taken at the time of the general survey of the district, or whether it was taken apart from any general survey. For, he says, that if it is proved that it was taken when there was no general survey of the district, then the kabuliyat is bad. In my opinion this argument is not relevant to the question which arises in this case. The facts are that every year the khots had to pass a kabuliyat. That kabuliyat fixed their rights and their liabilities, their rights as against the tenants, and their liability not to vary from or depart from the terms fixed by Government, and unless the kabuliyat was illegal, they themselves could not resist, and could not claim anything from their tenants which was not sanctioned by the kabuliyat. No question of illegality of the kabuliyat was raised in the lower Courts, and apart from anything else, that question cannot now be allowed to be raised. But it seems to me that there is no substance even in this argument. I have set out the facts as to what happened in this taluka, which are clearly supported by the decisions in the two cases to which I have referred. When this Court held that the new kabuliyat taken in 1914 which provided for the payment of the faida in cash was illegal, Government changed the form of kabuliyat and restored the old form which they had adopted in 1902, and there is not the slightest doubt that that kabuliyat provided that the payment of the faida was to be in kind and not in cash. If the kabuliyat is illegal, then it is open to the appellant to take such action as he may be advised. So long as the kabuliyat passed by the khot to the Government stands, it is difficult to see how the khot can go beyond the terms of the kabuliyat and how the tenants can resist the terms of the kabuliyat, and this seems to be clear from the observation of Madgaonkar J. at pages 764-765 in 26 Bom L R 754.[1] It is clear from the rulings of this Court that once Government have taken a kabuliyat in a particular form from the managing khot, he becomes entitled to recover the faida in accordance with the terms of the kabuliyat. If any occupant is dissatisfied with the terms of the kabuliyat, it is for him to take such steps as he may be advised against Government, or approach Government to get the kabuliyat changed, but until that is done, I am unable to see how the managing khot can go beyond the terms of the kabuliyats, so long as it stands. It is well known that the practice of taking kabuliyats was introduced to limit the demands of khots against their tenants. In this view, therefore, the appeals must be dismissed with costs.

K.S./R.K. *Appeals dismissed.*

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RANGNEKAR AND SEN JJ.

Ramchandra Ganpatrao Dalvi — Plaintiff — Appellant.

v.

Lakshmibai Shamrao Kalkundri — Defendant 1 — Respondent 1.

First Appeal No. 198 of 1934, Decided on 1st October 1937, from decision of First Class Sub-Judge, Belgaum, in R. C. S. No. 78 of 1931.

(a) Saranjam—Saranjamdar has no right to create saranjam.

A saranjam which is a political inam, appears by its very nature to be incapable of being created except by Government or the sovereign power alone. Hence it is not possible for a saranjamdar to create a saranjam in favour of a stranger : *A I R 1929 Bom 14, Expl.* [P 334 C 1]

(b) Inam—Alienation of sarva inam—Suit to set aside.

A suit to set aside alienation of a sarva inam made by the inamdar must be brought at the latest within 12 years of the death of inamdar who has effected the alienation : *34 Bom 91, Disting.* [P 335 C 1]

Dr. B. R. Ambedkar and B. D. Belvi — *for Appellant.*

G. N. Thakor and S. B. Jathar — *for Respondent 1.*

Sen J. — The plaintiff-appellant and defendants 2 to 8 belong to the family of the Dalvis of the village Kurnibujavade. The plaintiff sued to recover possession of the plaint village Kurnibujavade jointly with defendants 2 to 8, with mesne profits and costs. He alleged that the suit village had been acquired by the ancestors of the plaintiff and defendants 2 to 8 before the advent of the Peshwa rule; that in 1858 the British Government recognized Ramchandrarao and Yeshwantrao, the plaintiff's ancestors, as sarva inamdars and entered in the records the property in suit as sarva inam political saranjam Class 1, descendible to the male heirs of the holders and not to be interfered with as long as the Here jahagir existed; that the holders had nothing more than a life-interest in the property; that in 1890 five out of the then seven holders of the estate jointly passed two registered sale deeds in favour

of two brothers named Kalkundris in respect of the entire village; that the other two holders gave a manyatapatra to the vendors acquiescing in the sale; that the vendees sold the property in 1900 to one Huilgolkar, who sold it again next year to Shamrao Vithal Kalkundri; that Shamrao was in possession of the property till his death in 1924; and that his widow who is defendant 1, succeeded to him.

The plaintiff, originally a son of Daulatrao, one of the two holders who gave the manyatapatra in 1890 claims to be the adopted son of Ganpatrao Krishnarao Dalvi, Krishnarao being a brother of Daulatrao and son of Ramchandra, son of the eldest son of Nag Dalvi, the original acquirer of the sarva inam. Of the eight defendants only defendant 1 resisted the plaintiff's claim. She contended inter alia that the suit was barred by limitation as well as by res judicata; that neither the plaintiff nor defendants 2 to 8 were members of the saranjam family; that the plaint village was not a saranjam of the plaintiff and defendants 2 to 8, though it might be a saranjam of the Here jahagir, and that the law applicable to the Here jahagir saranjam was not applicable to the plaintiff and defendants 2 to 8. On these pleadings the learned First Class Subordinate Judge raised issues, all of which, except one, he decided against the plaintiff, and he dismissed the suit accordingly.

On the question of the plaintiff's adoption to Ganapatrao, the learned Subordinate Judge came to the conclusion that the adoption was not proved. His grounds were: first, that two important witnesses were unreliable, being relatives of the plaintiff; secondly, that there was delay of more than a year between the alleged date of the adoption and the date of the adoption deed produced; and thirdly, that for more than a year after the alleged adoption the plaintiff continued to sign his name as Bhausaheb Daulatrao Dalvi and not as Ramchandra Ganapatrao Dalvi, which would be his name if the adoption was true. We think that on the evidence the learned Subordinate Judge was perfectly right in his conclusion and we see no reason to come to a different conclusion.

The main contention of the plaintiff in this case was that the plaint village was a saranjam in respect of which the plaintiff's family had the rights and obligations of the saranjamdar and that an alienation made by a saranjamdar of saranjam property beyond his lifetime is void and illegal. Without examining this general proposition regarding the effect of the alienation of saranjam property beyond the lifetime of the saranjamdar, we propose in the first place to examine the question whether the plaint village constituted a saranjam village and whether the plaintiff's family can be said to be the saranjamdar's family in respect of that village. The plaintiff bases his contention in this respect on the decision given in 1858 by the Inam Commissioner Major Gordon appointed by Government under Act 11 of 1852. That decision is to be found in Ex. 59 which is called a faisalnama. Its heading shows that the village was being continued as a sarva inam in the dumalazada of 1855 in the name of Ramchandra bin Narappa and Yeshwant bin Girjappa Dalvi. The faisalnama states that the aforesaid village forms part of the jahagir of the Herekar chief; that so long as the jahagir is continued to the Herekar chief, there is no reason for interfering with the state of the aforesaid village, and that the aforesaid decision does not at all affect the right of the inamdar of the village, by which expression it is admitted that the Herekar chief is meant. An abstract of this decision was shown in a register kept for the purpose (Ex. 58) in which Ramchandra bin Narappa and Yeshwant bin Girjappa Dalvi were shown as having claimed the entire village as sarva inam, and a summary of the decision (Ex. 59) is given in this register. A somewhat similar summary also appears in the register of alienated villages and lands (Ex. 57) kept under the Bombay Land Revenue Code. The appellant has relied on the entries in this register in Cols. 3 and 4. In Col. 3 the names of "the present alienees" are given as Krishnajirao Ramchandrarao and Lingojirao Girajrao Dalvi, and in Col. 4 the class of alienation is shown as Class 1 political saranjam. The entry under Cols. 5 to 10 shows that the entries were based on the decision of Major Gordon in 1858. In Col. 11 the duration of the tenure is given as "to be continuable so long as the Herekar jahagir of which this village formed a part is allowed to remain in the possession of the Herekar." It seems to us that the preparation of this register being based on Major Gordon's decision in 1858, except as regards the area, survey assessment, etc., it cannot be held to record anything as to the class or nature of the tenure in excess of what is contained in the said decision.

This seems to us clear from the entries in Col. 5 to 10 and Col. 11. The entry in Col. 3, namely, as to the names of the present alienees must therefore mean the names of the alienees from the original grantee if there was any subsequent alienation. And the entry in Col. 4 ("class of alienation") as Class 1, political saranjam, must have reference to the original alienation, though it is no doubt prima facie possible to read the two entries as referring to the same alienation. Major Gordon did not decide the alienation in favour of Krishnajirao and Lingojirao or of any other member of the Dalvi family as holding a political saranjam. We therefore think that the entry in Col. 4 must be interpreted as having reference to the original alienation and not to the one subsequent to the original grant. In 1900 Government passed a resolution (Ex. 103) regarding the status of the holder of Kurnibujwade, which is described in the heading as a pot-inam village of the Here saranjam. The following passages in this resolution appear material:

> The Here saranjam consists of 47 villages—23 in the actual possession of Herekar, the saranjamdar, and 24 which have been alienated by his ancestors, in the possession of the alienees or their present representatives. According to the rules, which have been in force for many years, a saranjamdar cannot alienate any portion of his saranjam; and therefore the alienations of these 24 villages by the saranjamdar, if made after the rules were passed, would have been illegal and not recognized by Government.
>
> Having already recognized the original alienation by the saranjamdar of these 24 villages, they (i. e. Government) have no interest or concern in preventing the further sub-alienation of the same 24 villages, whether by sale or by decree of a Court.
>
> The village was given in inam by the ancestor of the present Herekar to an ancestor of the Dalvis. But the Herekar remains the saranjamdar while the Dalvis are only inamdars. As between Government and the Herekar, it is a saranjam village which would lapse to Government with all the Herekar's other saranjam villages, whether still in the Herekar's possession or granted in inam to other persons by a Herekar, on the extinction of the Herekar family in the male line. As between Government and the Dalvis, the village is simply an inam village granted to them by a Herekar. In neither case have Government at present any concern with it.

Thus the saranjam appears to have originally consisted of 47 villages out of which 24, including the plaint village, had been already alienated at the date of Major Gordon's decision, and Government recognized these alienations. One of the previous saranjamdars, the then head of the Herekar family, granted an inam consisting of the plaint village to one of the plaintiff's ancestors. There seems to be no doubt that the saranjamdar could make a grant of such an inam. Such a case is dealt with in 23 Bom L R 314,[1] which was a case of a grant of mirasi and inami rights in certain lands by the saranjamdar of a village. This case lays down that such grant is binding on the successor of the saranjamdar. It is not contended by counsel for the appellant that the Herekars themselves had no right to make such an inam grant beyond the lifetime of the original grantor. Such a contention would cut away the very basis of the plaintiff's title. But it has been contended by Dr. Ambedkar for the appellant that it is possible for a saranjamdar to grant a saranjam to an outsider, the grant itself constituting a fresh saranjam. For this proposition he has relied on 30 Bom L R 1463.[2] That was a case in which the Raja of Satara had granted a saranjam to the Gaekwar of Baroda by a sanad and there was a subsequent grant out of the same lands by the Gaekwar of Baroda to one Limbaji as a new inam. With great respect, we have found it difficult to follow the line of reasoning at pp. 1471 and 1472 which is relied on, as it is not easy to discover which grant is being referred to. Reference is first made to Divan Bahadur Rao's contention that the grant contained the expression "a new inam," and that the word "inam" did not mean "saranjam." Thereafter Mr. Justice Fawcett has come to the conclusion that the grant to the Gaekwar must be held to be one of saranjam. In this case it further appears that the Gaekwar had accepted the position that the grant made by himself was a saranjam grant and ultimately Mr. Justice Fawcett appears to have decided the point mainly on the ground that primarily it was for the Government to determine in any particular case of this kind whether a political tenure such as the saranjam existed. We think that this case is no useful guide to the question whether a saranjam can be created by the saranjamdar. It appears that in the present case all that the Inam Commission recognized was that the grant by the saranjamdars, i.e. the Dalvis, was an inam or a sarva inam, but as subject to the condition of forfeiture in case of the extinction of the Herekar family. It cannot be said that the

1. Sakharam v. Trimbakrao, (1921) 8 A I R Bom 303=61 I C 40=45 Bom 694=23 Bom L R 314.
2. Sayaji Rao v. Madhavrao, (1929) 16 A I R Bom 14 = 115 I C 369 = 53 Bom 12 = 30 Bom L R 1463.

plaintiff's family were grantees from Government or that the inam was created by Government. A saranjam, which is a political inam, appears by its very nature to be incapable of being created except by Government or the sovereign power alone. It does not appear from the decision of the Inam Commissioner, which must be the basis of the appellant's contention, that the Inam Commissioner even recognized the position of Dalvis as saranjamdars. All that the decision stated was that the plaint village was a part of the saranjam of Herekar and that it could not exist beyond the lifetime of the Here saranjam.

In this connection it is significant that in the resolution of 1900 (Ex. 103) it is distinctly stated: "as between Government and the Herekar it is a saranjam village" and "as between Government and the Dalvis the village is simply an inam village to them by a Herekar". It is also to be remembered that Ex. 58 shows that the claimants before the Inam Commissioner in 1858 claimed the village only as a sarva inam and as nothing higher than that. We are left in some doubt as to the exact meaning of the expression "sarva inam." This expression, as we have seen, was to be found in the dumalazada of 1855, and therefore appears to have been used with reference to this village prior to the decision of Major Gordon. Dr. Ambedkar for the appellant has contended that "sarva inam" is used in contradistinction from expressions such as "baqi inam", i.e. an inam in which the original grantor's rights, or some of them, are saved, and that "sarva inam" means a grant of all the original grantor's rights, i.e. the complete saranjam in this case. This village however has not been treated either by the Inam Commissioner or in the Government records as a saranjam separate from the Herekar's, with an independent existence of its own as a saranjam. As the saranjamdar had no right to create a saranjam, the interpretation that is sought to be put by Dr. Ambedkar on the expression "sarva inam" appears to us to be impossible.

With regard to the entry in Col. 4 in Ex. 57 I have already stated that that entry cannot be used to support the appellant's contention that it was the plaint village which was being referred to therein as a Class 1, political saranjam. It thus appears to us that the village Kurnibujavade cannot by itself be regarded as a saranjam and that it was made inam by one of the saranjamdars, the Herekars; and it seems to us that there is nothing in the evidence to show that such alienation of the village was intended to be restricted in any way. That seems to be the meaning of the expression used in Ex. 59 that there was no reason for interfering with the state of the village and also the meaning of the following passage in Ex. 103:

> Government having recognized the original alienation need not interfere in the case of any further disposition by the alienees so long as it is clearly understood that the village, form part of the Here saranjam and are resumable on the extinction of the Herekar family.

As the appellant has not succeeded in showing that he was the saranjamdar of the plaint village, it appears to us unnecessary to examine the further question whether a saranjamdar can alienate the whole or any part of his saranjam beyond his lifetime and whether such alienation would be void or illegal. Dr. Ambedkar has referred us to several cases to show that a saranjamdar, though holding a hereditary estate, cannot be said to have an absolute interest therein, in the sense that he can alienate the saranjam beyond his lifetime. It becomes unnecessary for us to go into these cases in view of the conclusion we have arrived at. We must therefore hold that the main contention of the appellant fails. Two further points arise as to limitation and res judicata. On the question of res judicata, we find that in 1903 Shamrao Vithal Kalkundri brought Suit No. 135 of 1903 for a declaration that he was the owner of the plaint inam village and as such was entitled to have his name entered in the register as a khatedar. Krishanjirao Ramchandrarao and Lingojirao Girajrao Dalvi, the same persons as those named in Ex. 57 as the holders of the suit village, opposed the suit. In this case there was no issue as to the capacities in which both parties were claiming to be the owners of the village, though it is possible to argue that the question of the Dalvi's holding the village as saranjamdars was a necessary issue arising in the suit. We think however that though there is considerable force in Mr. Thakor's argument, it is not necessary for us to express any opinion as to whether the decision in the suit of 1903 operates as res judicata.

On the question of limitation Dr. Ambedkar has referred us to 34 Bom 91[3] in which certain lands belonging to two brothers

3. Narasinha v. Vaman Venkatesh, (1909) 34 Bom 91=4 I C 249=11 Bom L R 1102.

were leased by one of them under a perpetual lease which was attested by the other brother and a suit was brought for recovery of the lands within 12 years of the death of the brother who died last. The defendants defended the suit on the ground inter alia of limitation the suit not having been brought within 12 years from the date of the lease, and it was held that limitation began to run from the date of the death of the survivor of the joint lessors. We think that this decision which dealt with a watan property is not applicable to the facts of the present case in which the property has been held by us to be a sarva inam. The learned Subordinate Judge has also come to the same conclusion, and has held that the cause of action arose in 1890 when the sale-deeds were passed. We think however that the period limitation would begin to run from the date of the death of the plaintiff's father, Daulatrao who died in 1914. The suit having been instituted 17 years after this date is therefore barred by limitation. The result therefore is that the appeal must be dismissed with costs.

Rangnekar J.—I agree. It seems to me that upon the evidence before the learned First Class Subordinate Judge there was only one conclusion to which he would come. The plaintiff's case was that the village in suit was a saranjam village and therefore the alienations made by his predecessors-in-title in 1890 were not binding upon him upon the death of the survivor of his predecessors-in-title. He relied upon several documents, the main document being a faisalnama of the Inam Commissioner of 1858 (Ex. 59) and the connected document (Ex. 58). Ex. 59 was if I may say so the root of his title. It is quite clear that the Inam Commissioner could not and in fact did not create or grant any new inam or saranjam. His duty was to adjudicate the claims made by the claimants upon the evidence brought before him and to record his decision. The documents show that the claim made before the Inam Commissioner in 1858 by the predecessors-in-title of the appellant was that they were the holders of a sarva inam. The Commissioner upon the evidence found that this formed part of the ancient saranjam tenure which was granted long before the advent of the Peshwa rule to the Herekar family. As it was found that the plaintiff's family was in possession and enjoyment of the village as inamdars since long before the advent of the Peshwas, the Commissioner and subsequently Government did not like to disturb the alienation but made it clear that the alienation would only be good and valid as long as the Herekar saranjam was not extinguished. The Commissioner's actual decision was that the plaintiff's family should continue in the enjoyment and possession of this village until the extinction of the saranjam on failure of the male line of the Herekar family. This was accepted by Government. That being so, I think the plaintiff's claim that the Herekar family granted the village in saranjam to his ancestor must fail.

Apart from that, it seems to be extremely doubtful whether a saranjamdar can create a saranjam out of the whole or any part of the property in favour of a stranger. A saranjam or jahgir, as is well known, is a political tenure created from or dependant on political considerations the existence of which can only be determined by Government and it seems to me to be difficult to hold that it would be open for a saranjamdar to create a saranjam out of his own property in favour of a stranger. I think therefore apart from the other evidence which my learned brother has referred to, the conclusion reached by the learned First Class Subordinate Judge upon these documents is correct and the appeal fails. On the question of limitation I need only say that the case relied upon by the learned counsel for the appellant has no application to the facts of this case if the finding at which the Court below and we have arrived is correct. At the latest the cause of action to bring the present suit accrued to the appellant upon the death of his father in the year 1914. The present suit having been instituted more than 12 years after his death must be held to be barred by limitation.

As we have dealt with most of the points, I think it is necessary to record our finding on the subject-matter of Issues 13 and 14 in this case. One of the contentions of the defendants was that assuming that the plaintiff succeeds in establishing that the sales of 1890 were not binding upon him, still he was not entitled to certain property which was not included in those sale deeds. This property the defendants contended came to them by way of alienations not from any of the ancestors of the plaintiff but from a third party. The learned Judge accepted this contention and we think rightly. The appeal therefore is dismissed with costs. Respondent 1 alone will get the

costs of the appeal. The appellant will have to pay Government duty.

K.S./R.K. *Appeal dismissed.*

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BROOMFIELD AND SEN JJ.

Shankardas Vishnudas Darbar and others — Appellants.

v.

Channappa Girimalappa Jolad and others — Respondents.

Companion First Appeals Nos. 11 and 27 of 1936, Decided on 25th November 1937, from decision of First Class Sub-Judge, Bijapur, in C. S. No. 545 of 1933.

Hindu Law—Adoption—Agreement between adoptive mother and natural father of adopted son entitling adoptive mother to manage and enjoy property for life — Agreement though valid by custom such custom does not extend to reservation by adoptive mother of unlimited powers of alienation during her lifetime.

Though an agreement made on the adoption of a Hindu between the widow of the adoptive father and the natural father of the adopted son that the widow would manage and enjoy the property of her deceased husband for her lifetime is valid by custom yet such custom does not extend to the reservation to the widow of unlimited powers of alienation for the period of her life. The party who relies on custom must satisfy the Court that it is comprehensive enough to cover his case. *23 I C 599 and 16 Cal 155, Rel. on; A I R 1924 P C 139, Expl.* [P 337 C 2]

K. G. Datar — *for Appellants (Defendants).*

R. A. Jahagirdar and K. R. Bengeri — *for Respondent 1 (Plaintiff).*

Broomfield J.—These are appeals by some of the defendants in a suit brought by the plaintiff, who was adopted by defendant 1 in the year 1920 as son to her deceased husband Girimalappa, to set aside certain alienations made by his adoptive mother after his adoption and to get possession of his adoptive father's estate. The only issue which has been argued in these appeals is that the suit is premature by reason of an agreement between the plaintiff's natural father and defendant 1 at the time of the adoption, the effect of which was according to the appellants, that the alienations by defendant 1 are valid for her lifetime. The agreement is thus set out in the adoption deed which is addressed by defendant 1 to the plaintiff.

I have today adopted you as my son. You get all the rights which a son born of my womb would get. From today you should leave your natural father's name and tell my husband's name. And all my husband's property I myself shall make management (wahiwat) of and enjoy (upabhog) during my lifetime. After me you should take possession thereof and manage.

The learned trial Judge holds that this agreement is not binding on the plaintiff. He says :

This agreement wholly postpones the rights of plaintiff as adopted son till after the death of the adoptive mother. The test by which it is to be judged is whether such an agreement is fair and reasonable and whether it is to be regarded as valid by custom. No plea of any custom is set up here: and in a similar case our own High Court has held such an agreement is neither fair nor reasonable : vide 16 Bom L R 57[1] also 54 I A 248.[2]

In 16 Bom L R 57[1] the facts were that a Hindu widow at the time of adopting a boy made an agreement with the natural father of the boy which provided that the widow was to continue in management of the property, that she was to retain all the rights she had of managing as long as she lived, of receiving the income, of recovering money, etc., and that she was to retain all the rights which she had in the absence of a son. Counsel in that case accepted the position that the proper criterion to be applied in testing the validity of an agreement of this kind was whether it was fair and reasonable. The Court found that the agreement in that case was not fair and reasonable and that it could not be held binding on the adopted son. It seems to me that there are really two questions to be considered in this case which, though connected, are quite distinct. The first is whether the agreement with which we are concerned clothed the widow with the power of disposing of the property for the term of her life. Question 2 is whether, if so, the agreement is valid and binding on the adopted son.

On the question of construction, I must say, I feel some difficulty. It is to be noted that we are not concerned with any question of legal necessity. It has been found against the defendants that the alienations cannot be supported on any such ground and that finding is not challenged in the appeals. The appellants' case is that defendant 1 was given a life-interest in the property and that the alienations which she has made were within her powers as a life-tenant, though they will become void on her death. According to this view it would be open to the adoptive mother to alienate

1. Purshottam v. Rakhmabai, (1913) 16 Bom L R 57=23 I C 599.
2. Krishnamurthi Ayyar v. Krishnamurthi Ayyar, (1927) 14 A I R P C 139=101 I C 779 =50 Mad 508=54 I A 248 (P C).