Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Vinayak Waman Joshi Rayarikar v. *Gopal Hari Joshi Rayarikar and others, from the High Court of Judicature at Bombay delivered the* 12*th February* 1903.

Present:
LORD MACNAGHTEN.
LORD LINDLEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.
SIR JOHN BONSER.

[*Delivered by Lord Macnaghten.*]

This is an Appeal *ex parte* against a Decree of the High Court of Bombay reversing the decision of the Subordinate Judge of Poona, who dismissed the Plaintiff's suit.

The Plaintiff sued for partition of the village of Ahire. It is not disputed that he is entitled to a one-fifth share in the village; but the suit was resisted by one of the co-sharers, the present Appellant, on the ground that the management of the village is vested in him and his branch of the family, and that the proper inference to be drawn from this circumstance, from the documents in evidence, and from the acts and conduct of the members of the family ever since the date of the original grant, is that the village is impartible.

The village was granted in 1762–63 by the Peishwa to six brothers, who were Brahmins, in consideration of their devotion to religious worship, and the arduous services performed by the youngest brother, Chinto Vithal. The grant

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does not declare the property to be impartible, nor does it say anything about the management of the village, but, in fact, Chinto Vithal acted as manager, paying his brothers their share of the income. Afterwards the village was attached, but ultimately in 1800 the attachment was removed, and the Peishwa re-granted or continued the *inam* to Chinto's son. Having thus got into possession, he attempted to appropriate the whole income and refused to recognise the interest of the five elder brothers. The representatives of the elder brothers preferred a complaint to the Peishwa, from which it appears that the brothers had then become separate. An inquiry followed, and an order was made to the effect that in future the representatives of all six brothers (the line of one brother, it may be observed, is now extinct) should receive equal shares. The management, however, was left in the hands of Chinto's son, and notwithstanding some disputes it has ever since remained in the hands of that branch of the family. But there are two Yadis, one in 1820 and one in 1830, which, in their Lordships' opinion, show conclusively that it was by the consent of the other co-sharers that the management was continued in Chinto's line. That was also the opinion of the High Court.

The argument on behalf of the Appellant rested on no solid foundation. It could not be contended that the original grant, or any document emanating from the ruling power, showed that it was intended that the *inam* should be impartible. The argument rather was to this effect: that, although the original grant fell short of proving that the property was impartible, yet there was, so to speak, a savour of religious endowment about the Peishwa's grant, and that this, taken in conjunction with the conduct of the family, the fact that, although the brothers separated, there was never any claim for the

partition of this property until quite recently, and the fact that, although there were on more than one occasion disputes or complaints of mismanagement, Chinto's branch held their position,—justified the inference that, either according to the true intent of the grant properly understood, or by family custom gradually developed, the *inam* was or had become impartible.

Their Lordships agree with the conclusion arrived at by the High Court, that "neither " * * * by the terms of the original " grant or of the subsequent orders of the " Ruling Power, nor by family custom, nor by " adverse possession (if such there could be in " a case like this) has Chinto's branch of the " family * * * acquired a right to " perpetual management of the village of Ahire, " or in consequence to resist its partition."

It may be worth while to refer to a case reported in Law Reports, 7 Indian Appeals, p. 162, *Adrishappa Bin Gadgiappa* v. *Gurushidappa Bin Gadgiappa*, the head note of which is that " Deshgat watan or property held as apper- " taining to the office of desai is not to be " assumed *primâ facie* to be impartible. The " burden of proving impartibility lies upon the " desai; and on his failing to prove a special " tenure, or a family or district or local custom " to that effect, the ordinary law of succession " applies."

Their Lordships will, therefore, humbly advise His Majesty that the Appeal ought to be dismissed.