

(1929) 01 BOM CK 0015

In the Bombay High Court

Case No : Second Appeal No. 123 of 1927

Anant Dattatraya Thakur-Desai

APPELLANT

Vs

Mahadev Wasudeo Thakur-Desai

RESPONDENT

Date of Decision : 24-01-1929

Acts Referred:

Citation : (1929) 31 BOMLR 628

Hon'ble Judges : Murphy, J;Mirza, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mirza, J.—The appellants claimed to be in possession of an undivided half share in a Khoti takshim in their right of purchase of the equity of redemption relating to that property from one Narmadabai, a Hindu widow, in 1911, and later from one Parvatibai an heir under the Hindu law of one Balkrishna, and in their right of having redeemed the property from the mortgagee. Both Courts have held that the property had become the property of one Gangabai by adverse possession and later of her daughter-in-law Narmadabai both by inheritance and by adverse possession; that the sale from Narmadabai was not justified on the ground of any legal necessity and was not binding upon her reversioners. Both Courts have also held that when Parvatibai sold the equity of redemption her right to it had long since been barred by limitation, and the equity of redemption had vested in Gangabai and Narmadabai by adverse possession. Hence they decreed the respondents' (original plaintiffs') claim to redeem the property from the appellants on payment of the amount which the appellants were held to have paid to the mortgagee.

2. In resisting the plaintiffs-respondents' claim to redeem the property, the appellants by their written statement set out the case that Gangabai was the owner of the equity of redemption in the property by adverse possession, that the property was her stridhan and had descended to her daughter-in-law Narmadabai as her heir and that as purchasers of the equity of redemption from

Narmadabai and as redeemers of the mortgage they were now the owners. But they had to resile from that position owing to the ruling of their Lordships of the Privy Council in *Lajwanti v. safa Chand* (1924) Bom. L.R. 1117 that a Hindu widow is not a life renter, but has a widow's estate, that is to say, a widow's estate in her deceased husband's estate and if possessing as a widow she possesses adversely to any one as to certain parcels, she does not acquire the parcels as Stridhan, but she makes them good to her husband's estate. In that view of the law the property acquired both by Gangabai and Narmadabai by adverse possession would belong to the estate of their respective husbands. The respondents are admittedly the reversionary heirs and they would be entitled to succeed to the property as such heirs.

3. Mr. Desai on behalf of the appellants baa argued that the possession of this property was all along with the mortgagee and under the ruling in *Tarabai v. Dattaram* (1924) 27 Bom. L.R. 441 neither Gangabai nor Narmadabai could acquire a title by adverse possession. The facts in that judgment, in my opinion, can be distinguished from the case with which we have here to deal. The earliest mortgage in the case, Exhibit 48, executed in 1857 shows that the property in euit along with three others was mortgaged to one Dhavale and purported to be a possessory mortgage; but the terms of the mortgage deed make it clear that the mortgagors reserved to themselves the right to remain in possession and to manage the properties as long as they paid interest to the mortgagee regularly and gave proper security in advance for such payment. The last surviving coparcener of this joint family was Balkrishna. He died in 1878, leaving his daughter Bhimabai as his heir according to the Hindu law. Gangabai at that time was entitled only to a right of maintenance out of the estate and the owner according to law was Bhimabai, the ancestress of Parvatibai.

4. The findings are that after the death of Balkrishna, Gangabai continued in sole possession and management of all the properties that had belonged originally to the joint family. Exhibit 54 is a further charge created in 1884 by Gangabai upon the properties belonging to this estate. Exhibit 75 is yet another further charge created by Gangabai in 1884 upon these properties. On August 13, 1892, Gangabai purporting to be the owner of the property in suit executed a mortgage of the same to secure a sum of Rs. 2,350, It is contended by Mr. Desai that this mortgage deed was in the nature of a consolidation of the previous mortgages and charges, and a further amount was obtained by Gangabai in respect of this fresh mortgage. The mortgage, in my judgment, is very different from the original mortgage of 1857. The mortgage of 1857 comprised four properties, including the one in suit, and three of them, namely, residential houses, Khoti Khasgi thikana and Deshmukhi allowances have been omitted from the mortgage deed of 1892, The mortgagor Gaugabai reserved to herself the right of vahivat to the property on terms similar to those which were set out in the original mortgage of 1857. After the death of Balkrishna, the name of Gangabai was substituted in the Botkhat in 1886. There are several rulings of this Court to the effect that an entry in a Botkhat is presumptive evidence of title and possession

in favour of the person whose name appears in it. Gangabai died in 1902 and on her death the Khoti takshim was transferred from her name to that of Narmadabai her daughter-in-law. Narmadabai would be entitled to succeed to Gangabai under the Privy Council ruling above referred to. She would be heir to Gangabai's deceased husband, Narmadabai's title to the property was never disputed by the heirs of Balkrishna.

5. In my opinion, the judgments of the two Courts are correct and this second appeal should be dismissed with costs.

Murphy, J.

6. It has been found that Balkrishna was the last male owner and on his death in 1878-79 his proper heirs were in succession his daughter and in turn her daughter and grand-daughter. But in fact what actually happened was that Gangabai, who was never the widow, but had been the sister-in-law of Balkrishna, the last male owner of the property, proceeded to deal with it as his widow's estate which had vested in her, and her daughter-in-law Narmadabai in turn acted in a similar manner, though actually all that the two women were entitled to, out of the family property, was maintenance; and although half the share in the Khoti village in question was mortgaged to one Dhavale during the whole of this period. Both Courts below found that the two widows' possession was in 1929 terms adverse to those of the heirs of Balkrishna. Finally, in 1911, the defendants acquired the equity of redemption in the property from Parvatibai, the great-grand-daughter of Balkrishna, and also obtained a sale from Narmadabai the second Murphy J, widow; and their title is based on these two documents. The view of the Courts below has been that the sale-deed by Narmadabai was not for family necessity, and that the real amount paid was Rs. 1,550 for the purpose of paying off Dhavale's mortgage. They have also held that Gangabai's and Narmadabai's possession was adverse to that of the real heir of Balkrishna, the heirship having culminated in Parvatibai; but on the strength of the Privy Council ruling in *Lajwanti v. Safa Chand* (1924) 26 Bom. L.R. 403 the acquisition by these widows of an estate by prescription would cause it to revert to their deceased husbands' estate; and since the alienation by Narmadabai has been shown to be for no legal necessity the reversioners would be entitled to this property on Narmadabai's death. Narmadabai died in 1917; but since during her lifetime the defendants had an interest entitling them to redeem and did redeem the mortgage, I think, the plaintiffs must pay the costs of the redemption before they can be entitled to possession of the Khotki as reversioners. For these reasons it seems to me that the judgments recorded by both Courts below are correct and that this appeal must be dismissed with costs.

7. Both appeals are dismissed with costs.