Supreme Court of India
Shrimant Dattaji Raobahirojirao ... vs Shrimant Vijayasinhrao And ... on 29 April, 1960
Equivalent citations: 1960 AIR 1272
Author: S Das
Bench: Das, S.K.

PETITIONER:
SHRIMANT DATTAJI RAOBAHIROJIRAO GHORPADE

Vs.

RESPONDENT:
SHRIMANT VIJAYASINHRAO AND ANOTHER.

DATE OF JUDGMENT:
29/04/1960

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
SARKAR, A.K.
HIDAYATULLAH, M.

CITATION:
1960 AIR 1272

ACT:
Saranjam Estate-Maintenance grant to junior member-Power of Government to resume and re-grant-Custom of lineal primogeniture, extent and effect of-Suit challenging Government order of resumption and re-grant-If barred-Saranjam Rules-Bombay Revenue jurisdiction Act, 1876 (Bom. X of 1876), s. 4.

HEADNOTE:
Upon the death of the holder in 1932, the Government of Bombay by order dated June 7, 1932, resumed the Saranjam estate of Gajendragad and re-granted the same to his eldest son. By the same order the assignment of some lands out of the estate in favour of B, a younger member of the family, by way of maintenance was also continued. On May 14, 1940, B died leaving his widow, A, and his undivided brother, D. A asked the Government for permission to adopt a son but without the permission being granted adopted V on July 10, 1941. By an order dated December 17, 1941, the Government continued the maintenance grant (Saranjam potgi) to D. Thereupon V filed a suit against the Government and D for recovery of the lands on the grounds (i) that the order of the Government dated December 17, 1941, was ultra vires,

null and void, and (ii) that by the custom of lineal primogeniture which prevailed in the family the lands, upon the death of B and upon the adoption of V by A, devolved upon V in preference to D. The suit was contested, inter alia, on the grounds: (i) that under the relevant Saranjam Rules the interest of B came to an end on his death and was not such as could devolve upon V despite the order dated December 17, 1941, (ii) that the alleged family custom did not apply to maintenance grants and (iii) that the suit was barred under s. 4 Of the Bombay Revenue jurisdiction Act, 1876:

Held, that the plaintiff was not entitled to the lands either under the Saranjam Rules or under the custom; further that the suit was barred by $- 4 of the Bombay Revenue jurisdiction Act, 1876.

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The maintenance grant (potgi holding) was part of the Saranjam and was governed by the incidents of Saranjam tenure and by the relevant Saranjam Rules. Saranjam grants were granted or withheld at the will and pleasure of the sovereign power and the grant was always subject to interruption and revocation by resumption, temporary or absolute. On the death of B it was open to the Government to resume the grant and to grant it to D and this is what it did by the order dated December 17, 1941. The taking in adoption of the plaintiff by the widow of the deceased could not affect the operation of the order passed by the Government.

Daulatrao Malojiyao v. Province of Bombay (1946) 49 Bom. L.R. 270, referred to.

Even under the custom of lineal primogeniture pleaded by the plaintiff, D was entitled to get the properties after the death of B. It was not pleaded that the properties once so vested were divested by subsequent adoption by the widow. Further it was neither pleaded nor proved that the custom took away the right of the Government to resume the maintenance grant and to make a fresh grant thereof.

Sub-clause 4 of the Bombay Revenue jurisdiction Act, 1876, barred the jurisdiction of civil courts in respect of " claims against the Government relating to lands granted or held as Saranjam". The plaintiff asked for a finding that the order of December 17, 1941, was null and void and did not affect the properties in suit. Unless the order was out of his way, the plaintiff was not entitled to claim recovery of possession. The claim was one which fell within the mischief of s. 4 and the suit was barred.

JUDGMENT:

CIVIL APPELLATE, JURISDICTION: Civil Appeal No. 37 of 1960. Appeal from the judgment and decree dated November 12, 1952, of the Bombay High Court in First Appeal No. 492 of 1949, arising out of the judgment and decree dated the 20th April, 1949, of the First Class Sub-Judge, Dharwar, in Special Civil Suit No. 16 of 1943.

S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the appellant.

Naunit Lal, for respondent No. 1.

B. R. L. Iyengar and T. M. Sen, for respondent No. 2. 1960. April 29. The Judgment of the Court was delivered by S. K. DAS, J.-This is an appeal on a certificate given by the High Court of Bombay, from the judgment and decree of the said High Court dated November 12, 1952, by which it reversed the decision of the Civil Judge, First Class, at Dharwar dated-,, April 20, 1949, in Special Civil Suit No. 16 of 1943.

The material facts are these. Gajendragad in Taluk Ron in the district of Dharwar is a Saranjam estate known as the Gajendragad Saranjam bearing number 91 in the Saranjam list maintained by Government. Within that estate lay village Dindur and survey field No. 302 of Unachgeri, which are the properties in suit. One Bhujangarao Daulatrao Ghorpade was the holder of the Saranjam estate at the relevant time. In 1932 the Saranjam was resumed and re-granted to the said Bhunjangarao by Resolution No. 8969 dated June 7, 1932, of the Government of Bombay in the Political Department. This Resolution said:

" The Governor in Council is pleased to direct that the Gajendragad Saranjam should be formally resumed and re- granted to Bhujangarao Daulatrao Ghorpade, the eldest son of the deceased Saranjamdar Daulatrao Bhujangarao Ghorpade, and that it should be entered in his sole name in the accounts of the Collector of Dharwar with effect from the date of the death of the last holder. The Collector should take steps to place the Saranjamdar in possession of the villages of the Saranjam estate which were in possession of the deceased Saranjamdar.

The Governor in Council agrees with the Commissioner, Southern Division, that the assignments held by the Bhaubands as potgi holders should be continued to them as at present."

One of the younger branches of the Ghorpade family was Babasaheb Bahirojirao Ghorpade, to be referred to hereinafter as Babasaheb. He held by way of maintenance (as potgi holder) the aforesaid village of Dindur and survey field No. 302 of Unachgeri. He had an undivided brother called Dattojirao, who was defendant No. 2 in the suit and is appellant before us. In this judgment we shall call him the appellant. Babasaheb died on May 14, 1940. On his death he left a widow named Abayabai and the appellant, his undivided brother. On July 10, 1941, Abayabai adopted Vijayasinhrao as a, son to her deceased husband. Vijayasinha was the plaintiff who brought the suit' and is now the principal respondent before us. It will be convenient if we call him the plaintiff-respondent, and state here that he was the natural son of Bhujaugarao's younger brother, another Dattajirao to be distinguished from the appellant who also bears the same name. On Babasaheb's death Abayabai asked for sanction of Government to her taking a boy in adoption; this

application was opposed by the appellant. On December 17, 1941, the Government of Bombay passed a Resolution in the following terms: " 1. Government is pleased to direct that the Saranjam potgi holding of village Dindur and Survey No. 302 of Unacbgeri, which were assigned for maintenance to the deceased potgidar, Mr. Babasaheb Bahirajirao Ghorpade, at the time of the re-grant of the Gajendragad Saranjam, should be continued to his undivided brother, Mr. Dattajirao Babirojirao Ghorpade.

2.Government is also pleased to direct, under Rule 7 of the Saranjam Rules, that the new potgidar, Mr. Dattajirao Bahirojirao Gborpade, should give to Bai Abaibai, widow of the deceased Potgidar, Mr. Babasaheb Bahirojirao Ghorpade, an annual maintenance allowance of Rs. 300 for her life.

3.These orders should take effect from the 14th May, 1940, i.e., the date on which the deceased potgidar, Babasaheb Bahirojirao Ghorpade, died.

4.The Commissioner S. D. should be requested to communicate these orders to Bai Abaibai, widow of the late potgidar, with reference to her petitions addressed to him and also to the Rayats of Dindur, with reference to their petition, dated the 12th May, 1941. The orders should also be communicated to the present Saranjamdar of Gajendragad." On February 8, 1943, the plaintiff-respondent brought the suit against the Province of Bombay as defendant No. 1, the appellant as defendant No. 2 and Abayabai as defendant No.

3. The suit was contested by the Province of Bombay (now substituted by the State of Bombay) and the appellant. Abayabai supported the case of the plaintiff-respondent, but she died during. the Pendency of the suit.

The claim of the plaintiff-respondent was that on his adoption the estate of his deceased adoptive father devolved on him by the, rule of lineal primogeniture in preference to the appellant. The main plea of the plaintiff-respondent was stated in paragraph 6 of the plaint, which read as follows:

" 6. The Government Resolution passed by defendant No. 1 in 1941 is ultra vires and null and void for the following reasons:

(a)Defendant No. 1 made a re-grant of the Saranjam estate to Shrimant Sardar Bhujaragarao Ghorpade in 1932 and therein the suit properties were, according to defendant No. 1, continued to the adoptive father of plaintiff Under the Saranjam rules no occasion has arisen for interference by Government at this stage. The re-grant made by Government would in any case be effective during the life-time of the grantee, viz., Shrimant Sardar Bhujangarao Ghorpade. Further the said Shrimant Sardar Bhujangarao Ghorpade was not consulted by defendant No. 1 before the said Government Resolution.

(b)By the custom of the family to which the family belongs, the estate of a deceased person devolves by the rule of lineal primogeniture. Hence after the death of plaintiff's adoptive father and the adoption of plaintiff himself, all the estate vested in plaintiff's adoptive father has devolved on the plaintiff in preference to defendant No. 2. The action of defendant No. 1 in ignoring this rule of

succession prevalent in the family is ultra vires and null and void."

On the aforesaid pleas, the plaintiff-respondent prayed for

(a) recovery of possession of properties in suit from the appellant, (b) mesne profits, and (c) costs. On behalf of the Province of Bombay several pleas by way of defence were taken. The main pleas were (1) assuming that the plaintiff-respondent was validly adopted, he had nevertheless no legal claim to the properties in suit because under the relevant Saranjam Rules the interest of Babasabeb came to an end on his death and was not of such a nature as would devolve on the plaintiff-respondent despite the Government Resolution dated December 17, 1941, (2) that the alleged family custom did not apply to maintenance grants, and (3) that, in any event, the suit was barred under s. 4 of the Bombay Revenue Jurisdiction Act, 1876. The appellant besides supporting the aforesaid pleas raised the additional pleas that there was no valid adoption of the plaintiff-respondent and Abayabai was expressly prohibited by her husband from adopting a son.

On these pleadings several issues were framed. The suit was originally dismissed on a preliminary ground, namely, that the plaint did not disclose any cause of action. The learned Civil Judge apparently took the view that the properties in suit were subject to the Saranjam Rules and on examining those rules, he came to the conclusion that as the plaintiff-respondent on his adoption became a nephew of the appellant and in that sense was claiming maintenance from the latter, it was necessary for him to have alleged the necessary circumstances under which certain members of a Saranjam Family are entitled to claim maintenance under Rule 7 of the said Rules and as those circumstances were not pleaded by the plaintiff-respondent, the plaint disclosed no cause of action. The High Court rightly pointed out that the plaintiff-respondent did not make a claim for maintenance under Rule 7 of the Saranjam Rules, but claimed that the properties in suit devolved on him by reason of his adoption and the custom of lineal primogeniture. Therefore, the High Court held that the claim of the plaintiff- respondent was much more fundamental than a mere claim of maintenance, and the learned Civil Judge had misdirected himself as to the true scope of the suit. Accordingly, the High Court set aside the decree of dismissal and directed the suit to be tried on all the issues.

After this direction the learned Civil Judge tried all the issues. Issues 1 and 2 related to the question of adoption, namely, (1) whether the ceremony of adoption was properly proved and (2) whether Babasaheb during his life-time had prohibited his wife from making an adoption. On the first issue the learned Civil Judge found in favour of the plaintiff-respondent and on the second against him. The High Court affirmed the finding on the first issue, and on a careful and detailed examination of the evidence held on the second issue that the learned Civil Judge was wrong in holding that the adoption was invalid by reason of the alleged prohibition of Babasaheb. The High Court held that there was no such prohibition, and the adoption was valid. We do not think that this finding of the High Court has been or can be successfully assailed before us. Therefore, we have proceeded in this appeal on the basis that the plaintiff respondent was validly adopted by Abayabai on July 10, 1941. We go now to a consideration of those issues which are material for a decision of this appeal. They are: Issue No. 3--Does plaintiff prove his title to the suit property ? Issue No. 4--Is it proved that the Government Resolution (D. G.) No. 8969 of December 17, 1941, is ultra vires and null and void as

alleged in the plaint ?

Issue No. 5-Is the suit barred under section 4 of the Revenue Jurisdiction Act ?

Issue No. 7-Is the alleged custom set up in para. 6(b) of the plaint proved ?

On all these issues the learned Civil Judge found against the plaintiff-respondent, and held that the latter was not entitled to recover possession Of the properties in suit, that he had failed to prove the custom pleaded in paragraph 6(b) of the plaint, that the Government Resolution of December 17,1941, was not ultra vires, and that the suit itself was barred under s. 4 of the Bombay Revenue Jurisdiction Act, 1876. The High Court reversed the decision of the learned Civil Judge on all the aforesaid issues, and held that as the properties in suit were given to the junior branch of Babasaheb for its maintenance and were impartible and governed by the rule of lineal primogeniture, they devolved on the appellant after Babasaheb's death ; but as soon as Babasaheb's widow made a valid adoption, the properties were divested and inasmuch as the plaintiff-respondent became the eldest member of the senior branch of Babasaheb's family, he became entitled thereto as a result of the combined effect of the family custom and ordinary Hindu law. The High Court said that looked at from this point of view, no question arose of the validity of the Government Resolution dated December 17, 1941, and no relief for possession having been claimed against Government, the suit was not barred under s. 4 of the Bombay Revenue Jurisdiction Act, 1876. On behalf of the appellant, it has been very strenuously argued that the High Court was in error in holding that the properties in suit which are part of a Saranjam, vested in the appellant on 'the death of Babasaheb and were then divested on the adoption of the plaintiff-respondent; it is contended that such a conclusion is inconsistent with the nature of a Saranjam tenure and furthermore, the properties in suit having vested in the appellant by reason of the re- grant dated December 17, 1941, they could not be divested by the adoption made on July 10, 1941. Nor does it follow, it is contended, from the custom pleaded in paragraph 6(b) of the plaint, apart from the question whether even that custom has been proved or not, that the properties in suit having once vested in the appellant will be divested on a valid adoption. Secondly, it has been contended that the High Court was also in error in holding that there was no claim against Government within the meaning of the fourth sub-cl. of s. 4(a) of the Bombay Revenue Jurisdiction Act, 1876. The argument before us has been that there was such a claim, and no Civil Court had jurisdiction to determine it. We are satisfied that these arguments are correct and should be accepted. The claim of the plaintiff respondent that the properties in suit devolved on him on his adoption may be examined either from the point of view of the Saranjam Rules or the custom which he pleaded in paragraph 6(b) of the plaint. Let us examine the claim first from the point of view of the Saraniam Rules assuming here that they apply, as far as practicable, to maintenance grants (potgis) within the Saranjam. In the Resolution of June 7, 1932, quoted earlier, the Government of Bombay treated the potgi holders as being within the Saranjam and made provision for them. The Resolution of December 17, 1941, also proceeded on that footing. Two earlier Resolutions, one of 1891 (Ex. 100) and the other of 1936 (Ex. 101), also treated the whole of Gajendragad and also parts thereof as a Saranjam. Babasaheb in his lifetime wanted to surrender the grant in his favour to the Saranjamdar, but Government refused to accept such relinquishment. Even Abayabai asked for permission of Government to take a boy in adoption, which permission she did not obtain. All this shows that the potgi holding was part of the Saranjam and was treated as

such by all the parties concerned.

What is a Saranjam ? The word " Saranjam literally means apparatus, provisions or materials. In his Glossary, Wilson defines Saranjam as temporary assignments of revenue from villages or lands for support of troops or for personal service usually for the lifetime of the grantees. Dr. G. D. Patel in his book on " The Indian Land Problem and Legislation has said:

" According to the account given by Col. Etheridge in his preface to the Saranjam List, it was the practice of the former Governments, both the Muslims and the Marathas, to maintain a species of feudal aristocracy for the State purposes by temporary assignments of revenue either for the support of the troops or personal service, the maintenance of official dignity or for other specific reasons. The holders of such lands were entrusted at the time with the necessary powers for enabling them to collect and appropriate the revenue and to administer the general management of the lands. Under the Muslim rule, such holdings were called Jahagirs and under the Maratha rule, they came to be called Saranjam. However, this distinction between these tenures ceased to exist during the Maratha period. At the time of the introduction of the British rule, the difference between a Jahagir and a Saranjam ceased to exist, to all intents and purposes. The two terms became convertible and all such grants came to be known by the general term "saranjam". Apart from the Saranjam grants, which were found only in the Deccan, there were other grants of a political nature found scattered over the whole State. Their origins did not materially differ from those of the Saranjam with the result that the British treated them under the same rules called the Saranjam Rules ". The Saranjam Rules were made in exercise of the powers referred to in r. 10 of Schedule B of Act Xi of 1852 and of the second sub-cl. to el. 3 of s. 2 of Bombay Act VII of 1863. We may here reproduce some of these Rules: " Rule I-Saranjams shall be ordinarily continued in accordance with the decision already passed or which may hereafter be passed by Provincial Government in each case. Rule 2-A Saranjam which has been decided to be hereditarily continuable 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 Provincial Government reserve to themselves the rights for sufficient reasons 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 Provincial Government. When a saranjam is thus continued to an adopted son, he shall be liable to pay to Provincial Government a nazarana not exceeding one year's value of the saranjam, and it shall be levied from him in such instalments as Provincial Government may in each case direct.

Rule 5-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 Provincial Government, unencumbered by any debts or charges save such as may be specially imposed by Provincial Government itself Rule 7-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 deformity 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, Provincial Government may direct him to make suitable provision for

such person 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 Provincial Government, otherwise sufficiently provided for, shall be entitled to maintenance from the Saranjamdar.

Rule 8-Every order passed by Provincial Government under the above rule for the grant of maintenance by a Saranjamdar shall hold good' during his life only The true nature of a Saranjam tenure was considered by a Full Bench of the Bombay High Court in Daulatrao Malojirao v. Province of Bombay(1) where their Lordships after referring to the earlier decisions in Shekh Sultan Sani v. Shekh Ajmodin (2) and Raghojirao v. Laxmanrao(3) observed: " An examination of the authorities, makes it clear that the whole structure of a Saranjam tenure is founded in the sovereign right, which can only change by conquest or by treaty. So founded, jagirs and Saranjams, with the feudal incidents connected with them, are granted or withheld at the will and pleasure of the sovereign power, and, if 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 (1) (1946) 49 Bom. L.R. 270. (2) (1892) L.R. 20 I.A. 50. (3) (1912) 14 Bom. L.R. 1226.

to private rights between subject and subject can fetter or disturb the sovereign will ".

It seems to us manifestly clear that the Saranjam Rules furnish no basis for the claim of the plaintiff respondent. Abayabai asked for sanction to her taking a boy in adoption. No such sanction was given. On the death of Babasaheb, it was open to Government to resume the grant, and by its Resolution of December 17, 1941, Government directed that the Saranjam potgi holding of village Dindur and Survey No. 302 of Unachgeri should be continued to the appellant. This really amounted to a resumption and fresh grant and we do not agree with the High Court that the order passed amounted to no more than recognising the legal position according to the rule of succession and stood on the same footing as any order of ordinary mutation. The High Court has emphasised the use of the word " continued " in the Resolution dated December 17, 1941, and has contrasted that Resolution with the earlier Resolution dated June 7, 1932, which was clearly a Resolution giving effect to a resumption and regrant of the Gajendragad Saranjam. It may, however, be pointed out that in paragraph 2 of the earlier Resolution, Government used the same word " continued " in connection with the maintenance grants, namely, potgi holdings within a Saranjam. Nothing, therefore, turns upon the use of the word " continued " and if the]Resolution dated December 17, 1941, is read as a whole it is clear that the potgi of village Dindur and Survey field No. 302 of Unachgeri was granted to the present appellant. It was open to Government to pass such an order, and we see no reasons to hold that it was null and void. Indeed, the High Court did not say that it was an invalid order; on the contrary, it said that it was a good order and operated with effect from the death of Babasaheb. But it said erroneously in our opinion, that by reason of the subsequent event of adoption, the order ceased, for all practical purposes, to have any effect from that event. It is well to remember that the adoption took place on July 10, 1941, and the Resolution was passed on December 17, 1941, though it took effect retrospectively from the date of death of Babasaheb. We see no reasons why S, a valid order made by Government will cease to have any effect because of an adoption made by Abayabai without sanction of Government. To hold that the Government Order ceased to have any effect by reason of the act of a private party will be to go against the very nature of a Saranjam tenure. Let us now examine the claim of the plaintiff respondent from the point of

view of the custom pleaded in paragraph 6(b) of the plaint. The custom pleaded was the rule of lineal primogeniture. In its written statement Government said:

" The family custom alleged in clause (b) is not admitted, and it is denied that such a custom can apply in respect of maintenance grants. Under Rule 7 of the Saranjam Rules, which merely embody the customary law relating to Saranjams, Government is given absolute discretion to determine whether or not to make an order and what provision to make and in whose favour The appellant said:

" The contents of para. 6(b) of the plaint are not correct. The custom of descent by the rule of primogeniture is denied. This defendant has become the owner by survivorship, after the death of Babasaheb ". The learned Civil Judge found that the custom pleaded in paragraph 6(b) of the plaint was not proved. The High Court has not referred to any evidence on which the custom could be said to have been proved, but observed that " it is common ground that the properties which had been assigned to this branch for its maintenance is impartable and goes by primogeniture". Even if we assume that the High Court is right in its observation, though in face of the denial in the two written statements it is difficult to see how this could be common ground between the parties, we fail to appreciate how the assumption helps the plaintiff- respondent. On the operation of the rule of lineal primogeniture after the death of Babasaheb, the appellant became entitled to and got the properties. It was not pleaded in the plaint that the properties once vested by the customary rule of lineal primogeniture were divested on subsequent adoption, by the widow. No such plea was specifically taken, but the High Court relied on the concession made by learned advocate for the appellant that under ordinary Hindu law the properties which were vested in the appellant were divested on a subsequent valid adoption by the widow. We consider it unnecessary to go into the vexed question of divesting of an estate on a subsequent valid adoption by the widow. It is enough to point out that the plaint disclosed no such case; no such issue was raised and it was not open to the plaintiff-respondent to make out a new case for the first time in appeal. The plaintiff-respondent set up a family custom of lineal primogeniture different from the ordinary law of inheritance; it was incumbent on him to allege and prove the custom on which he relied and to show its precise extent and how far it prevailed over ordinary Hindu law. In our opinion, he failed to plead or prove any family custom by which the properties devolved on him. Moreover, in order to succeed the plaintiff respondent must further establish that the custom was such as would bind the Government. The appellant and the Government never conceded that the custom of lineal primogeniture, if it prevailed in the family, took away the right of Government to resume the maintenance grant which was part of a Saranjam and make a fresh grant thereof in accordance with the Saranjam Rules.

Now, as to s. 4 of the Bombay Revenue Jurisdiction Act, 1876. The section, so far as it is relevant for our purpose, says:-

" S. 4.-Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters:

(a)claims against the Government relating to any property appertaining to the office of any hereditary officer appointed or recognised under Bombay Act no. III of 1874 or any other law for the

time being in force, or of any other village-officer or servant, or claims to perform the duties of any such officer or servant, or in respect of any injury caused by,, exclusion from such office or service, or suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by the State Government or any officer duly authorized in that behalf, or claims against the Government relating to lands held under treaty, or to lands granted or held as Saranjam, or on other political tenure, or to lands declared by the Provincial Government or any officer duly authorized in that behalf to be held for service".

In Mallappa alias Annasaheb Basvantrao Desai Nadgouda v. Tukko Narshimha Mutalik Desai and Others (1) it was pointed out that in the section a distinction has been made between claims and suits. The subclause we are concerned with is the fourth sub-clause which relates inter alia to " claims against the Government relating to lands granted or held as Saranjam ". The High Court has taken the view that no claim was made against Government in the present case. We are unable to agree. In express terms, the plaintiff respondent asked for a finding that the Government Resolution dated December 17, 1941, was null and void and did not affect the properties in suit because the Government had either no authority to make such an order or no occasion to do so. He asked for possession of those properties in spite of the orders of Government. In these circumstances we must hold that Government was more than a purely formal party, and a claim was made against it in respect of the orders contained in its Resolution dated December 17, 1941. Unless the Resolution is out of his way, the plaintiff-respondent is not entitled to claim recovery of possession from the appellant with mesne profits, etc. The Civil Court has no jurisdiction to determine any claim against the Government in the matter of the Resolution of December 17, 1941, relat- ing to Saranjam lands, and the suit was barred under s. 4 of the Bombay Revenue Jurisdiction Act, 1876. (1) I.L.R. [1937] Bom. 464.

We accordingly allow this appeal, set aside the judgment and decree of the High Court dated November 12, 1952, and restore that of the learned Civil Judge dated April 20, 1949. The appellant will be entitled to his costs throughout from the plaintiff-respondent.

Appeal allowed.