

(1922) 10 BOM CK 0009
In the Bombay High Court
Case No : First Appeal No. 181 of 1916

Sir Dolatsingji Jaswantsingji

APPELLANT

Vs

Oghad Vira Khachar

RESPONDENT

Date of Decision : 11-10-1922

Acts Referred:

Gujarat Taluqdars Act, 1888 — Section 2(1)(a)

Citation : AIR 1924 Bom 72 : (1923) 25 BOMLR 726

Hon'ble Judges : Pratt, J;Marten, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Marten, J.—The question in this appeal is whether defendants Nos. 1 to 30 are "Mulgametis who hold laud directly from Government" within the meaning of Section 2(1)(a) of the Gajarat Taluqdars" Act 1888 (Bombay Act VI of 1888) as amended by Section 2(1) of Bombay Act II of 1905, and hence are "Taluqdars" within the operation of the amended Act. The plaintiff contends that this question should be answered in the negative, and sues for a declaration to that effect. The defendants contend for an answer in the affirmative. Mr. Kennedy, the then District Judge at Ahmedabad, decided this point in the defendants' favour, and dismissed the plaintiff's suit with costs on March 23, 1916. Hence the present appeal by the plaintiff. The intervening delay is, I understand, accounted for by the necessity of adding the representatives of certain deceased defendants as parties to the suit.

2. The question as above stated is hardly indicative of its interesting character. But in fact its investigation has led us to explore the somewhat misty history of the border-lands of Kathiawar in those pre-British days when might was right, and no man's life or property was secure. Jama or tribute used then to be collected by the annual excursions of armed bands led by one who apparently had a financial interest in the amount recovered for the Peshwas. But a receipt or free pass (Parvana) was given for the amount collected, and this apparently

protected the local inhabitants from further exactions for the year in question. Failure to pay however led to extensive ravaging. Apart from the Peshwas?the then paramount Power?one also had to reckon with the hostility of one's neighbours. And in the present case each of the contending parties alleges that it was by the force or fraud of his opponent's ancestors that his own ancestors were obliged to give up those lands or rights which his opponent now enjoys.

3. The suit arises in this way. The village in respect of which the defendants 1-30 claim to be Mulgametis is the village of Salangpur situate in the Dhandhuka Taluka of the District of Ahmedabad in Gujarat. Though now within British India, it is geographically part of the eastern border of Kathiawar, and is situate some twenty miles to the south-east of Limbdi or Limri as it is sometimes written. Limbdi is the principal town of the Native State of that name, and over that State the plaintiff rules, As is stated in Peile at p. 4:

The estates of the Ahmedabad Talookdars may be defined geographically as the border land between Guzerat proper and the peninsula of Kathiawar, and historically as the coast where the debris of the old Rajpoot principalities of that peninsula was worn and beaten by the successive waves of Mogul and Mahratta invasion. But they are part of Kathiawar rather than of Guzerat. Their proprietors are Kathiawar Chiefs. Their communities have the same elements.

4. The plaintiff, as the Thakore Sahib of Limbdi, is admittedly the registered Talukdar under the 1888 Act to the extent of two-thirds share in this village of Salangpur. As regards the remaining one-third share, the registered Talukdar is Sher Miya defendant No 39 (see Exhibit 439). On the evidence before us, it is also clear that up to the passing of the amending Act of 1905, none of the defendants 1-30 were entered as Mulgametis or Talukdars. But in the Settlement Register as altered after this amending Act was passed, the defendants 1 to 30 are entered as Mulgametis, if not as Talukdars, and this has led to the present suit. Exhibit 439 is a typical entry from this Register, and it describes some of the defendants as "Mul (i. e. original) Gameti." The plaintiff regarded this as the thin edge of the wedge, and accordingly brought this suit. Defendants 1-30 who are Kathis took up the challenge, and are strongly supported by defendant No. 39 who was added as a party at his own request. Defendants 31-38 one need not trouble about, as they are only assignees of defendants 1-30, and admittedly are not Mulgametis. But the dispute though originally over the Register does not necessarily depend on the accuracy of the precise entry there made, The point argued before us is whether the defendants, 1-30 are Talukdars within the meaning of the amended Act, and that is the point on which both parties want our decision

5. This point primarily depends on the definition of "Taluqdar" in the amended Act, Section 2(1)(a) of which now runs as follows:

2(1) In this Act, unless there be something repugnant in the subject or context

(a) "taluqdar" includes a thakur, niehwassi, kasbati, and naik, and a mulgameti

who holds land directly from Government.

6. These last words, viz, "and a mulgameti who holds land directly from Government" were added by the amending Act of 1905. They were not in the original Act, viz., the Ahmedabad Taluqdara"Act 1862 (Bom. Act VI of 1862), nor in the Gujarat Taluqdars" Act 1888 which was an extension of the 1862 Act. The amending Bill originally proposed to add merely the words "and a mulgameti", but as a result of a protest by the plaintiff to Government that the word "mulgameti" was an ambiguous one and would cause confusion, the additional words " who holds land directly from Government " were eventually Included in the amending Act.

7. There is no definition of "mulgameti? in the amended Act, and not much light can be obtained from the provisions of the Act itself. But as regards its general nature I may quote from Waghela Rajsanji v. Shekh Masludin ILR (1887) 11 Bom. 551 where Lord Hobhouse in delivering the judgment of the Privy Council on certain matters arising under the 1862 Act said at p. 562 as follows:

The object of the Taluqdari Act was to maintain the status and order of taluqdars which the Government, as a matter of policy, thought it important to maintain. They were a class of gentlemen who had been living beyond their means; they had got very much embarrassed, and they did not perform those political objects which the Government thought of great importance to have performed in various parts of the country. Many Acts of the kind have been passed relating to different parts of the country, and all with the same object. The method adopted was, where a taluqdari estate had reached a certain pitch of embarrassment, to make a declaration placing it under the management of an officer who was to manage for a term of years which might extend to twenty years.

8. In the present case the estate of Sher Miya (defendant 39) is under management, and hence he appears by the Taluqdari Settlement Officer.

9. As regards the details of the Act, I need only for the present mention the following. Section 2(1)(c) defines "jama" to mean "land revenue payable by a, Taluqdar to Government.? Sections 4 to 9 deal with the preparation of a Settlement Register in which (inter alia) the name of every registered Taluqdar and of every incumbrancer is to be entered. It is not for the Court to correct this Register, but its entries have to be in conformity with any decision of the Court as to the respective rights of any particular parties (Sub-sections 6 and 8). In the present case the Collector and on further appeal the Governor in Council have upheld the entries made by the Settlement Officer with reference to the village of Salangpur. Sections 10-21 provide for partition: and Sections 22 to 29 F for revenue administration. Section 23 preserves all existing settlements as to the amount of jama. This is of importance to the plaintiff, for, as I shall presently show, he settled with Government as long ago as 1807 for the payment in one lump annual sum of the jama in respect of this and other villages. Section 24 provides that the registered Taluqdar shall be primarily responsible to

Government for the jama of his village. Sections 26 to 29 F provide for the management of Taluqdari estates and the liquidation of their liabilities. Section 31 puts restrictions on the power to incumber or alienate a Taluqdar's estate, but the amending Act of 1905 provides that Section 31 is not to apply to any incumbrance or alienation made before that Act by a Mulgameti who holds lands directly from Government, except where his estate has been taken under management. Section 33(2) limits the application of the Bombay Land Revenue Code, and Section 34 prevents any new declarations under the 1862 Act.

10. Stopping there for a moment, one may ask why are the defendants so anxious to come within the Act, and the plaintiff so anxious to exclude them? No very clear answer was given by counsel, but it was pointed out that a dignity or honorary status went with the terms "Taluqdar" and "Mulgameti." It was also suggested that the inclusion of the defendants might lead to increased interference by Government in the affairs of the village, and that friction might thereby be caused. But whatever may be the real motives of the contending parties, I think one may fairly assume that as a matter of common sense, the respective parties would not have fought out this heavy litigation with its voluminous record and lengthy arguments, unless in their opinion there was some material advantage to be gained by obtaining a decision of the Court in their favour on the ostensible point in dispute.

11. The next difficulty is to define a Mulgameti, and it seems to me a very real one. Literally it signifies a former lord or proprietor of a village, and is derived from three words, viz., Mul (former), gam (village) and pati (lord). But in my opinion it is clear that the literal meaning is too wide and in some respects too narrow. For instance this literal meaning (a) would not include any descendants of a former lord (b) nor necessitate such former lord having held any sovereign or quasi-sovereign rights (c) nor necessitate his descendants retaining any portion of the lands or rights formerly enjoyed. Some clue to its real meaning may, I think, be obtained from the word "mul" which is probably the same word as the Sanskrit "mul" signifying a root, and hence figuratively the root of a tree or origin of a family. If that derivation is correct, it would account for the secondary use of the word as "original" or "former." In this connection I may refer to the learned judgment of Sir Michael Westropp in *Vyakunta Bapuji v. Government of Bombay* (1875) 12 B.H.C. 19 where the expression "Mulavargdar" as used in Kanara was held to mean the proprietor of an ancestral hereditary estate, and was contrasted with "gainivarg" where the land is held directly from the State (p. 20).

12. The dictionary definitions give us little assistance. Robertson at p. 16 defines "Gameti" as a Rajput grashiya in the Ahmedabad Collectorate. "Grash" he says is a grant to a younger son of a Chief for his maintenance. Wilson at p. 577 states that "Gameti" is the designation of proprietary villages held by Rajputs paying revenue. But defendants 1730 are not Rajput cadets. They are Kathis. The plaintiff does not, however, contend that the definition should be confined to

Rajputs.

13. The learned trial Judge defined Gameti as a person holding in full proprietorship a village or group of villages and paying tribute or taxation (however you may call it) to the paramount power, and exercising certain sovereign rights in the village. If such a Gameti alienated his proprietorship, but reserved to himself some rights of a class associated with the retention by him of some sort of sovereignty, then he became an old proprietor known as a Mulgameti.

14. Defendants' counsel does not accept this meaning of Mulgameti. He admits that the old proprietor must retain certain lands or rights, but contends that those rights need not be sovereign rights. He would define "Mulgameti" as follows, viz., "a person who or whose ancestor was once a proprietor of the village but who has lost the proprietorship retaining for himself a share of the village lands and land revenue such as Jiwai and Chouth, even though he may not have retained a share in the Government of the village, or any sovereign rights." Plaintiff's counsel on the other hand accepts the learned Judge's definition of Mulgameti, but contends that the defendants 1-30 were wrongly held to have retained any sovereign or seignorial rights, and that in fact all those rights passed to plaintiff about 1777 or 1781, and have ever since been enjoyed by him. Plaintiff's contention in short was that you cannot have an ex-gameti unless he retains part of the sovereign rights.

15. Both counsel, however, agree that to constitute a Mulgameti at the present day, he must hold some lands or rights which have descended to him from a Gameti. For instance, a Bombay Bania would not become a Mulgameti by purchasing some of the lands of the defendants. It is also agreed that the Kathi defendants 1-30 have established their descent from the persons they say were at one time Gametis. But there was no agreement, I think, as to the date up to which the Gameti must have remained a Gameti. If, for instance, the Act only refers to those who were Gametis at the date of the cession of the district by the Peshwas to the East India Company, but who then lost their rights and became Mulgametis, that would effect a substantial restriction on possible claimants for that name.

16. In *Secretary of State v. Bai Rajbai* (1915) 17 Bom. L.R. 750 the Privy Council distinguished the status and rights of Kasbatis from that of Garasias and other true taluqdars. At p. 751 Lord Atkinson said :

They (Garasias) were ancient Rajpoot proprietors, and before the cession of the Ahmedabad Zilla, stood to their Native Sovereigns in that relation, their lands being cultivated by ryot tenants?. They and the Mewassies were clearly distinguishable from the Kasbatis. The last-named held their lands by contract, neither by sanad nor by defiance, and Colonel Walker, the first official appointed to deal with this district, was well aware that there was no analogy between the holdings of the Garasias and those of the Kasbatis. The word "Taluk" was first

applied to these Rajpoot proprietors by the British themselves.

17. Then at p. 752 he continues:

They (Kasbatis) never were Talukdars of Ahmedabad in the true sense. They did not lose their ancient right of ownership of their land by taking leases, as did the Garasias, and therefore did not suffer the injustice which the Statute (i.e. the 1862 Act) was designed to remedy.

18. I shall refer to this case again in another connection; and also to Maharana Shri Jaavatsingji Fatesingji v. The Secretary of State for India ILR (1889) 14 Bom. 299 where Mr. Justice Candy used the expression "Mulgameti" as meaning the original owner of the village; and quoted from Peile (p. 21) where it is said : "The relief which it is possible to give to original holders (Mulgametis) is therefore small." Peile at pp. 72-81 gives particulars of the Dhundooka Taluka in 1863, and after setting out at p. 76 that the plaintiff is the proprietor of various villages, including two-thirds of the village Salangpur, and pays a fixed Jama of Rs. 15,448-0-11 sanctioned by Government on May 28, 1821, he states in a footnote to p. 80 as follows :

N.B. The Limree estate is only a late acquisition by Limree and was originally the property of Chorsumas or Kathees who are still found in the villages as Mocl Gamotees.

19. Colonel Jacob in his Report of October 1842 thus describes the origin of Mulgerasias:

The establishment of various tribes in the peninsula was founded on the sword, but much of the territory was subsequently gained by the weaker landholders writing over their geerass to whomsoever they thought best able to protect them, reserving a fixed portion for themselves. These when they retained only a minor share of the village lands and taxes without one in its Government, are termed mool geerassias, and from the natural result of power and cupidity united have in most oases been deprived by degrees of much or all of what they had reserved for themselves. With those exceptions, the tenure on which the Chiefs hold their possessions is that of absolute sovereignty over, and property in the soil.

(See Selections, Vol. 37, p. 23).

20. In Peile at p. 67 is set out a despatch from the Government of Bombay in 1862 pointing out that the Taluqdars of Gujarat are quite different in status and powers from the Taluqdars in the North-West Provinces:

The Taluqdars of Gujerat all call themselves gametees, grassias, and more frequently still Bhomeas, all which names indicate very ancient family possessions. These proprietors are the direct issue of one cadet of some Rajpoot Gadee or Sovereign Chief to whom 2 or 3 villages were given for support?. The gadees or chiefshipa (such as?Limree?.) from which they have sprung...still

exist, and are recognised by the Gametees or Grassias as their natural head. The proprietary right of these Gametees, Grassias or Bhomeas is therefore, as towards the public or States as complete as possible.

21. The present case is therefore somewhat unusual as we have to deal with Kathis and not with the cadets of a chieftain family. A long account of the Kathis is given by Colonel Walker in Selections pp. 246-254, and though he does not give them a good character (see p. 252), it was hardly an age for good characters in those parts of India. Strength was then a more important qualification for existence.

22. The view of the learned trial Judge that the term Gameti usually implied some form of sovereignty receives much support also from many passages in Colonel Walker's reports. [His Lordship after referring to several passages proceeded :]

23. Mr. Williamson's Report is especially valuable as it exactly meets the facts of the village of Salangpur. Jiwai lands and chouth are admittedly what the Kathi defendants still retain. The plaintiff says that these are not sovereign rights, nor do the defendants retain anything else. Unfortunately the learned Judge does not say specifically what sovereign rights he considered the Kathi defendants still retained, but I gather from his judgment that he must have considered the retention of the Jiwai lands and Chauth to be a retention of part of the sovereign rights. Nor does he consider the difficulty why an ex-gameti should necessarily retain any of his former rights. An ex-Emperor for instance is not expected to do so. And the very meaning of "former" or "original" owner implies that the person in question is not necessarily an owner now. Further, if retention of the old rights is essential, the learned Judge's description of a mulgameti would appear to exclude those numerous Grassia Chieftains spoken of in *The Secretary of State Vs. Bai Rajbai*, who had lost their ancient right of ownership of their land by taking leases from the Bombay Government. (See p. 752). "Thenceforward," says Lord Atkinson at p. 751, "their legal rights were...determined entirely by the contract they had made with that (Bombay) Government, altogether irrespective of what their position and rights may have been before the cession of their territory."

24. His Lordship then referred to the Girasia Court Rules in the Kathiawar Agency for determining disputes between Bhayats and Mulgarassias, and also between Mulgarassias and Bhayats on the one hand and Taluqdars on the other hand which are in Aitchison's Treaties, 4th Edition, Vol. VI at pp. 127-135, and contain a definition of "Mulgerassia."

25. The conclusion then which I have arrived at is that the learned Judge was correct in his view that generally speaking a Gameti would have sovereign or quasi-sovereign rights, but that I disagree with his finding that to constitute a Mulgameti some retention of such sovereign or quasi-sovereign rights is essential. In my opinion it is sufficient if the Gameti retains or is re-granted some

of his former lauds or an interest therein although all his former governing rights pass to others.

26. I will not attempt an exhaustive definition for all Gujarat, but as far as the village of Salangpur is concerned and for the purpose of the present case only, I will describe a Mulgameti as follows, viz., one who is or is descended from a former ruler and owner of the village and still retains by re-grant or otherwise some portion of the lands or interests therein of such former ruler and owner, but not necessarily any of his governing rights.

27. I will next consider what are the existing interests of the parties in the village. Barring certain claims which the learned trial Judge has disallowed, the existing interests of the parties are substantially what they have enjoyed for over one hundred years past. It appears from figures agreed by counsel, and extracted from Exhibit 240, that the total acreage of the village is 4287 acres of which 637 acres are waste, thus leaving in actual occupation 3650 acres. The Kathi defendants Nos. 1 to 30 hold 1377 acres as Jivai or rent free lands, and have acquired by adverse possession a further 291 acres thus making a gross total of 1668 acres in their possession. This leaves a balance of 1982 acres of which the village site occupies twenty acres. The remaining 1962 acres are owned by the plaintiff subject as follows : Out of the gross income of these 1962 acres the expenses thereof are first paid, including the Government one anna cess which I will deal with later, and then the net income is applied as follows: (a) one third is paid to Sher Miya defendant No. 39, (b) out of the remaining two thirds a sum equivalent to one-quarter of the gross income of the 1962 acres is paid to the defendant Kathis as chauth and (c) the residue goes to the plaintiff. [After discussing the interest of the Kathis in the village land His Lordship proceeded:] A good deal turns in this case on the significance to be attached to the chauth which the defendants thus get. Literally chauth means a quarter of the income of the village. But sometimes it has been used to designate a form of blackmail which was levied in the old days as the price paid for forbearance to ravage. Before us, however, the plaintiff's counsel has been content to treat the chauth as meaning merely the fraction of the income I have indicated.

28. These then being the interests of the parties, are defendants 1-30 Mulgametis, and do they hold their land directly from Government? To answer this question, one must investigate the history of the village. Now at the trial two conflicting theories were advanced as to how the village lands came thus to be held in the present manner. The plaintiff alleged that originally he was the proprietor of the whole village, and that these Jivai lands and also the chauth were extorted from him by robber bands as the price of forbearance to ravage his estate. Consequently as this he said was the origin of the Kathis, they were never Gametis, and could not properly be regarded as Mulgametis. The case of the Kathi defendants was that they were the original proprietors of the village, and that for their own purposes they had leased or mortgaged the village from time to time to the plaintiff, and that he had wrongfully set up a title as an

absolute owner.

29. The learned Judge found the facts midway between these two contentions. He found that the Kathis were the original proprietors of the village, and that in 1763 or thereabouts they granted one-third of it to the ancestor of defendant No. 39, and that in 1777 or 1781 they granted the remaining two-thirds to the plaintiffs ancestor, but that on the occasion of the latter grant they reserved to themselves the Jiwai lands, namely, the 1668 acres and also the chauth in the remaining lands, namely, the 1962 acres. He rejected entirely the alleged leaser or mortgagee set up by the defendants. At the hearing before us plaintiff's counsel was content to argue the case on the footing that the learned Judge's findings on these points were correct. The defendants did not abandon their former position as to the alleged leases and mortgages, but the arguments on this point occupied a minor position, and for the moment I will deal with the case on the assumption that the learned Judge rightly rejected these alleged leases or mortgages. [After discussing the history of the village from 1755 and the evidence relating to the alleged leases or mortgages, his Lordship continued:]

30. In this connection one most important point to bear in mind is that this fixed jama is paid by the plaintiff alone, and that none of the Kathi defendants (1-30) have ever paid any of this fixed jama or any other jama or land revenue to the British Government. Nor since Walker's Settlement, can they point to the exercise by them of any quasi sovereign or seignorial rights : or to any compensation being paid to them for any loss of such rights : or indeed to any dealings with Government whatever. On the contrary it has always been the plaintiff or his ancestors who have ostensibly represented the village as its Gameti or lord, apart of course from the rights of defendant 39. And it is the Durbari officers of the plaintiff who have been in actual management of the village, and have collected the produce and income for division among the parties, [His Lordship then dealt with further evidence and concluded:]

31. My conclusion then is that the learned Judge rightly rejected all these alleged leases or mortgages, and that the present rights of the parties should be decided on that footing.

32. What then are the conclusions which one ought to draw from the voluminous evidence in this case? The Kathi defendants 1-30 are admittedly descendants of former Gametis, and admittedly hold Jiwai lands formerly belonging to those Gametis, and also chauth in respect of the produce of other land. But I draw a distinction between the mere holding of land or an interest therein such as chauth, and the exercise of sovereign or quasi-sovereign rights. In my judgment the true inference to be drawn from the facts is that in 1777 or 1781 or thereabouts the Kathis surrendered their lordship of the village to the Thakore Sahib in perpetuity in exchange for his protection, but at the same time retained or were re-granted the Jiwai lands and the chauth. As the new Gameti, it was thenceforward for the Thakore Sahib to pay the Jama, and settle all differences with the Peshwas and afterwards with Government; and this in fact he appears

to have done ever since. In my judgment, therefore, the Kathis have not had any quasi-sovereign or aignorial rights in respect of this village since 1781.

33. If then I were to accept the definition of Mulgameti adopted by the learned Judge, it would follow that I should not consider the Kathia to be Mulgametis. But taking as I do the view that the retention of sovereign rights is not essential to constitute a Mulgameti, I have arrived at the conclusion that in fact the Kathi defendants are Mulgametis by reason of their retention of the Jiwai lands and chauth. And I am considerably fortified in this conclusion by the fact that in that formal document Exhibit 428 and also in Exhibit 406 the Limbdi State has itself described and treated the Kathia as the Mulgametis of the village. And to this I may add the corroboration afforded by the definition of "Mulgirassia" in the Girassia Court Rules of the Kathiawar Agency which I have already alluded to.

34. But can it be truly said that defendants 1-30 are Mulgametis "who hold land directly from Government" within the meaning of the amended Act ? Unfortunately the learned Judge has almost taken this point for granted, for the following is the only direct passage in the judgment which deals with it, viz., "No real Mulgameti would fail to hold land direct from Government, for he must, hold it from some one and ex hypothesi does not hold it from the actual proprietor."

35. Defendants' counsel endeavoured to support this proposition by contending that in theory all lands in British India belong to Government, and that if any one is found in possession of rent free lands, presumably he holds from Government. I do not desire to be thus drawn into the controversial questions which were considered at great length in *Vyakunta Bapuji v. The Govtrnment of Bombay* (1875) 12 B.H.C.R. 53 and by the Privy Council in *Gunga Gobind Mundul v. The Collector of the Twenty four Pergunnaths* (1867) 11 M.I.A. 345 but I think I have stated enough of the history of the village of Salangpur to show that the Peshwas at any rate did not have the property in the soil of this village, and that the British officers felt the greatest difficulty in claiming more than a mere right of Jama or tribute. No doubt after conquest, it is the right of the conqueror to say what he will take and what he will concede. Thus in *The Secretary of State Vs. Bai Rajbai*, , it was held by the Privy Council, following other authorities, that after a cession of territory to British Rule the only enforceable rights against the Sovereign are those conferred by him after the cession either by agreement express or implied or by legislation. An implied agreement conferring rights may be established by evidence of recognition of rights existing before cession, and of an election express or implied to be bound by them : but the burden of establishing the existence of an enforceable right is upon the subject.

36. In the present case we have the express agreement between the Thakore Sahib and Government which is contained in Walker's Settlement, and which has been acted on ever since 1807-8. But I can find no agreement express or implied between the Kathi defendants or their ancestors and the British Government. On the contrary it is the Thakore Sahib who has dealt directly with Government. Even, therefore, if it can be said that the Kathis hold their Jiwai lands from

Government-which, in my opinion, is open to extreme doubt-they do not in my opinion, hold these lands "directly" from Government. An intermediary in the shape of the Thakore Sahib has, in my opinion, been interposed between them and Government, The very use of the word "directly" would seem to negative the mere application of any general theory that all land is held of the Crown. The definition in Section 2(1)(a) would indeed fit those Girassia proprietors spoken of in the same case (pp. 751-752) who had taken leases from the British Government. They undoubtedly would hold directly from Government, but no such lease or sanad from Government has ever been taken by any of the Salangpur Kathis, so far as the evidence before us goes.

37. Some argument was addressed to us as to the effect of the Bombay Land Revenue Code 1879 on the question. The learned Judge did not deal with the Code, but I doubt if it gives one much assistance, except to show that the fixed Jama payable by the plaintiff must I think be for the defendants Jiwai lands, as well as for the plaintiff's own lands. Both the Taluqdars Act and the Code are technical and difficult Acts and the definitions in both Acts have to be carefully looked at before giving any meaning to an apparently ordinary expression [His Lordship then discussed various sections of the Code and continued :

38. The conclusion then which I draw from the 1888 Act and the Code is that defendants 1-30 would be liable for land revenue if it were not for the 1807 settlement which the Thakore Sahib effected with Colonel Walker; and further that it is the Thakore Sahib as the registered Taluqdar who is regarded by Government as the person primarily responsible to them for such land revenue. The Code also uses the expression "lessee holding directly under Government" in excluding such a lessee from the definition of "tenant" in Section (14). Why say "directly" unless it was to negative any mere theoretical holding under the Crown?

39. Further the Code in defining in Section 3(13) a superior and an inferior holder and in fixing in Section 83 their respective rights would seem to consider the actual payer to Government of the land revenue to be the superior holder, provided he is entitled to receive it from another, viz., the inferior holder. In the present case, the plaintiff is not, I think, entitled to recover Jama from the defendants 1-30. He pays the whole, and has no right of recoupment or contribution. Apart from that-which I agree is an important difference-he and they would seem to occupy the position of superior and inferior holders respectively as defined by the Code.

40. Nor I think is any different conclusion to be arrived at by studying the earliest Land Revenue Regulations which counsel referred us to, viz., Regulation 17 of 1827. There Rule 2(1) provides that-

All land shall be liable to the payment of land revenue to Government according to the established principles which govern the assessment of that description of land to which it belongs, except such as may be proved to be either wholly or partially exempt from the payment of Land Revenue under any of the provisions

of this Regulation.

41. It will be seen that this substantially corresponds with Section 45 of the present Code.

42. Then Section 3 is important It runs:

The settlement of the assessment shall be made with the occupant. The cultivator when the land is held direct from Government is to be considered the occupant; and when it is not so held the person having the highest right or holding recognised by the custom of the country or resting on specific grant which intervenes between the Government and the cultivator is to be so considered.

43. Once more then we get the reference to holding "direct" from Government. And if the cultivator does not so hold direct, then Government makes liable the highest right intervening between the cultivator and Government. In the present case, surely the Thakore Sahib as Gameti would be the person having such highest right. At any rate nobody else has hitherto been recognised as having it except the Thakore Sahib. I exclude of course defendant 39. He is not a Kathi.

44. Then Regulation 5 provides that the occupant shall be liable in his person and property for the revenue of the land, but on non-payment by the superior holder it may be recovered from the inferior holder. And Regulation 30 provides that superior holders are responsible to the Collector for the public revenue assessed on their lands and, if payment is not made, the Collector may realise from the crop the amount due, or remit direct to the inferior holder as provided in Section 5.

45. It is true that Regulation 4(2) provides that when there is a right on the part of the occupant in limitation of the right of Government in consequence of a specific limit having been established and preserved, the assessment shall not exceed such specific limit. That provision may protect the Thakore Sahib having regard to Walker's Settlement, but I fail to see what limitation on the right of Government could be proved by the Kathi defendants if once Walker's Settlement was out of the way. They were no direct parties to that settlement. Whether if Government forced them to pay, they would have any right of indemnity against the Thakore Sahib under the provisions of a presumed lost grant in 1777 or 1781 I need not discuss. No such point has been taken before us. In the result, therefore, I think these Regulations and the subsequent Code and the 1888 Act rather assist the Thakore Sahib's contentions than otherwise.

46. I have now dealt with the more important of the able and lucid arguments that were urged on us by counsel for the respective parties. My final conclusion on the whole case is that the Kathi defendants 1-30, though they are Mulgametis, do not hold land directly from Government, and consequently are not Taluqdars within the meaning of the 1888 Act as amended by the 1905 Act. Defendants 31-38 are neither Mulgametis nor Talukdars.

47. I would, therefore, allow the appeal, and set aside the decree of the Court below, and instead make a declaration to the following effect, viz., that within the meaning of the Gujarat Taluqdars' Act (Bombay Act VI of 1888) as amended by Bombay Act II of 1905, the Kathi defendants 1-30 are Mulgametis but that they do not hold land directly from Government and that they are not Talukdars and that defendants 31-38 are not Mulgametis or Talukdars.

48. As regards the Settlement Register (Exhibit 439), it is not for us to make any actual amendment therein. Our duty is to determine the rights of the parties, and it is then for the Survey Officer or the Collector to make any necessary amendments under Sub-sections 6(2) and 8(2) of the 1888 Act. We have now determined those rights and, in the view we take, the 1905 Act has effected no change in the respective rights of the present parties under the Gujarat Talukdars' Act with reference to this particular village. But we may point out that as regards the only extract from the Register shown to us, viz., Exhibit 439, the Kathi defendants would not appear to be entered as Talukdars but only as Mulgametis.

49. As regards costs, the plaintiff has failed in his contention that his ancestors were the original grantors to the defendants, and that the defendants 1-30 are not Mulgametis. On the other hand, these defendants have failed in their contention that the plaintiff was only a lessee or mortgagee from them, and that they are Talukdars within the meaning of the Act. Under all the circumstances of the case, I think the fair order as to costs will be that each party should bear his own costs throughout in both Courts. This order also applies to defendant No. 39. He has espoused the cause of the Kathie, and must stand or fall with them.

50. I have not overlooked the fact that in his plaint the plaintiff claimed that the village of Salangpur was a village in Limbdi State belonging to him, but this surprising claim was dropped before the trial. The written statement of defendant No. 39 goes far beyond any mere defence to this abandoned claim, and it would appear that he took an active part at the trial, and put in a large amount of documentary evidence. He cannot, therefore, be regarded as a nominal party, more especially as he was added at his own request.

Pratt, J.

51. The plaintiff in this suit is the Chief of Limbdi who has been registered as Talukdar of the British village of Salangpur in the Settlement Register prepared u/s 5 of Bombay Act VI of 1888.

52. He complains that although he is the sole proprietor and Talukdar of the village defendants Nos. 1 to 38 have been registered as Mulgametis. This, he says, is prejudicial to his rights and status as Talukdar and he seeks a declaration that defendants Nos. 1 to 39 are not Mulgametie or Talukdare.

53. Defendants Nos. 1 to 30 are Kathis holding Jivai or rent free lands in the village and claimed that they held the land independently of the plaintiff, and

are, therefore, Mulgametis or Talukdars,

54. Defendants Nos. 31 to 38 are their assignees who are not interested.

55. Defendant No. 39 Sher Miya was added as a party at his own request as he is a registered one-third sharer in the Talukdari of the village and desired to resist the plaintiff's claim to be sole Talukdar.

56. The lower Court dismissed the plaintiff's suit holding that defendants Nos. 1-38 were Mulgametis holding directly under Government.

57. The plaintiff has, therefore, appealed.

58. The Talukdari estates in Gujarat are the remnants of old Rajput kingdoms. These disintegrated being either disrupted by internecine feuds or crushed by foreign invaders. The subordinate states thus formed were known by names generally indicative of their origin. The smallest of these subordinate rulers was the Gameti or ruler of a single village. In Mahratha times these states were independent and Colonel Walker writing of them in 1804 says:

With the reservation of their acknowledged tributary payments, the Katty war States are independent, and at liberty to form connections with other powers. They are under no obligations of service, and neither the Pesbwa nor the Gackwar pretend to exercise an authority in Kattyawar, beyond the demand of their respective contributions.

59. Under the British Rule the old rulership slowly degraded into a mere landlord estate. This process is foreshadowed in Colonel Walker's Report on July 25, 1806 (Selections from Government Records No. 39, p. 52)-In para 69 occurs the following passage:

Hence it would appear that the Purgunas of Dundooka, Ranpoor, and Gogo and even Dholka, comprehend, exclusively of the Honourable Company's Sirkar a variety of lordships.

60. Then in para 81 he makes the following significant recommendation :

It would, however, be extremely desirable to dissolve these discordant authorities and to consolidate all the inferior jurisdictions under the Company's power.

61. Bombay Act XIX of 1844 abolishing various local taxes and cesses was one stage in the process by which some of these lordships or seignorial rights were dissolved. But it may be that some still survive such as the right to waste or the right of escheat.

62. A Talukdari estate is, therefore, an estate which connoted rulership in pre-British times but which is now a landlord estate to which some seignorial or subordinate rights may or may not be still attached.

63. When the estate connoted rulership of a single village the holder is a

Mulgmeti, i.e., a Gameti who has lost all or most of his lordships. These estates being very small the holder was not Included in the definition of Talukdar until the amending Act (Bombay Act II of 1905) recognized as a Talukdar a Mulgameti who holds lands directly from Government.

64. The plaintiff's contention in the lower Court was-

(1) that the Kathi defendants were not Mulgametis as their ancestors were not the rulers of Salangpur.

(2) that even if they were Mulgametis they were not entitled to be registered as they do not hold land directly from Government.

65. On the first point it is now conceded that prior to 1777 at any rate, the Kathis were the rulers or Gametis of the village. And this in spite of the fact that they are Kathis and not Rajputs- for the Kathis had invaded and seized many parts of Kathiawar and indeed Jasdan is a Kathi State. The Revenue records make it clear that in the time of the Peshwas the village was a Kathi village. It is so entered in the Revenue Settlement of 1759 attached to Collector Byron Rowles' report Exhibit 380. It is also certain that the Kathis paid tribute to the Peshwa in 1772- Bond Exhibit 443 and Taleband Exhibit 374. Then the admissions made by Limbdi in a suit in 1816 show that the Kathis granted one-third of the village to Sheir Miya's ancestor in 1763 (Exhibit 353 and Exhibit 372) and then granted two-thirds of the village to Limbdi in 1777 after reserving rent free Jiwai land for their maintenance and a chauth or quarter share of the produce (Exhibit 354).

66. It is, however, contended that when the Kathis granted the two-thirds of the village to Limbdi in 1777 they surrendered all their rights of rulership and were therefore no longer Gametis at the time of the British acquisition under the treaty of Bassein in 1802. But the probabilities are all the other way. Grants were at that time made in return for protection and they were generally for a limited period: see DeSouza's report in 1805, Exhibit 378 The Limbdi pleading in the suit of 1816 already referred to did not describe the grant as being in "aghat" or in perpetuity and Colonel Jacob in his report on Kathiawar in 1842 at para 20 refers to the reluctance of Chiefs to make perpetual grants-Selections Bombay Government Records, Vol. 39, p. 27. The Kathis allege that the transaction of 1777 was a lease for a term of years renewed by another lease in 1801. This latter lease (Exhibit 377) is not signed but the fact that it was produced by the Kathis before the Collector as far back as 1829 and that they then claimed that the term of the grant had expired is significant. The grant not being in perpetuity it is not likely that a grant of rights of rulership was included. Indeed Limbdi in 1826 in a petition to the Collector described the Kathis as Mulgametis: (Exhibit 406) It is true that this term was sometimes used in a complimentary sense. But the petition of 1826 was one complaining of the conduct of the Kathis and the phrase would not have been used if the Kathis had not been Gametis in 1802. The Kathis were also described as gametis in the suit of 1816. Proof of the actual exercise of subordinate sovereign rights prior to 1802 either by the Kathis or by

Limbdi there is none; but on the evidence available I think it proved that the Kathis were the Gametis up to the time of the British acquisition in 1802.

67. On the second point the District Judge appears to have held that as the Kathis paid no rent to Limbdi and did not derive title from Limbdi they could not be said to hold under Limbdi-and as they did not hold under Limbdi they must hold under Government, But this line of reasoning overlooks the fact that the revenue of the village was paid by the plaintiff first to the Peshwa and then to Government. Indeed the Kathis' written statement admits that the revenue is paid by the plaintiff and by Sher Miya. Colonel Walker settled the Limbdi tribute in 1807 and in the remark column of his statement he made a reference to the revenue of the Dhandhuka Parganna. Whether this implies that Col. Walker made a permanent settlement of the revenue of all the villages in the Parganna including Salaugpur for the sum named may well be doubted. But Government have accepted that construction of the settlement. See G.R. 591 of 1821, Exhibit 393. The revenue, therefore, of the village is paid by the plaintiff; and the Kathis who hold part of the village do not hold directly from Government. Moreover, they have not given evidence of any direct dealings with Government ever since 1802. Government compounded the local taxes with Limbdi in 1844 (Exhibit 106) and the Local Fund also with Limbdi in 1865 and 1883 (Exhibit 108) The defendant Kathis are therefore not Talukdars.

68. It must be observed, however, that the plaint is wrong in assuming that the entry of the defendant Kathis in the Talukdari Settlement Register as Mulgametis involves their recognition as Talukdars. The defendants are entered not in Column 1 as Talukdars but in Columns 6 and 7 as holding rent free land under the Talukdar. If they were entered in the Register as Talukdars they would u/s 24 be primarily responsible for the Jama which would be absurd for it is admitted the Limbdi is and always has been primarily responsible. Section 5 makes it clear that holders of other rights appear also on the Register.

69. Plaintiff exaggerated his case in every possible way. He claimed that the village was in his State whereas it is a British village. He said he was sole Talukdar whereas it is admitted that Sher Miya is a one-third sharer in the talukdari. He pleaded that the Kathi defendants' estate was derived from him whereas it is his estate that is derived from the Kathi. Lastly he pleaded the Talukdari Settlement Register as giving a cause of action for a declaration that the Kathi defendants were not Talukdars whereas they are not entered as Talukdars in the Register. The suit illustrates the warning in *Sree Narain Mitter v. Sreemutty Kishen Soondory Dassee* (1873) L.R.IndAp 149 where it was said :

There is so much more danger in India than here of harassing and vexatious litigation, that the Courts in India ought to be most careful that mere declaratory suits be not converted into a new and mischievous source of litigation.

70. However as the Kathi defendants were so ill-advised as to adopt the plaintiff's construction of the Register and to claim in their written statement to

be Talukdars I think it would be advisable to make a declaration.

71. I agree, therefore, that the appeal should be allowed and a declaration made on the terms suggested by my learned colleague.

72. The declaration will be that the plaintiff is a two-third sharer in the Talukdari estate of Salangpur, that the other one-third sharer in the Talukdari is defendant No. 39 Sher Miya Bapumiya, that the Kathi defendants are not Talukdars but Mulgametis not holding directly from Government. I agree with my learned brother's order that parties bear their own costs in both Courts.