

(1982) 06 BOM CK 0020

In the Bombay High Court

Case No : Second Appeal No. 920 of 1974

Shripatrao Vinayakrao Patwardhan and Others

APPELLANT

Vs

Sharatchandra Nilkanth Patwardhan and Others

RESPONDENT

Date of Decision : 14-06-1982

Acts Referred:

Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953 — Section 3, 5
Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 — Section 4, 7
Bombay Rent-free Estates Rules — Rule 10
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12(1), 17, 54

Citation : (1982) 1 BomCR 619

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Advocate : M.V. Paranjpe and P.M. Pradhan, for the Appellant; K.J. Abhyankar, for respondent No. 1, G.B. Karandikar, for respondent Nos. 5, 6 and 7 (A to C), V.P. Tipnis, for the Respondent

Judgement

M.L. Pendse, J.—This second appeal is preferred by original defendants Nos. 3 to 7 and 11 to 14 to challenge the legality of the judgment dated August 12, 1974 recorded by the District Judge, Sangli decreeing the plaintiff's suit for partition and possession of several lands and house properties. The properties involved in the suit include lands of Saranjam tenure and the trial Judge dismissed the suit by judgment dated March 6, 1973 holding that the grant of Saranjami rights were in favour of defendant No. 1 only and the other members of the joint family had no interest in those lands, and therefore, the properties were not partible.

Haribhat | Balvant & Ballal | Moro (died in 1774) | Shripatrao | Moreshwar
| Balvantrao (died in 1860) _____
_____ | | | | Moreshwar Shripatrao
Ganpatrao Govindrao Krishnarao (died in 1881) (given on (died in 1876) (died in
(died in 1888) | adoption | 1902) Shripatrao in 1840) | _____
_____ (died on 12-7-1915) | | | | Widow Ramabai Nilkantrao

Trimbakrao Hariharrao Keshavrao _____ | _____ | | (given in adoption) |
 (given in adoption) | | | Balvantrao Madhavrao Narayan Govind | |
 _____ | _____ | _____ (died on (died
 in | | | | 8-6-1919 1916) | Nilkantrao Ganpatrao Ramchandra Krishnarao
 Trimbakrao Vinayakrao(Deft No.1) | (given in adoption (Deft. 10) _____ |
 _____ (Deft No. 13 Adopted in 1920 | to Ramabai.) | | Saraswatibai (wife of |
 Madhavrao Moreshwar Deft. No. 1 died on _____
 (Deft. No. 11) (Deft No. 12) 27-12-70) | | | Chintaman Bhalchandra
 Sharatchandra | (Deft. 8) (Deft. 9) (Plff.) _____ |
 _____ | | | | |
 Shripatrao | Balvant | Sheela (Deft. No. 3) | (Deft. No. 5) | (Deft. No. 7)
 Shankarrao Prabhakar (Deft. No. 4) (Deft. No. 6) 2. The facts which have given
 rise to this litigation are not in dispute, but before setting out the relevant facts,
 it would be appropriate if the genealogy of the joint family is set out.

The plaintiff and defendants Nos. 8, 9 and 10 belong to the branch of Ganpatrao, while defendant Nos. 11, 12 and 13 belong to the branch of Govindrao. The contesting defendant Nos. 1 to 7 belong to the senior branch of Moreshwarrao. The ancestor of the parties Moro Balvant Ballal was a member of the branch of Govind Hari Patwardhan, who founded the Miraj Sansthan. Maratha rulers i.e. Peshawas granted a Saranjam in favour of Govind Hari sometime prior to the year 1750 for a sum of Rs. 25 lacks and in this grant was included an allowance of Rs. 5000/- which was ear-marked for Moro Ballal. The grant was made in consideration of political or military service and the grantees were called upon to maintain troops. Initially the grant in favour of Moro Ballal was a cash allowance of Rs. 5000/-, but sometime in the year 1800 five villages were allotted to Moro Ballal in lieu of the amount which he was entitled to receive under the original grant. Those villages were Dahiwadi, Vayafale, Kushavade, Ropale and Madaginhal. Subsequently in lieu of village Vayafale two other villages Lingnur and Vagholi were granted to the ancestors of the parties. In the year 1819, the grant was confirmed by one Mr. Chaplin, representing the East India Company and the covenant and the treaty was entered into between the Miraj Rulers and the East India Company whereby the rights of the Saranjamdars were guaranteed. A separate treaty was entered into by Mr. Chaplin with Balvantrao Moreshwar. It is required to be stated at this juncture that the initial grant was in favour of Moro Balvant who died in the year 1774 and on his death the estate was succeeded to by Shripatrao, his son and thereafter by Moreshwar and Balvantrao. Balvantrao had five sons Moreshwarrao, Shripatrao, Ganapatrao, Govindrao and Krishnarao. Shripatrao was given in adoption in 1840 and Balvantrao was living with his four sons and the joint family was in possession of various lands of Tainati, Saranjami, Inami and Sheri nature.

3. Balvantrao left for Kashi pilgrimage sometime prior to the year 1857 and thereafter his four sons continued to live jointly and enjoyed the income of various properties. The four sons of Balvantrao divided the moveable properties of the joint family on October 12, 1859, but continued to remain joint in respect

of other properties in accordance with the wishes of their father Balvantrao. Balvantrao died in the year 1860, but prior to that the four sons had decided to share the income from the joint family lands in equal share. In the year 1881 Shripatrao, the eldest son of Moreshwar and the members of the family of the other three branches, entered into certain family arrangement whereby the parties provided for sharing of income of the joint family properties. Another family arrangement was entered into in the year 1897. Shripatrao, the member from the eldest branch, continued to divide the income of the properties, including the lands of Saranjami tenure, in favour of the remaining branches, but in the year 1911 Shripatrao declined to honour his commitments and thereupon Hariharrao and Nilkantrao, the members of the branches of Govindrao and Ganpatrao complained to the Rulers of Miraj and demanded that they are entitled to the share in the joint family properties including the lands of Saranjami tenure in pursuance of the arrangements arrived at between the members of the joint family in the years 1859, 1881 and 1897. The Ruler did not accept the claim, but directed that the member of the senior branch shall pay an amount of Potagi (maintenance) to the other branches. The decision of the Ruler was approved by the Resident and Political Agent. Shripatrao died on July 12, 1915 leaving behind two minor sons Narayan and Govind and his widow Ramabai. Govind died in the year 1916, while Narayan died on June 8, 1919 and till the death of Narayan, the Saranjami lands were under the management of Chief of Miraj as Narayan, who was the eldest male linear descendent of Shripatrao was a minor. On the death of Narayan, Ramabai, the widow of Shripatrao adopted defendant No. 1 in the year 1920 and the Chief of Miraj approved the adoption and granted the Saranjami rights in favour of defendant No. 1. Nilkantrao, belonging to the junior branch, raised objection to the grant in favour of defendant No. 1 but the Ruler turned down the objection. The appeal carried by Nilkantrao to resident of Kolhapur also ended in dismissal.

4. On April 15, 1936, the three branches, the branch of Krishnarao being extinct, effected a partition of the lands excluding the Saranjam lands. By the partition deed (Exh. 228) only the properties of Saranjam tenure were left to be divided and possibly those lands were not included as they were impartible by nature. It is not in dispute between the parties that defendant No. 1 belongs to the senior branch and he continued to pay certain amounts every year to the members of the junior branches towards the maintenance amount in respect of the Saranjam rights as determined by the former Rules of Miraj State. The Government of Bombay enacted the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953 and the Act came into effect on August 1, 1954. By provisions of this Act, the Saranjams were abolished and the lands were resumed by the Government and re-granted to the Saranjamdars after levying the full assessment on the lands. In other words, the lands became Rayatav lands and ceased to be of impartible nature. The plaintiff thereupon served notice dated July 21, 1968 upon defendant No. 1 and demanded partition and possession of his 1/18th share in the lands and the properties set out in Schedule A to the plaint. The plaintiff

claims that the Saranjam was granted not to an individual but to the joint family and though the land stood in the name of the holder, in accordance with the rule of primogeniture, the other members of the joint family were entitled to the share in it as soon as the characteristics of impartibility was removed. The plaintiff further claims that the lands belonging to the joint family, whether those were Saranjami, Tainati Inami or Sheri, were thrown into the common hotch-pot and were enjoyed by all the members of the joint family for over several years. The plaintiff also claimed that defendant No. 1 alienated certain properties in favour of defendant Nos. 14 to 19 and there was total absence of any necessity to effect such alienations. The plaintiff claimed that the alienations are not binding on his share and the lands alienated should be allotted to the share of defendant No. 1. The plaintiff, accordingly, claimed partition and possession of 32 properties set out in Schedule A to the plaint. The suit was instituted on September 16, 1968 in the Court of 3rd Joint Civil Judge (Junior Division), Sangli.

5. The suit was resisted by defendant No. 1 by written statement (Exh. 124). Defendant No. 1 claimed that the properties at Serial Nos. 1 to 5 and 28 to 32 in Schedule A to the plaint are Saranjami estate and the Saranjam was granted to the defendant No. 1 alone and the plaintiff or the other members of the joint family had no interest in those properties. Defendant No. 1 further claimed that these ten properties, which were of Saranjami tenure are not available for partition as the Saranjam is granted always to an individual and not to the family. Defendant No. 1 relied upon the decisions of the Ruler of Miraj State recorded in the years 1910 and 1926 to support his contention. Defendant No. 1 further pleaded that the properties at Serial Nos. 12 to 24 of Schedule A to the plaint are accretion to the Saranjam estate, and therefore, it became part of the Saranjam estate and are not liable for partition. Defendant No. 1 asserted that on the abolition of Jagirs by the Act of 1953, the lands were resumed by the Government and regranted to him exclusively, and therefore, the plaintiff is not entitled to claim partition and possession. Defendant No. 1 finally claimed that the properties in Schedule A to the plaint were enjoyed by him exclusively to the exclusion of other members of the joint family from the year 1910 onwards and thereby defendant No. 1 has perfected his title by adverse possession. Defendant No. 1 claimed that alienations effected by him were in favour of tenants of the lands and are binding on the sharers or other coparceners, if it is found that the lands are liable to partition. Defendant No. 14 pleaded that he was a protected tenant of land at Serial No. 1 in Schedule A to the plaint and purchased the same on February 21, 1955 for Rs. 6500/- from defendant No. 1. Defendant No. 17 the purchaser of land at Serial No. 26 and had purchased it as a protected tenant on March 19, 1927. Defendant No. 18 pleaded that he had purchased Survey No. 81 mentioned in Serial No. 14 in Schedule A to the plaint on May 18, 1954 and thereafter had transferred it to one Nane and Patil several years prior to the date of the suit and, therefore, had no interest in the land and was unnecessarily joined as a party. Defendant Nos. 10, 11, 12 and 13 supported the claim of the plaintiff by their written statements Exhs. 115, 133, 103 and 137 respectively

and claimed that their respective shares in the joint family properly should be awarded to them and they are ready and willing to pay the requisite Court-fee in respect of their shares.

6. With these rival pleadings, the parties went for the trial and led evidence, both oral and documentary, in support of their respective claims. The trial Court framed several issues and came to the conclusion that the agreements of the years 1859, 1881 and 1897, on which the plaintiff placed reliance, were not proved. The trial Judge held that the original documents were not produced by defendant No. 1 and the secondary evidence was not permissible. The trial Judge further held that the contents of these three documents are not binding on defendant No. 1 as those documents were entered into by the predecessors of defendant No. 1 without securing the prior sanction of the Ruler of Miraj State. The trial Judge further held that the properties described in Schedule A to the plaint are Saranjam properties and the Saranjam was granted not to the family but to the particular holder. The trial Judge thereupon concluded that the Saranjam grant was in favour of defendant No. 1 alone and after abolition of Saranjam the regrant made in favour of defendant No. 1 cannot enure for the benefit of the joint family. The plaintiff challenged the decree of dismissal by preferring an appeal before the District Court, Sangli, and the Lower Appellate Court reversed the decree of the trial Judge. The District Judge came to the conclusion that the plaintiff's claim is not barred by principles of *res judicata* as the decisions recorded by the Ruler of Miraj State were not decisions of a Civil Court. The Lower Appellate Court further held that defendant No. 1 failed to establish acquisition of title to the Saranjam lands by adverse possession. The District Judge found that the Saranjams was initially granted prior to the year 1750 to Moro Ballal and to such grant Rule II of Rules for the purpose of determining the terms to which the continuances of Jagirs and Saranjama shall be subject and framed by the Governor in Council would be applicable. The District Judge concluded that the Saranjam was hereditarily confineable and was governed by the order of primogeniture. It was found that the Saranjam property fulfils all conditions of an impartible estate under the Hindu Law and after abolition of Jagirs was available for partition amongst the members of the joint family. On the strength of these findings, the District Judge passed a decree for partition and possession in respect of all the properties described in Schedule A to the plaint, and that has given rise to the present second appeal.

7. Shri Paranjpe, the learned Counsel appearing the support of the appeal, raised four contentions to challenge the legality of the decree passed by the learned District Judge. The first contention of the learned Counsel is that some of the properties in Schedule A to the plaint are of Saranjam tenure and in such properties members of the joint family had no interest whatsoever as the incidents of survivorship is not applicable to this kind of properties. It was urged that the Saranjam tenure is given to a particular holder for rendering political service and Jagir and Saranjam are never granted to the family. Shri Paranjpe further submitted that even assuming that the Saranjam properties are merely

impartible and are available for partition after abolition of Jagirs, still any accretion made to such Saranjam properties or any properties purchased from the income of such Saranjam properties are the separate properties of the holders and are not liable for partition. The third submission of the learned Counsel is that some of the properties included in Schedule A to the plaint were lost to the family in view of the provisions of the Tenancy Laws and as such decree for partition and possession of those lands should not have been passed. The final submission of the learned Counsel is that certain properties included in Schedule A were alienated by defendant No. 1 and those alienations were bona fide and effected in the ordinary course of business and should have been protected. The learned Counsel made a grievance that the District Judge was in error in allotting the alienated properties to the share of defendant No. 1. Shri Abhyankar, the learned Counsel appearing on behalf of the plaintiff and Shri Karandikar and Shri Tipnis, Advocates appearing on behalf of original defendants Nos. 11, 12, 13 and defendant No. 10 respectively, supported the judgment of the Lower Appellate Court submitting that the Saranjam estate was initially granted to the joint family and the conduct of the parties for over several years unmistakably establishes that the grant was not to the individual but to the family. It was further claimed that the incidents of survivorship were applicable to the lands of Saranjam tenure and the lands were impartible till the Saranjam was abolished by the provisions of the Statute. It was further claimed that the alienations effected by defendant No. 1 are not bona fide and could not bind the other members of the family.

8. The principle question which falls for determination is as regards the character of the Saranjam properties and Shri Paranjpe in support of his contention that the grant of Saranjam is personal and not hereditary and resumable at the pleasure of the Crown relied upon certain decisions. Col. Etheridge in his writing published in 1874 found that it was the practice of the former Governments, both Mohammedans and Marathas to maintain a species of feudal aristocracy for State purposes by temporary assignments of revenue either for the support of the troops or personal service. Holders of such lands were entrusted with the powers requisite to enable them to collect and appropriate the revenue and to administer the general management of the lands. The terms "Jagir and Saranjam" had practically no difference and were convertible. The grants by Mohammedans and Marathas were usually the grants dependent on the pleasure of the Sovereign and the fidelity of the grantee, and as such they were not in general hereditary and were effective only during the life time of the grantee. The principle that to whom a Saranjam shall be granted, upon the death of its holder, is one which belongs exclusively to the Government to be determined upon political considerations and it is not within the competency of any legal Tribunal to review the decision, was laid down by the Privy Council in the decision reported in ILR 17 Bom. 431 in the case of Sheikh Sultan Sani v. Sheikh Ajmodin, which was decided on November 19, 1892 in a suit which was instituted prior to the year 1886. The Privy Council approved the Minute dated March 15, 1822 of Sir

Thomas Munro and to which a reference is made by Col. Etheridge in his preface to the Narrative of the Bombay Inam Commission to the effect that the terms in documents of grant like "for over", "from generation to generation" or in Hindu grants "while the sun and moon endure" are mere forms of expressions and were never supposed either by the donor or the receiver to convey the durability which they imply, or any beyond the will of the Sovereign. The second decision which Shri Paranjpe made reference is the decision of the Privy Council reported in 14 Bom.L.R. 1225 in the case of Shrimant Raje Bahadur Raghojirao Saheb v. Shrimant Raje Laxmanrao Saheb. The Privy Council noted that there were three points with reference to the position of Jagir property and with regard to which there has been certain element of confusion. The three points were (i) was the land impartible; (ii) did the law of hereditary succession apply to it; and (iii) was it subject to the law of primogeniture. The Privy Council found that the grants were personal and not hereditary and were resumable at pleasure. The grants being personal and temporary were necessarily impartible. It was further observed :

"This accurately distinguishes between impartibility as such, and any consequence, whether in the direction of hereditary or primogenital succession, which may be supposed to flow from such a fact. The impartibility of Jagir lands is in truth entirely separated from the idea of succession by the fact that the impartible lands were held together as an unit in the hands of one man who was rendering personal service to the Government of the day. It may be that upon his death a fresh grant, again to one man and again in return for personal service, was made; and it may also be that the one man selected was in ordinary case the eldest son; but these matters of practice were not consequences of law, and the impartibility and unit which attached to personal service was not related to, but, on the contrary, was distinct from, the dead of succession by force of law to the impartible lands."

Shri Paranjpe also relied upon the Full Bench decision of this Court reported in 49 Bom.L.R. 240 in the case of Daulatrao Malojirao v. Province of Bombay. The Full Bench held that :

"The whole structure of Saranjam tenure is founded in the sovereign right, which can only change by conquest or by treaty. So founded, Jagirs and Saranjams, with the fuedal incidents connected with them, are granted or withheld at the will and pleasure of the sovereign power, and, it granted, the fixity of tenure is always subject to interruption and revocation by resumption, be it temporary or absolute in character. No incident normally applicable to private rights between subject and subject can fetter or disturb the sovereign will."

The principle laid down by the Full Bench was approved by the Supreme Court in the decision reported in Shrimant Dattajirao Bahirojirao Ghorpade Vs. Shrimant Vijayasinhrao and Another, in the case of Dattajirao Bahirojirao Ghorpade v. Vijayasinhrao and another. The Supreme Court while approving the above principle, also referred to earlier decision reported in ILR 17 Bom.431 (supra)

and 14 Bom.L.R. 1226 (supra). From these decisions Shri Paranjpe submits that it becomes clear that Saranjam grants are in favour of an individual and are liable to be resumed by the Government at its pleasure. It was urged by the learned Counsel that the grant in the present case was to Moro Ballal prior to the year 1750 and on his death a fresh grant was made in favour of the sons, grand son and great grand son Balvantrao. It was claimed that merely because the grant was made in favour of member of the family and that too in accordance with the rule of primogeniture, it cannot be concluded that the grant was to the family. The grant was of political nature and was dependent on the sole discretion of the grantor and on the fidelity of the grantee.

9. Before evaluating the submission of Shri Paranjpe, it is necessary to make reference to certain other developments subsequent to the decisions rendered by the Privy Council. In the Bombay Presidency there were several Saranjam holdings but only some of them involved the performance of military service. After the downfall of Peshawas and on the settlement of the country by Mount-Stuart Elphinston, such of the military Saranjams, as they were not guaranteed by treaty, were ordered for resumption. The Saranjams guaranteed by treaties were conveniently called treaty Saranjams and they were included in the memorandum known as Aitchison Treaties and Engagements. Mr. Elphinston also set up a Inam Commission to make Saranjam inquiries and the Home Government approved certain principles, one of which was that all Saranjams granted prior to the year 1751 or held in commutation of anything so granted should be continued hereditary. The Government also reserved to itself the power to resume any Saranjams and this was on the principle that the Saranjam lands are granted at the pleasure of the Government. Ultimately, in exercise of powers referred to in Rule 10 of Schedule B of Act XI of 1852 and of the second sub-clause to Clause 3 of section 2 of Bombay Act VII of 1863, His Excellency the Governor in Council was pleased to issue the following rules for the purpose of determining the terms to which the continuance of Jagirs and other alienations of a political nature shall be subject :

(I) Saranjams shall be ordinarily continued in accordance with the decision already passed by Government in each case.

(II) A Saranjam which has been decided to be hereditarily confineable shall ordinarily descend to the eldest male representative, in the order of primogeniture, of the senior branch of the family descended from the first British Grantee or any of his brothers who were undivided in interest. But Government reserve to themselves their rights for sufficient reason to direct the continuance of the Saranjam to any other member of the said family, or as an act of grace, to a person adopted into the same family with the sanction of Government. When a Saranjam is this continued to an adopted son he shall be liable to pay to Government a Nazarana not exceeding one year's value of the Saranjam, and it shall be levied from him in such instalments as Government may, in each case, direct.

(III) In the case of Saranjams which have been decided to be confineable for two generations with a pension to the third, the eldest surviving son shall be considered to represent a generation, and the entire Saranjam shall descend to him, when he represents the second generation from the first British Grantee and a pension when he represents the third. But if the eldest son or sons of the British Grantee have died before their father but leave sons, the grandson who ranks first in the order of primogeniture shall on his grand father's death be regarded as the second generation, and the entire Saranjam shall be continued to him, no pension being granted to the next generation.

(IV) Proposed orders regarding succession to Saranjams in accordance with the above rules must, as they constitute a technical regrant of the Saranjam, be submitted in all cases for the sanction of Government.

(V) Every Saranjam shall be held as a life estate. It shall be formally resumed on the death of the holder and in cases in which it is capable of further continuance it shall be made over to the next holder as a fresh grant from Government, unencumbered by any debts, or charges, save such as may be specially imposed by Government itself.

(a) In cases in which there is no suitable person to whom regrant can immediately be made; or in which an immediate regrant would be injurious to the interest of the estate, the Saranjam may be attached and placed under Government management for such period as Government may consider necessary; and the revenues of the Saranjam after deduction of the expenses of management, may be assigned for the maintenance of the representatives of the deceased Saranjamdars, in such manner and in such proportion as Government may from time to time direct.

(VI) No Saranjam shall be capable of sub-division.

(VII) Every Saranjamdar shall be responsible for making a suitable provision for the maintenance of the widow or widows of the preceding Saranjamdar, his own brothers, or any other member of his family, who having a valid claim arising from infancy, mental or physical infirmity, rendering such member incapable of earning a livelihood, may be deemed deserving of support at his hands. When this obligation is not fulfilled by any Saranjamdar. Government may direct him to make suitable provision for such persons and may fix the amount, which he shall pay, in each instance; provided that no one who has independent means of his own, or is in the opinion of the Government otherwise sufficiently provided for, shall be entitled to maintenance from the Saranjamdar.

(VIII) Every order passed by Government under the above rule, for the grant of maintenance by a Saranjamdar shall hold good during his life time only.

(IX) If an order passed by Government under Rule (VII), is not carried out. Government may, whatever the reason may be, direct the Saranjam, or a portion of it, to be resumed, as the circumstances of the case may require. Provision for

the members of the Saranjamdar's family entitled to maintenance shall then be made by Government out of the revenues of the Saranjam so resumed.

(X) Whenever it appears that a Saranjam or its revenues have passed by attachment or any other process of the Civil Court into the hands of a person, other than a Saranjamdar, Government will ordinarily direct the Saranjam to be resumed, and pass such order as to its regrant or other disposal as may seem to them fitting.

(XI) The above rules shall be applicable not only to Saranjams proper, but also to Chough Saranjams.

(XII) Any Inam granted on political considerations shall be continued in the terms of the sanad or order creating the grant. In the event of any such Inam passing out of the possession of the family, for whose support it was granted, it shall be liable to resumption, unless there be an express provision, permitting such transfer, in the terms of the grant.

These Rules being issued under powers reserved to the Government under the enactment, have statutory force and are determinative of the rights of the Saranjamdars on all matters with which they deal. Rule (II) provides that a Saranjam shall be decided to be hereditarily confineable or ordinarily descend to the eldest male representative in the order of primogeniture and Rule (V) which provides that Saranjam shall be held as life estate must be read subject to Rule (II). Rule (II) is attracted to a Saranjam which is granted prior to the year 1751 and is decided to be hereditarily confineable. In the present case it is not in dispute that the initial grant in favour of Moro ballal was prior to the year 1750.

10. After the Saranjam Rules came into effect on May 5, 1898, as amended on July 8, 1901, there are several decisions where the questions as to the exact import of Rule (V) came up for consideration. Rule (V), as mentioned hereinabove, inter alia provides that every Saranjam is a life estate and is liable to resumption on the death of the holder. It further provides that after it is made over to the next holder as a fresh grant from the Government, it shall be unencumbered by any debts or charges save such as may be specially Imposed by Government itself. A question arose in the case reported at 23 Bom.L.R 314 in the case of Sakharam Gopal Page v. Trimbakrao Ramchandra Mantri, as to whether a grant of Mirashi and Inami rights in certain lands by the Saranjamdar of the village, whose estate descends by inheritance to the eldest member of the family, is binding on his successor, and the Division Bench of this Court, referring to the Privy Council decision in ILR 15 Bom. 222 in the case of Dosibai v. Ishwardas Jagjivandas, held that the grant by the holder would necessarily bind the successor. The Division Bench held that the resumption dealt with by Rule (V) is a formal resumption only and the intention is not to interfere with the succession. The Division Bench relied upon the earlier decision of this Court reported in 12 Bom.L.R. 208 in the case of Trimbak Ramchandra v. Shekh Galam Zilani and 18 Bom.L.R. 768 in the case of Madhavrao Hariharrao v. Anusuyabai

and laid down the principle that estate covered by Rule (II) is a guaranteed hereditary estate and the right to succession is in the family but subject to regulations by the Government. Chief Justice Scott in the later decision reported in 18 Bom.L.R. 768 (supra) observed that the estate is an estate which is bound according to the Rules to continued in that family, and although on the death of a holder it is provided under Rule 5 that there shall be a formal resumption and re-grant free from debts and charges to the next holder, there is no provision for freedom from all tenures, rights, encumbrances and equities created in favour of any person other than Government. The new holder, therefore, take the estate as it was on the death of the previous holder, and he takes by virtue of his inheritance from the previous holder subject to the provisions of formal resumption and re-grant by Government. In other words, this Court consistently held that the resumption by the Government is a formal resumption and though the Saranjam estate is described as a life-estate, in fact it is an accepted principle that it will be hereditarily continued to the eldest male representative. The decision of this Court was considered by the Privy Council in the decision reported in 29 Bom.L.R. 1503 in the case of *The Secretary of State for India v. Girjabai*. The Privy Council approved the observation of Mr. Justice Lallubhai Shah holding that the fact that the Saranjamdar is in a sense a life tenant does not alter the ordinary incidents of a grant by a way of Saranjam. The Privy Council observed that what those ordinary incidents are must be ascertained when there is no deed of grant forthcoming from (a) the evidence, if any, in the case; (b) from legislative enactments; and (c) from judicial decisions. Shri Paranjpe made reference to the decisions of the Supreme Court in Civil Appeal No. 44 and 45 of 1968 and to a judgment of the Division Bench of this Court in First Appeal No. 25 of 1962, copies of which are produced on record at Exhs. 307 and 308, but it is not necessary to make detailed reference to these decisions as those decisions do not assist defendant No. 1. in regard to the contention about the nature of the grant.

11. From the decisions relied upon by the learned Counsel and from the contents of the authoritative book of Shri N.H. Phadnis. "The law of Saranjams and Inams", the following principles as regards the character of Saranjams emerges. Before the introduction of the British Rule, Saranjams were estates held for life and they were neither transferable nor hereditary and were held at pleasure of the Sovereign. Being personal and temporary, they were necessarily impartible. Upon the death of a holder, a fresh grant was made by the Sovereign and it was possible that the person selected was in ordinary case the eldest son from the family of the previous owner. After the advent of the British Rule the policy followed was not to resume the military Jagirs of the political Saranjamdars except the same motive of keeping troops for serving the Sovereign continued to exist. The law of Saranjams under the British Government is that they are to be held and inherited according to the Rules laid down by the Government, and the rules are determinative of the rights of the Saranjamdars on all matters dealt with by the Rules. Rule (II) contemplates that all Saranjams which were granted

prior to the year 1751 are decided to be hereditarily confineable. Rule (II) prescribes the mode and the manner in which the Saranjam estate was to be dealt with. The enactment of the Rules make it clear that the British Government recognised the principle that the Saranjams were not necessarily granted to an individual but could be granted to the family. The Rules also recognise the fact that members of the family of the grantee and also the members of the joint family who are required to be maintained, being either the widows or persons suffering from physical or mental infirmity, are to be provided out of the income of the Saranjam estate. The obligation is cast upon the holder of the Saranjam by Rule (VII) and the powers were reserved by the Government to enforce the said obligation. The scheme of the Rules makes it clear that the Government recognised that grant of Saranjam need not necessarily be to an individual but the grantee can hold for the benefit of the family. Though it is true that the Saranjams are granted by the Mogul and the Maratha Rulers for rendering service to the Sovereign, it cannot be ruled out that service could not be rendered by the members of the family. In fact the history indicates that the Saranjamdars, who were required to render political service, like maintenance of troops, used to carry out that service not only by themselves but with the assistance of their brothers and other members of the joint, family. A successor to the Saranjam estate takes the Saranjam by inheritance and not by virtue of gift by the ruling power. The Government undoubtedly reserves to itself the right for sufficient reasons to direct the continuance to any other member of the family. The right reserved by the Government was only a limited right and that is to chose any other member of the family by by-passing the rights of the eldest male member. It follows from this principle that a vested right to have the Saranjam continued to one or other members of the family accrued to the family of the Saranjamdar. The decision of the Privy Council reported in 14 Bom.L.R. 1226 (supra) and relied upon by Shri Paranjpe relates to a Saranjam estate which lapsed in 1853, i.e. long prior to the enactment of Saranjam Rules by British Government. The other decision reported in ILR 17 Bom. 431 (supra) is also a decision prior to the enactment of the Rules. On the other hand the decision of the Privy Council reported in 29 Bom.L.R. 1503 in the case of *The Secretary of State for India v. Girjabai*, is a decision which arise out of the suit instituted subsequent to 1901 when the Saranjam Rules were amended. It is, therefore, obvious that the contention of Shri Paranjpe that in regard to the Saranjam estate the grant is always in favour of an individual and being a life estate ceases to have an effect on the death of the holder, cannot be accepted. Though technically the grant stands resumed to the Government on the death of the holder, there being a vested right to inherit the Saranjam estate, as contemplated by Rule (II) the resumption is only a formal resumption. It is also clear that a Saranjam grant can be in favour of the family, though the name of senior member would be entered as the holder of the estate. The question whether the initial grant was in favour of the family or to an individual person has to be ascertained with reference to the deed of grant itself and in its absence, as observed by the Privy Council in 29 Bom.L.R. 1503 (supra) from the

evidence, from the legislative enactment and from the judicial decisions. The question as to whether the question of survivorship is applicable to the Saranjam in question would depend upon the issue as to whether the initial Saranjam was granted to the family or to an individual.

12. It is not in dispute between the parties that the initial grant was in favour of Moro Ballal and was granted prior to the year 1750. The original grant is not forthcoming, nor the grants made subsequently in favour of Shripatrao, the son of Moro or his successor Moreshwar, Balvantrao, Moreshwarrao, Shripatrao or defendant No. 1. The plaintiff asserted in paragraph 7 of the plaint that all the documents, accounts, sanads and agreements in respect of Saranjam estate are in possession of defendant No. 1 and defendant No. 1 is not willing to disclose that record to the plaintiff. The plaintiff demanded that defendant No. 1 should be directed to produce the entire record in the Court and the plaintiff should be permitted to take inspection of the same. The plaintiff also averred that his predecessors had taken out copies of certain documents and the plaintiff should be permitted to produce the same. In the written statement (Exh. 124) filed by defendant No. 1 it was not denied that the documents including sanads and agreements in respect of Saranjam properties are in possession of defendant No. 1. Defendant No. 1 claimed in paragraph 13 of the written statement that the agreements entered into in the years 1859, 1881 and 1897 are not binding on him. This averment clearly indicates that the assertion of the plaintiff that defendant No. 1 was in possession of all the documents was not even challenged. After the issues were settled and before the evidence commenced on January 19, 1970, the plaintiff filed an application (Exh. 152) pointing out that the plaintiff had demanded production of the entire record in possession of defendant No. 1 and inspection thereof and defendant No. 1 had not denied the fact of possession of the documents in the written statement. The plaintiff, therefore, requested the Court to direct defendant No. 1 to produce the record. On January 23, 1970, defendant No. 1 filed his reply at Exh. 153 and claimed that the question of production of original agreements of 1859, 1881 and 1897 does not arise as defendant No. 1 was not personally aware of the same. Defendant No. 1 further claimed that as the plaintiff had demanded production of documents, the question whether it should be produced or not should be decided at the conclusion of the suit. It is obvious that the reply filed by defendant No. 1 was extremely vague and deliberate efforts were made to avoid production of the original documents. The trial Judge passed an order on January 23, 1970 itself below Exh. 152 directing defendant No. 1 to produce all documents in his possession in respect of Saranjam estate on or before February 10, 1970. Defendant No. 1 instead of complying with the order, filed a review application (Exh. 154) on January 31, 1970 and claimed that order of production is utterly uncalled for materially irregular, patently illegal and highly detrimental to the interest of defendant No. 1. Defendant No. 1 claimed that unless and until the plaintiff establishes his claim for partition and possession, the question of production of documents and account books does not arise. The plaintiff opposed

the application by Exh. 155 pointing out that not only the review application is not maintainable, but effort of defendant No. 1 is to prevent the Court from proceeding with the suit by persistent refusal to produce the requisite documents. Curiously enough, the trial Judge by order dated March 20, 1970 allowed the review application and set aside its earlier order observing that the question of discovery is reserved till the concerned issues of the plaintiff's right in the disputed properties are decided. The method adopted by defendant No. 1 in consistently declining to produce the original document, including the initial grant in favour of Moro Ballal clearly indicates that defendant No. 1 was desirous of keeping back the truth from the Court. Shri Abhyankar for the plaintiff naturally claimed that an adverse inference should be drawn against defendant No. 1 for non-production of original grant as it would have disclosed that the grant in favour of the predecessors of defendant No. 1 was not an individual grant but was for the benefit of the family. Defendant No. 1 entered the witness box and his testimony is at Exh. 273. Defendant No. 1 admitted that since the death of his father Shripatrao he is the manager of the family and the old ancestral record is in his possession. Defendant No. 1 further stated that he had not ascertained from the record as to whether the agreements of 1859, 1881 and 1897 are there. Defendant No. 1 admitted that he is in possession of the sanad showing his title to the Saranjam properties, but feigned ignorance as to whether he was in possession of other documents. In view of these admissions and refusal of defendant No. 1 to produce the original documents, the trial Judge was perfectly justified in permitting the plaintiff to produce secondary evidence in respect of the agreements entered into between the holder of the grant and the other members of the family in the year 1859, 1881 and 1897. The copies of these documents were made by the plaintiff's father is an exercise book which is produced on record at Exh. 203.

13. The first document on which strong reliance was placed on behalf of the plaintiff to establish that the initial grant was in favour of the Patvardhan family is an agreement dated October 12, 1859. As mentioned hereinabove, Balvantrao had left for pilgrimage in the year 1857 leaving behind his four sons Moreshwarrao, Ganpatrao, Govindrao and Krishnarao. The four brothers executed the document after the moveable property was divided in equal share. The agreement sets out that the immovable properties and the income therefrom is to be kept joint and further sets out the expenses which are required to be incurred. The agreement provides that after incurring the expenses the income should be divided into four equal shares and to be paid over to the four brothers after reserving an amount of Rs. 800/- for Moreshwarrao, who was the eldest brother. The agreement includes lands of the family which were Tainati, Saranjami, Inami and Sheri lands. Shri Abhyankar submits, and in my judgment with merit, that in 1859 itself all the four brothers entered into an agreement to decide the income of all the lands including the Saranjam lands as they were fully conscious that the Saranjam grant was to the family and not to an individual. It is also required to be noted that the four brothers entered into an

agreement while their father was still alive and gone on the pilgrimage. The second document was executed on January 2, 1881 by Moreshwarrao and is in the nature of arrangement to be carried out after his death. The writing was executed in consultation with his brothers and nephews. This documents reiterates the arrangement arrived at in the year 1859 and states that in accordance with that agreement the income was divided equally amongst the four brothers. The agreement further recites that Moreshwarrao had applied to the Ruler of Miraj for grant of permission to take the son of his brother in adoption and in case such permission is granted, the arrangement arrived at in the year 1859 should be continued by giving share of Moreshwarrao to the adopted son. The third document is dated May 24, 1897 and is between Shripatrao, who was taken in adoption by Moreshwarrao and Balvantrao belonging to the branch of Ganpatrao and Govindrao the brother of Moreshwarrao. By this document, the two earlier agreements of October 12, 1859 and January 2, 1881 were approved and it was stated that the Vahivat carried out in accordance with the agreement should be continued even thereafter. Relying upon these three documents it was contended by Shri Abhyankar that the contents of the documents make it crystal clear that the income from the Saranjam lands was treated by the members of the family including the holder of Saranjam as the joint family income and was accordingly shared between the various branches. The documents leave no manner of doubt that Saranjam lands were treated as that belonging to the family, as each of the document asserts that all the properties should be kept joint and income should be equally shared. It is crystal clear from these documents that the members of the family were conscious that the grant was not to an individual but to the family.

14. Shri Paranjpe for the appellants relied upon Exh. 226, which is a Yadi of the year 1821. This Yadi is an order from the Political Agent and known as Tainat-Zabta setting out that the grant of Rs. 5000/- was given to Balvantrao Moreshwar and in lieu thereof lands situated in various villages were assigned as Saranjam estate. It is stated in this document that Balvantrao was to render service to the Ruler. This document nowhere indicates that the grant was exclusively to Balvant Moreshwar and not to the family. It is interesting to note that even during the life time of Balvantrao his four sons had entered into an agreement in the year 1859 to keep all the properties joint and to share the income equally and the agreement itself recites that it was done in accordance with the wishes of Balvantrao. It could be well inferred that Balvantrao himself never considered that the grant was to him exclusively and was not to his family. The reference to this Tainat-Zabta is found in Captain West's Mamoirs, but that also nowhere recites that the grant was to Balvantrao individually and not to the family.

15. Strong reliance was placed by Shri Paranjpe on two orders passed by the former Ruler of the Miraj State to submit that the grant of Saranjam estate was to an individual and it is necessary now to make a reference to those orders. As

mentioned hereinabove, the four sons of Balvantrao executed agreements in the years 1859, 1881 and 1897 to share equally the income of the lands, including the Saranjam lands, belonging to the family. Accordingly, the income was shared by all the four branches for over 60 years. Moreshwarrao, the eldest son of Balvantrao died in the year 1881 and the Saranjam estate was inherited by his son Shripatrao. Even after the death of Moreshwarrao, Shripatrao continued to divide the income amongst the four branches, but in the year 1910 Shripatrao declined to share the income and that led to the complaint by Hariharrao, son of Govindrao, Nara the Chief Ruler. The State Agent made a report pointing out that there are three branches of Moro Ballal (the original grantee) with heirs who are sharers of the Saranjam and the deceased represented the senior branch. The report indicates that there were sharers in the Saranjam estate. The Chief Ruler considered the claim of Hariharrao and the order of the Chief Ruler dated January 9, 1913 produced at Exh. 207 recites that Shripatrao admitted that income of Saranjam land was equally distributed between various branches from the year 1858 in accordance with the agreement. Shripatrao also claimed that although the division of income was effected for over 60 years he was not inclined to continue it as the Saranjam was granted for rendering service. The Chief Ruler noted that the Saranjam income was folded, but to such division, in pursuance of the agreement the sanction of the ruler was not secured. The Chief Ruler felt that it would not be advisable to divide the income of Saranjam lands as the Saranjam was granted for rendering service and that goal would not be achieved if division of income is permitted. The Chief Ruler accordingly turned down the demand of Hariharrao for share in pursuance of the agreement, but provided that as Hariharrao was an heir to the Saranjam estate he would be entitled to receive an amount of Rs. 300/- per year towards Potagi. The Assistant Political Agent, South Maratha Country, approved the order of the chief ruler on July 26, 1914 by order Exh. 208; and ultimately the decision was upheld by the Resident, Kolhapur and Political Agent by order dated February 15, 1915 (Exh. 209). All these three orders, accept the fact that Saranjam income was equally divided between the four sons of Balvantrao, but declined to grant relief to Hariharrao on the ground that the agreements to share the income of Saranjam estate were entered into without obtaining the sanction of the Chief Ruler. Shri Paranjpe submits that the decisions recorded by the three authorities in connection with the claim of Hariharrao to the income of Saranjam estate establishes the fact that the grant of Saranjam was exclusively to Shripatrao, the father of defendant No. 1 and was not for the benefit of the joint family. Shri Paranjpe submits that in case the grant was for the family then Hariharrao would have succeeded in his claim for a separate share. The submission cannot be accepted for more than one reason. In the first instance the issue before the Chief Ruler was not as to whether the grant of Saranjam estate was to Shripatrao exclusively or to the family. Hariharrao had approached the Chief Ruler for enforcing the agreements entered into in the years 1859, 1881 and 1897 and the Chief Ruler declined to enforce those contracts on the ground that the contracts could not be upheld as prior sanction of the Chief Ruler was not

obtained. The order of the Chief Ruler nowhere indicates that the grant was exclusively to Shripatrao, and therefore, the claim of Hariharrao cannot be sustained. It is required to be stated that Saranjam estate was impartible and it was not permissible to divide it or to divide the income of it unless the grantor specifically permits it to be done. The second ground is that in spite of the fact that the Chief Ruler declined to enforce the agreement, it was directed by the order of the Chief Ruler that Shripatrao should pay an amount of Rs. 300/- per month to Hariharrao as Potagi as Hariharrao was heir to the Saranjam estate. This direction was entirely uncalled for if Hariharrao had no interest whatsoever in Saranjam estate. It is required to be stated that the order of the year 1913 was passed by the chief ruler after the British Government had enacted Saranjam Rules in the year 1898. Rule (II) provides that Saranjam granted prior to the year 1751 were hereditarily confineable and shall descend to the eldest male representative in the order of primogeniture while Rule (V) provides that Saranjamdar shall be responsible for making provisions for the maintenance of his own brothers or any other member of his family. The order of the chief ruler read along with these rules unmistakably establishes that Shripatrao was given the Saranjam grant after the death of his father Moreshwar, but the interest of other branches represented by brothers and nephews of Moreshwar was specifically safeguarded. The Chief ruler would not have passed the order of Potagi in favour of Hariharrao if grant to Shripatrao was an individual grant. It is interesting to note in this connection that till the year 1943 Shripatrao and on his death his son defendant No. 1 continued to pay the Potagi amount as ordered by ruler. In my judgment, the order of the Chief Ruler and confirmed by the Assistant Political Agent and Resident Political Agent in no manner establishes that the grant was to Shripatrao alone and not to the members of the joint family.

16. Shri Paranjpe then relied upon the order dated November 23, 1926 passed by the chief ruler of Miraj State and produced on record at Exh. 214. To appreciate this order, it is necessary to make reference to certain facts with reference to the geneology. Shripatrao, the holder of Saranjam estate died on July 12, 1915 leaving behind two sons Narayan and Govind and his widow Ramabai. Both Narayan and Govind were minors and the estate was taken under the management by the Chief Ruler. Govind died in the year 1916 and Narayan died on June 8, 1919 during their minority. On the death of the two sons, their widow mother Ramabai adopted defendant No. 1 in the year 1920. An inquiry commenced for grant of Saranjam estate to the descendent of Shripatrao and in that heirship inquiry Ramabai informed the Chief Ruler that she desired to take defendant No. 1 in adoption. Accordingly, the permission was granted and defendant No. 1 was adopted by Ramabai. Nilkantrao, the father of the plaintiff raised objection to the grant of permission to Ramabai to adopt defendant No. 1 and the order of the Chief Ruler giving grant of Saranjam estate to defendant No. 1, being the adopted son of Shripatrao under Rule (II) of Saranjam Rules. Rule (II) of the Saranjam Rules inter alia provide that the Government had a right to direct the continuance of Saranjam as an act of grace to a person adopted in the

family with the sanction of the Government. The Chief Ruler considered the objection that Saranjam estate could not be continued to defendant No. 1, the adopted son of Ramabai and over-ruled the same. The objector aimed that on the death of Narayan on June 8, 1919, the branch of Shripatrao became extinct as there was no male member alive and the Saranjam estate belongs to the family and was entitled to be continued by the other members of the family who were available at the time of the death of Narayan. Nilkantrao claimed that he being the eldest male member in the second senior branch of the joint family, was entitled to succeed as the holder of Saranjam estate. The objector claimed that adoption of defendant No. 1 in the year 1920, although with the sanction of the Chief Ruler, would not result in divesting of his right to succeed to the Saranjam estate. The contention was turned down on the ground that defendant No. 1 was adopted with the sanction of the chief ruler and as the Saranjam estate was merely a life estate, on the death of Shripatrao it stood resumed and could be regranted by the Ruler in favour of any member of the family and as a matter of grace even to an adopted son. The decision of the Chief Ruler was confirmed by the Resident of Kolhapur on July 21, 1930 by order Exh. 215 passed on a revision application preferred by Nilkantrao. The order of the political agent indicates that the Chief Ruler had a power to grant Saranjam estate to the adopted son, defendant No. 1, even though it was hereditarily confineable and shall descend to the eldest legal male representative. Shri Paranjpe submits that the decision of the chief ruler indicates that the Saranjam estate, being a life estate, the interest of the Saranjamdars stands extinguished on his death and the estate is to be afresh to any other individual according to the sweet will of the Ruler. The submission cannot be entertained as it is inconsistent with the statutory Rules framed by the Government. It is obvious that though Rule (V) provides that the Saranjam estate is a life estate, the resumption of the estate on the death of the holder is only a formal resumption and is capable of further continuance. The expressions "formal resumption" and "capable further continuance" connote that the descendants of the deceased Saranjamdar have got vested right to claim fresh grant. Though the claim of Nilkantrao for fresh grant of Saranjam estate was turned down, in my judgment, it cannot be concluded that the grant was not to the joint family. In my judgment, the decisions of the Chief Ruler in the years 1913 and 1926 in no manner establish the claim of defendant No. 1 that the grant of Saranjam estate was not to the family but only to an individual. On the other hand, the conduct of the parties over several years in executing the agreements to treat Saranjam estate as of the joint family and to divide the income thereafter in equal share, conclusively prove that the Saranjam estate was granted to the joint family. In absence of any original grant on record on the material available, the finding of the Lower Appellate Court that the grant was to the family does not require any interference. Accordingly, the first submission of Shri Paranjpe that properties at Serial Nos. 1 to 5 and 28 to 32 of Schedule A to the plaint, being of Saranjam tenure, are not available for partition as the members of the joint family had no interest in it cannot be accepted.

17. A reference is required to be made to Civil Application No. 1493 of 1982 filed by the appellant No. 1 for production of documents under Order, 41 Rule 27 of the CPC on April 30, 1982. This application was presented after the arguments were over. The appeal was heard for about four days consecutively and though I inquired from Shri Paranjpe on several occasions the reason for non-production, no satisfactory answer was given. By this civil application the, legal representatives of defendant No. 1 assert that defendant No. 1 died during the pendency of the suit and defendant No. 3 who is the eldest son had no knowledge of various documents and, therefore, a stand was taken in the trial Court that documents are not relevant. Defendant No. 3 claims that it transpired at the hearing that the documents asked for by the plaintiff are relevant and therefore, defendant No. 3 is willing to produce the documents and permission should be granted. In my judgment, the application is most frivolous and was filed by defendant No. 3 with certain ulterior motives. In the first instance defendant No. 1 had died even long before the hearing of the suit commenced in the trial Court. Defendant No. 3, who is the eldest son of defendant No. 1, was defending the suit and as pointed out hereinabove made every effort to defeat the "order of the Court for production of documents. It is interesting to note that at no stage before the trial Court or before the District Court defendant No. 3 claimed that documents were not in his possession, but his only claim was that they are not relevant and are not required to be produced unless it is decided that the plaintiff has a share in the properties. Secondly, even the application which is now filed is very vague and does not disclose as to which documents defendant No. 3 desires to produce. The application is totally silent about the nature of documents in the custody of defendant No. 3 and is made only when it dawned upon him that the documents are relevant. The application merely states that it transpired at the time of hearing that the documents are relevant. In case defendant No. 3 was really honest, the request would have been made long before the hearing concluded. In spite of several inquiries, defendant No. 3 declined to disclose whether any document was in his possession during the hearing and thought it worthwhile to file the application for additional evidence only when the hearing concluded. Thirdly, defendant No. 3 is under a misapprehension that there is absolute right to produce evidence at whichever stage the party thinks it proper. The mere perusal of Order 41, Rule 27 of the CPC would make it clear that the parties to an appeal are not entitled to produce additional evidence as a matter of course, but the Appellate Court may allow such evidence provided the Appellate Court requires any document to be produced to enable it to pronounce judgment or for any other substantial purpose. In my judgment, the provisions of Rule 27 of Order 41 of the CPC are not at all attracted in the present case. The appellants have shown no reason whatsoever for non-production of documents before the trial Court and the application does not disclose which documents the appellants desire to produce. In these circumstances, the civil application is most frivolous and is required to be dismissed.

18. Shri Paranjpe did not dispute that if it is found that the Saranjam tenure was to the joint family, then on abolition of Saranjams by the provisions of Bombay Merged Territories and Area (Jagirs Abolition) Act, 1953, the incidents of impartibility ceases to have any application and the lands are available for partition even though they have been granted in the name of defendant No. 1 alone. The position as regards the impartible estate and the incidents thereof under the Hindu Law is now well settled and a reference need be made only to the recent decision of the Supreme Court reported in Nagesh Bisto Desai and Others Vs. Khando Tirmal Desai and Others, in the " of Nagesh Bisto Desai v. Khando Tirmal Desai etc., Mr. Justice A.P. Sen, speaking for the Bench observed :

"The property though impartible may be the ancestral property of the joint Hindu Family. The impartibility of property does not per se destroy its nature as joint family property or render it the separate property of the last holder, so as to destroy the right of survivorship, hence the estate retains its character of joint family property and devolves by the general law upon that person who being in fact and in law joint in respect of the estate is also the senior member in the senior line."

In view of this clear-cut dictum, it is obvious that the plaintiff is entitled to claim partition and possession of his share in the lands which were original Saranjam properties.

19. Shri Paranjpe then submits that even assuming that the plaintiff is entitled to claim partition and possession of his share in Saranjam lands, still any accretion to the Saranjam lands or properties purchased from the income accrued from the Saranjam lands cannot be the joint family property but would be only the separate property of the holder of the grant. As mentioned hereinabove, the properties of which partition was sought by the plaintiff, are described in Schedule A to the plaint, and it is not in dispute between the parties that only the properties at Serial Nos. 1 to 5 and 28 to 32, i.e. the ten properties in all, were only Saranjam lands. In paragraph 41 of the written statement filed by defendant No. 1, it is claimed that the contention of the defendant in regard to each of the properties mentioned in Schedule A to the plaint is given separately in the schedule to the written statement. In the schedule it is mentioned that the lands at Serial Nos. 12 to 14 and 16 to 24 in Schedule A to the plaint are situated at village Lingnur in Miraj taluka and defendant No. 1 has become owner of the same because the tenants had left cultivation and, therefore, it became accretion to Saranjam estate and had become part of the Saranjam estate itself, and therefore, are not liable for partition. It is difficult to appreciate what exactly defendant No. 1 desired to convey by this averment in the written statement. Merely because the tenants left cultivation of certain lands, it could not be an accretion to Saranjam estate and in no case it can form part of the Saranjam tenure. The Saranjam tenure is granted to Saranjamdar by the Government and the land always vests in the Government. It is impossible to imagine how any lands could be accreted to Saranjam estate merely because the tenants left

cultivation. In case the contention of defendant No. 1 is to be accepted, then such lands could even be resumed by the Government and surely defendant No. 1 could not have that situation in mind. Shri Paranjpe, therefore, very rightly did not press the contention as urged in the written statement, but adopted a different line by claiming that any property acquired out of the income of Saranjam lands would be the separate property of the Saranjamdar. In support of the submission reliance was placed on the decision of the Privy Council reported in 25 Bom.L.R. 676 in the case of Rani Jagadamba Kumari v. Thakur Wazir Narain Singh. The Privy Council laid down that the principle with regard to an ordinary joint family that the income, equally with the corpus, forms part of the family property, is not applicable in the case of income from the impartible estate and any acquisition made out of the income of an impartible estate cannot be treated as accretions to the impartible estate. Shri Abhyankar very rightly point out that there cannot be any debate about the principle urged by Shri Paranjpe, but defendant No. 1 had neither pleaded that case in the written statement nor there is any material on record to establish when the properties at Serial Nos. 12 to 14 and 16 to 24 were acquired and by what means defendant No. 3 had not spoken one word in his evidence about the acquisition of these lands. Defendant No. 1 ought to have led proper evidence to establish what was the income of the Saranjam lands and how he acquired another lands with the aid of that income. In absence of any pleadings or evidence, the submission of Shri Paranjpe that the lands at Serial Nos. 12 to 14 and 16 to 24 in Schedule A to the plaint are self acquired properties of defendant No. 1 and are not liable for partition deserves to be repelled.

20. Shri Paranjpe finally submitted that the District Judge while passing the decree in favour of the plaintiff had over-looked that some of the properties described in Schedule A to the plaint were not available with the family, while in respect of some other lands they were alienated by defendant No. 1 and the alienations were affected bona fide. Shri Paranjpe submits that the District Judge without considering the claim of defendant No. 1 in respect of each of the properties in Schedule A to the plaint has passed the decree observing that the alienated properties should be assigned to the share of defendant No. 1. The District Judge observed in paragraph 12 of the judgment that both the sides never touched any particular contention about any particular property and, therefore, a partition in all the properties mentioned in Schedule A to the plaint is required to be granted. Shri Paranjpe is right in his submission that the District Judge has failed to apply his mind to various contentions urged in the trial Court and which found favour with the trial Judge. The appeal was preferred in the District Court by the plaintiff and it was not necessary for defendant No. 1 to agitate the contentions which found favour with the trial Judge and which findings were not challenged. The District Judge has also over-looked that defendant Nos. 14, 17 and 18 had filed separate written statements claiming that the allegations in their favour were valid. In these circumstances, it is necessary to consider the claim of defendant No. 1 in respect of various properties in

Schedule A to the plaint.

21. As regards the property at Serial No. 1, defendant No. 1 sold it to No. 14 on February 21, 1955 for a consideration of Rs. 6500/-. Defendant No. 14 was a protected tenant cultivating this land and was entitled to purchase it under the provisions of Bombay Tenancy and Agricultural Lands Act. The transfer effected in favour of the protected tenant was in accordance with law and was approved by the Mamlatdar and as such the property is not available for partition as the joint family has lost the same. Property at Serial No. 7 is Revision Survey No. 113 and the said land belongs to Kashi Vishweshwar Temple, which is a public trust. The defendant produced to record Exh. 225 which is a copy of the registration of the public trust and this exhibit clearly establishes that the property belongs to the Trust, and as such is not a joint family property available for partition. The property at Serial No. 11 is City Survey No. 4397 and this property also belongs to the Kashi Vishweshwar Temple, which is a public trust and is not available for partition. The property at Serial No. 25 was gifted by defendant No. 1 to Peer Devasthan on July 20, 1957. Defendant No. 1 has executed a registered gift deed in favour of Devasthan and from the year 1957 onwards property is in possession of Peer Devasthan. The plaintiff had led no evidence to establish that the gift deed by defendant No. 1 was not genuine and, therefore, the property ceased to be that of the joint family and the plaintiff is not entitled to claim partition and possession of the same. As regards property at Serial Nos. 12 and 13, they are sold by defendant No. 1 to Lagmanna Gawade and Tammanna Bharm Waghmode on October 17, 1955 and April 18, 1955 respectively. The sale was effected by defendant No. 1 several years prior to the suit and inspite of the specific plea by defendant No. 1 that he had effected transfer, the transferees were not joined as parties to the suit. In absence of transferees and in absence of any evidence on the part of the plaintiff that transfers were not genuine or for want of legal necessity, it cannot be held that the lands at Serial Nos. 12 and 13 are available for partition. The Land Revision Survey No. 81 at Serial No. 14 in Schedule A to the plaint was sold by defendant No. 1 to defendant No. 18 on May 18, 1954 and defendant No. 18 by his written statement (Exh. 144) claimed that he had sold it long before the suit to Vhasmane and Patil and, therefore, had no interest in the said land. The plaintiff did not lead any evidence to challenge the genuineness or the legality of this alienation, nor did join the transferees of defendant No. 18 as parties to the suit. In these circumstances, it is not possible to hold that the land at Serial No. 14 is a joint family property or available for partition. The lands at Serial Nos. 16 to 24 are situated at village Lingnur in Miraj Taluka and purchased by Mirashi tenants under the provisions of the Bombay Tenancy Act. Defendant Nos. 16 and 14 were Mirashi tenants cultivating these lands and Exh. 265 is a copy of the order of Tahsildar fixing the purchase price of this Mirashi lands. Defendant No. 1 claimed in the written statement that these lands are in possession of Mirashi tenants who were declared as purchasers under the provisions of section 32-G of the Tenancy Act and as such the lands are not with the family. In view of the

evidence in the shape of order of Tahsildar produced on behalf of the defendants, it is obvious that these lands no longer belong to the joint family and are not available for partition. Same is the position in respect of land at Serial No. 26 situated at village Dahiwadi in Tasgaon taluka. The land was purchased by defendant Nos. 17 to 19 as they were cultivating the same as protected tenants and were declared as purchasers. In respect of lands at Serial Nos. 1, 16, 24 and 26, the same having been sold to the tenants under the provisions of the Tenancy Act and defendant No. 1 having received the purchase price, the plaintiff and the other co-sharers would be entitled to claim the amount of their respective shares from defendant No. 1.

22. Defendant No. 1 claimed that property at Serial No. 3 was allotted to the share of his son Prabhakar, defendant No. 6 in the year 1957 and was entered in the name of his wife, defendant No. 7 by Vardi in the year 1959. Defendant No. 1 claims that defendant No. 7 executed a gift deed dated June 28, 1968 in favour of Dattu Bala Nikam and as such the property is not available to the joint family. Shri Abhyankar very rightly points out that the claim made by defendant No. 1 is totally false and cannot be accepted. In the first instance it is difficult to appreciate how the land which belongs to the joint family was exclusively assigned by defendant No. 1 in the name of his son and equally how defendant No. 6 entered the name of his wife in the village record. As the property belongs to the joint family, it was not open either for defendant No. 1 or defendant Nos. 6 or 7 who were merely his agents, to transfer it by gift. The gift deed is obviously not binding on the other sharers and the transaction not being bona fide, cannot be accepted and the other members of the joint family are entitled to claim share in it. As regards the property at Serial No. 6, it was claimed by defendant No. 1 that in the family partition of 1936 in respect of other properties this land was left out as it was lost to the family. Defendant No. 1 further pleads that it was recovered back through Court proceedings and being an Inam land was regranted to him by the Collector under the provisions of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955. Defendant No. 1 produced order of re-grant at Exh. 258. The claim of defendant No. 1 that the land was lost to the family and was recovered by him alone and, therefore, became his separate property, cannot be accepted. The land being of Inami was impartible by nature and the mere fact that defendant No. 1 recovered it by an order of the Mamlatdar from the tenant is not sufficient to conclude that the interest of the joint family in the land was lost. The order of re-grant obviously enures for the benefit of all the members of the joint family and the plaintiff and other sharers are entitled to claim partition. As regards property at Serial No. 8, defendant No. 1 claimed that it was a self-acquired property of his father Shripatrao having purchased the same on July 16, 1908 from Shripatrao Date. Defendant No. 1 claimed that on the death of his father the land came to his share and was transferred by him in the name of his wife, defendant No. 2. Defendant No. 1 failed to lead any evidence to establish that the property was purchased by his father Shripatrao as the separate property. The evidence on

record unmistakably establishes that Shripatrao was joint with his brother till his death which occurred on July 12, 1915. There is a presumption under Hindu law that the properties acquired by members of the family are joint family properties and the burden was heavy on defendant No. 1 to establish that it was a self-acquired property of Shripatrao. Defendant No. 1 has failed to discharge that burden, and therefore, obviously the property has to be treated as a joint family property. The property at Serial No. 9 is a house property bearing City Survey No. 6345/A and an open site at Miraj Killa. Defendant No. 1 claims that initially the entire property was numbered as City Survey No. 6345 and was sub-divided as 6345/A and 6345/B in the year 1958-59 and separate municipal numbers were given in the property register card because of the partition effected between the two branches. Defendant No. 1 claimed that on the property bearing City Survey No. 6345/A he had constructed a house and which is in his possession for over 100 years. Defendant No. 3, who entered into the witness box, deposed that the property was divided into two parts, but did not mention as to how and why separate city survey numbers were given. It was open for defendant No. 3 to produce the record before the City Survey Officer in the shape of statements made by the plaintiff to establish that the sub-division were effected as the plaintiff was given his separate share. In absence of any evidence whatsoever, the claim of the plaintiff that there was no sub-division whatsoever in the year 1958-59 but merely separate numbers were given in the inquiry conducted by the City Survey Officer, cannot be turned down. Defendant No. 1 also claimed that property at Serial No. 10, being house property No. 4395 is his self-acquired property and not available for partition, but no evidence was led to support that claim, and therefore, the contention that the property is not available for partition cannot be accepted. As regards property at Serial No. 27, being an agricultural land situated at village Kulbawade in Khainapur Taluka, defendant No. 1 claimed that the said property is not in possession of the family and defendant No. 1 has no knowledge as to where the land is situated. The plaintiff had produced Exh. 18, which is an extract of Village Record No. 8-A of year 1954-55 and the property is shown in this extract as belonging to the joint family. The plaintiff is obviously entitled to his share in this property. The land at Serial No. 15 was claimed by defendant No. 1 to be Gavran land. Defendant No. 1 claimed in the written statement that the said land is reserved for grazing cattle's by public at large and, therefore, the same is not available for partition. There is no material worth the name to establish this claim, and therefore, the contention of defendant No. 1 is required to be turned down.

23. Shri Paranjpe submitted that the land at Serial Nos. 28 to 32 are agricultural lands situated at village Khainapur in Athani taluka of Belgaum District in the State of Karnataka and it is not open for the Civil Court in the State of Maharashtra to pass a decree for partition in respect of this land Shri Paranjpe submits that in paragraph 5 of the plaint, the plaintiff stated that certain Saranjam and Inami lands of the joint family are situated at village Mandaginal in Dharwad District of Karnataka State and the plaintiff sought liberty to file a

separate suit as the lands are situated outside the State of Maharashtra. Shri Paranjpe submits that there was no occasion for the plaintiff to include the land at Khainapur which is also outside the State of Maharashtra in the present suit. It is not possible to accept the submission of Shri Paranjpe that the courts in State of Maharashtra are not entitled to pass a decree for partition in respect of the land situated outside the State. Section 17 of the CPC inter alia provides that where a suit is to obtain relief to immovable property situate within the jurisdiction of different courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate. As the immovable property is situate in India, the trial Court, which was entitled to take cognizance of the suit as some of the properties are situate in the local limits of its jurisdiction, was entitled to pass a decree in respect of the properties situate in State of Karnataka. The submission of Shri Paranjpe therefore, cannot be entertained. Accordingly, properties which are available for partition are those mentioned at Serial Nos. 2 to 6, 8, 9, 10, 15, 27 and 28 to 32. The plaintiff and the other sharers would be entitled to the proportionate amount of their share in the purchase price received by defendant No. 1 in respect of the properties sold to the protected tenants and situate at Serial Nos. 1 and 16 to 24 and 26. The claim of the plaintiff for partition of properties at Serial Nos. 7, 11, 12, to 14 and 25 is rejected as those properties did not belong to the joint family on the date of the institution of the suit. The decree of the Lower Appellate Court is accordingly required to be modified.

24. The plaintiff has filed cross-objections to the decree appealed against and the plaintiff claims that the District Court was in error in rejecting the claim of the plaintiff for accounts of the joint family property from defendant No. 1 since the year 1937 onwards. The plaintiff claims that the joint family properties, except mentioned in the Schedule A to the plaint, were partitioned by a document dated April 15, 1936 (Exh. 228) and the properties in the present suit being Saranjam lands were left out of partition as they were impartible in nature. The plaintiff claims that defendant No. 1 being the manager of the joint family, enjoyed the entire income from the year 1937 onwards, and therefore, is liable to render accounts for the same. The plaintiff claims that defendant No. 1 is liable to compensate other sharers in respect of the income of the suit properties from the year 1937 onwards. The District Court did not accept the claim, and in my judgment very rightly. It is well settled that the co-parceners are not entitled to claim accounts from the manager as long as the family continues to be joint. The plaintiff is undoubtedly entitled to seek mesne profits from the date of institution of the suit and the District Judge has passed that decree in favour of the plaintiff. The plaintiff has led no evidence to establish that defendant No. 1 had deliberately mismanaged the joint family property or has accrued certain undue advantages. In these circumstances, the claim of the plaintiff for accounts from the year 1937 onwards is without any basis and cannot be granted. Accordingly, the cross-objections filed by the plaintiff-respondent No. 1 are liable to be dismissed.

25. Shri Karandikar and Shri Tipnis, the learned Counsel appearing for defendants 11, 12, 13 and defendant No. 10 respectively, claimed that the District Judge was in error in not passing a decree for partition and possession of the respective sharers of these defendants. The learned Counsel urged that the District Judge merely declared the share of the plaintiff but failed to declare the share of the other defendants and, therefore, the decree passed by the District Court was not in accordance with law. It was urged that there is no dispute between the parties as regards the respective shares of the members of the joint family, and the District Judge ought to have passed a decree directing that each of the sharers would be entitled to enforce the decree for partition and separate possession after the payment of requisite Court-fees. The submission is correct and deserves to be accepted. In fact defendant Nos. 10 to 13 have filed their written statements at Exhs. 115, 133, 103 and 137 respectively and supported the claim of the plaintiff and requested for passing decree in respect of their share also undertaking to pay the requisite Court-fees. The District Judge ought to have passed the decree in their favour also. It is not in dispute that the plaintiff would be entitled to 1/18th share, defendant No. 1 to 1/3rd, defendants 8 and 9 to 1/18th each, defendant No. 10 to 1/6th, defendant Nos. 11 and 12 to 1/12th each and defendant No. 13 to 1/6th. The decree of the District Court is accordingly required to be modified.

26. Accordingly, the appeal is partly allowed and the decree dated August 12, 1974 passed by the District Judge, Sangli is modified and the following decree is passed.

27. It is declared that the plaintiff holds 1/8th share, defendant No. 1, 1/3rd, defendant Nos. 8 and 9, 1/18th each, defendant No. 10, 1/6th, defendant Nos. 11 and 12, 1/12th each and defendant No. 13, 1/6th in the properties mentioned at Serial Nos. 2 to 6, 8, 9, 10, 15, 27 and 28 to 32 in Schedule A to the plaint. The plaintiff is entitled to get partition and separate possession of his share. Defendant Nos. 8 to 13 are also entitled to get the partition and separate possession of their respective shares on payment of requisite Court-fees. The plaintiff and defendants 8 to 13 are entitled to recover the amounts in accordance with their respective shares from defendant No. 1 in respect of the purchase price received by defendant No. 1 by sale of lands under the provisions of the Tenancy Act and described at Serial Nos. 1, 16 to 24 and 26 in Schedule A of the plaint. Defendant No. 1 shall pay to the plaintiff and defendants 8 to 13 the mesne profits from the date of the suit and to be determined in an inquiry under Order 20, Rule 12(1)(c) of the Code of Civil Procedure. The partition of lands assessed to the payment of revenue shall be referred by the trial Court to the Collector in accordance with the provisions of section 54 of the CPC and the Collector shall give separate possession to the plaintiff and defendants 8 to 13. The partition of the house properties shall be done by the Commissioner to be appointed by the trial courts. The parties shall bear their respective costs.

28. The cross-objections preferred by respondent No. 1-original plaintiff are

dismissed without any order as to costs.

29. The appellants and respondents shall bear their respective costs through-out.