

(1921) 04 BOM CK 0009

In the Bombay High Court

Case No : Second Appeal No. 48 of 1940

Balku Sidu Kumbhar

APPELLANT

Vs

Vyankatesh Vaman Deshpande

RESPONDENT

Date of Decision : 08-04-1921

Acts Referred:

Citation : (1921) 23 BOMLR 799

Hon'ble Judges : Shah, J;Norman Macleod, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shah, J.—These appeals (Second Appeals Nos. 927, 928, 940, 911, 950 of 1919 and 48, 108, 129, 319, 320, 821 and 322 of 1920) relate to the alienations either of the Inam or Mirasi rights of the Vatandar. The plaintiff is the successor of the original Vatandars whose right, title and interest were either sold at Court sales or by private transfers. The plaintiff claims to recover possession of these lands on the ground that these are Vatan lands and that the alienations have ceased to be operative alter the life-time of the original Vatandars.

2. The lands in question have been found to be Vatan lands. It is dear that the alienations made after Regulation XVI of 1827 came to be applied, to the District of Satara would not be operative beyond the life-time of the Vatandar. All these alienations except one were effected during the years 1863-74, i.e., after the Regulation XVI of 1827 was made applicable to this district and before the Bombay Hereditary Offices Act (III of 1874) came into force. It is also found by the lower appellate Court, and there is no reason to doubt the correctness of the finding, that the settlement of this Vatan was made on the lines of the Gordon Settlement; and the provisions of the settlement point to the same conclusion though not in terms. It is clear from the decision in Appeal v. Keshav I.L.R (1890) Bom. 13 that the alienations of such lands, whether effected by the Court or by the Vatandar himself are inoperative beyond the life-time of the Vatandar. It is not seriously disputed that so far as the Inam rights in the lands are

concerned, the alienations have ceased to be operative. But the only ground upon which some of the appeals, in which the alienations of the Mirasi rights are involved, are sought to be saved is that though the alienations of the Inam rights in the Vatan lands may be inalienable, there is no reason to extend the restriction on the power of alienation to the Mirasi or occupancy rights unless it be shown that such rights formed part of the grant.

3. Assuming without deciding that such a distinction is permissible in the case of Vatan lands, there is no evidence in this case to show that the Mirasi rights were independently and separately acquired by the original Vatandar. The record, such as it is, shows that the lands were treated as Vatan lands. No Sanad is produced in the case. Beyond the fact that these shah J. lands are Vatan lands, we have no information as to the terms of the settlement with reference to these lands which could throw any light on the question as to whether the Mirasi rights were independently acquired originally by the Vatandar. In the absence of any such evidence it is clear to my mind that the distinction sought to be made in the appeals, in which the alienations of the Mirasi rights are involved, cannot be maintained. No case has been cited to us in the course of the argument in which the ordinary presumption which applies to the Inams and Jagirs has been extended to the Vatan lands; and the accuracy of the observations in *Amrit v. Hari* (1919) 22 Bom. L.R. 275 bearing on the point with reference to the Vatan lands has not been challenged on behalf of any of the appellants in these appeals. I am, therefore, of opinion that the lower appellate Court was right in holding that, whether the alienations were of the Inam r. rights or of the Mirasi rights, they were operative only during, the life-time of the Vatandars whose right, title and interest were alienated and that therefore after their deaths, the successor was entitled to the possession of the lands in question. I would, therefore, dismiss all the appeals preferred on behalf of the alienees with costs.

4. As regards Appeal No. 129 of 1920 preferred by the plaintiff, he has not been able to show that the alienation in question was made after the Regulation of 1827 came to be applied to the district. In the absence of any restrictive provisions against alienations applicable to the particular alienation it is clear that the alienation is binding upon the successor of the Vatandar 5 and it must be taken to be on the same footing as an alienation by the owner of his ordinary Immovable property. That appeal also must be dismissed with costs.

Norman Macleod, Kt., C.J.

5. I agree.