

(1977) 06 BOM CK 0002
In the Bombay High Court
Case No : A.F.O.D. No. 162 of 1969

Balwant and Others

APPELLANT

Vs

Annasaheb Bapusaheb Patil and Others

RESPONDENT

Date of Decision : 28-06-1977

Acts Referred:

Bombay Inferior Villages Watans Abolition Act, 1958 — Section 4
Hindu Succession Act, 1956 — Section 16, 5

Citation : AIR 1978 Bom 64 : (1978) 80 BOMLR 27

Hon'ble Judges : Vaidya, J; Aggarwal, J

Bench : Division Bench

Advocate : S.C. Pratap and S.S. Pratap, for the Appellant; V.M. Limaye, for the Respondent

Judgement

Vaidya, J.—The main question arising, in the above First Appeal, filed by the defendants in Special Civil Suit No. 79 of 1967, before the learned Civil Judge, Senior Division, Kolhapur, is whether, under the Hindu Law in force in Kolhapur District, where the suit lands are situated, they were liable to be partitioned.

2. The suit was filed by the respondents Nos. 1 to 4 making the following allegations in the plaint: Plaintiff No. 1 and defendant No. 1 are the sons of one Bapu Anna Patil, who died on Oct. 31, 1956. Plaintiffs Nos, 2, 3 and 4 are the sons of plaintiff No. 1, while defendant Nos. 2 and 3 are respectively son and grandson of defendant No. 1. Defendant No. 4 Laxmibai is the sister of plaintiff No. 1 and defendant No, 1.

3. It is alleged by the plaintiffs that Bapu Anna died as a member of the joint Hindu family and was acting as the Manager of the family till his death. It is further alleged that after the death of Bapu Anna, plaintiff No. 1 and defendant No. 1 divided the Rayatawa lands of Bapu Anna; and since then they were in actual possession thereof. According to plaintiff No. 1 the partition took place in Dec. 1956; while according to defendant No. 2, it took place in the beginning of 1959; but the exact year of the partition is immaterial as it has absolutely no

bearing upon the question which is to be decided in the present case.

4. It was alleged that the two lands comprised in the plaint were originally Palilki Watan lands. During the lifetime of Bapu Anna, he was the representative Watandar. According to the terms of the Patilki Watan, under the Vat Hukums of Kolhapur, these lands were impartible; and they devolved upon the seniormost member of the senior-branch by the rule of primogeniture. The suit lands are situated at Rukadi and had the total acreage of 15 acres 20 gunthas, assessed at Rs. 75.8 Ps. After the death of Bapu Anna the lands were, therefore, entered against the name of defendant No. 1.

5. According to the plaintiffs, when the Maharashtra Revenue Patels (Abolition of Office) Act, 1962, came into force on Jan. 1, 1963, the Patil watans were abolished; and the original Watan lands became Rayatawa lands subject to partition according to the provisions of the Act and the Hindu Law, the personal law applicable to the parties. The plaintiffs claimed that since the abolition of the Watans, they had the right to claim one-half share in the lands,

6. The plaintiffs, therefore, claimed partition and separate possession of their one-half share in the suit lands. In the alternative, the plaintiffs claimed one-half share in the suit lands even assuming that these lands were the separate property of Bapu Anna during his lifetime. It was also contended that defendant No. 4, the sister of plaintiff No. 1 and defendant No. 1 had no share in the property.

7. Defendants Nos. 1 to 3 resisted the suit contending that although the lands had become Rayatawa lands after the coming into force of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962; and the previously existing Rayatawa lands were divided by metes and bounds by the plaintiffs and the defendants, the suit lands vested, after the death of Bapu Anna, in defendant No. 1 as his separate property; and hence the plaintiffs cannot claim a share therein.

8. Furthermore, they contended that the suit lands were the separate property in the hands of Bapu Anna inasmuch as he got those properties as obstructed heritage from one Chandrabai. The defendants Nos. 1 to 3 further contended that defendant No. 1 had become the absolute owner thereof as he had paid the occupancy price of Rs. 484-12 P. after the Watans were abolished; and the lands were regranted in favour of defendant No. 1 alone. It was also contended that the present suit was barred by the Bombay Revenue Jurisdiction Act of 1876.

9. The learned Civil Judge by his judgment and decree, dated Oct. 31, 1968, overruled all the objections of the defendants; and passed a preliminary decree for partition on Oct. 31, 1968, relying on certain unreported decisions of the High Court, under the provisions of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955, which came into force on August 1, 1955 and which did not apply to the Patilki Watan lands in the present case as the Patilki Watan was abolished by the Maharashtra Revenue Patels (Abolition of Office) Act, 1962.

10. The learned Civil Judge observed in para. 15 of his judgment:

"I have carefully gone through Ss. 4, 5, 6 and 7 of the Act No. XXII of 1955 and Ss. 3, 4, 5 and 6 of Act No. XXXV of 1962. On comparing the phraseology and the contents of the above sections in the two Acts, I have noticed that except for a slight variation in the phraseology there, is no difference in the sections of the two Acts. In my opinion, the results contemplated by the two Acts are identical and the provisions regarding Re-grant of the resumed lands is also almost similar. The conditions of regrant are also similar. Hence it would not be wrong if the principles laid down in the above rulings are made applicable to the facts of the present case especially when there is no direct ruling for guidance of the Court under Act No. XXXV of 1962."

11. The decision of the learned Civil Judge is challenged, in the above First Appeal, by Mr. Pratap, the learned counsel appearing for the appellants-defendants, relying on the decision of the Division Bench, to which I was a party in Kalgonda Babgonda Patil Vs. Balgonda Kalgonda Patil, .

12. It was a case of Sanadi Inam lands, wherein it was laid down that having regard to Clause 7 of Vat Hukum No. 76 of 1873, Kolhapur Darbar, which made the lands of the holders of Inam private lands of the holder, the lands could not be considered as the lands in which the rights of the other members of the family to be partitioned can be recognised as long as the said Vat Hukum remains in force.

13. It was further laid down that whatever be the interpretation of the general principles of Hindu Law in the rest of India, when considering the nature of the Sanadi Inam lands in Kolhapur State, the Court could not ignore the express words of Clause 7 of Vat Hukum No. 76 of 1873, which declared that they were not the family lands of the holder at all; and whatever might be the position prior to 1873, after the passing of this Vat Hukum, the holder of the Sanadi Inam lands was not holding them as a member of the joint family or as his own lands but as lands held by him, for rendering service, subject to the various Vat Hukums and restrictions relating to the possession and enjoyment of the suit lands.

14. It was further laid down that the lands having been expressly declared to be impartible, whatever might be preexisting rights of the members of the family of the holder, in those lands, (they) ceased to exist after 1873. In the facts and circumstances of that case, therefore, the suit for partition of the lands in that case, which were also the lands situate at Kasbe Rukdi, Taluka Hatkanangale of Kolhapur, was held to be liable to be dismissed.

15. Mr. Pratap pointed out that the said decision, in Kalgonda Babgonda Patil Vs. Balgonda Kalgonda Patil, , was not wholly overruled by the subsequent Full Bench decision in First Appeal No. 372 of 1968, decided on 8-4-1976 : Laxmibai Sadashiv Date and Others Vs. Ganesh Shankar Date and Others, inasmuch as the said Full Bench decision which was neither concerned with the Vat Hukum of

Karvir Darbar nor lands situated within the Karvir State, only overruled the interpretation put on Section 4 of the Bombay Inferior Village Watans Abolition Act, 1959, which was in pari materia with Section 4 of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955.

16. With respect to the said Section 4 of the Bombay Inferior Village Watan Abolition Act, 1959, it was held in *Kalgonda Babgonda Patil Vs. Balgonda Kalgonda Patil*, , differing from *Malvankar J.* that when the Legislature has stated that "all incidents appertaining to the said watans shall be and are hereby extinguished", it is not open to the Court to exclude incidents arising out of the personal law appertaining to the suit properties if any such incidents existed in them.

17. The Full Bench overruled the view taken by the Division Bench in the *Kalgonda Babgonda Patil Vs. Balgonda Kalgonda Patil*, and affirmed the view taken by *Malvankar J.* that the resumption and regrant of the land to the Watandar of the Watans does not affect in any manner rights created under the personal law and hence does not take away the character of the land as joint family property or as held by tenants-in-common inasmuch as "normal rights" under the personal law will continue to apply.

18. Mr. Pratap pointed out that neither before *Malvankar J.* nor before the Full Bench the land situate within the former Karvir State, governed by the Vat Hukums Issued by the Darbar, was involved. He drew our pointed attention to the fact that in the case before *Malvankar J.* the land was situated at the gaon in North Sholapur Taltika of Sholapur District and before the Full Bench the land was situated in the Jahangir of Ichalkaranji where the Vat Hukums did not apply.

19. Mr. Pratap, therefore, submitted that as far as the lands situated in the former Karvir State, governed by the Vat Hukums of Darbar of Kolhapur State were concerned, even applying as per the interpretation of *Malvankar J.* and the Full Bench, the personal law of Hindus in the former Karvir State, namely; the Digest of Hindu Law and the Vat Hukum which governed the Inam lands, the ratio in *Kalgonda's* case will apply.

20. In other words, Mr. Pratap submitted that it was not an incident of the personal Hindu Law in Karvir State that the land granted to a holder of Patil Watan land could enure to the benefit of the family of the holder as in the case of Hindu Law in Sholapur, which was before *Malvankar J.* or in the case of the Jahagir of Ichalkaranji which was before the Full Bench.

21. Mr. Limaye, the learned counsel appearing for the plaintiffs-respondents could not challenge the legal position that the Vat Hukums of Kolhapur Darbar had made the Patil Watan lands in suit the private property of the holder and prohibited their partition or trans- fer. He had to concede that as far as the area in Kolhapur Darbar which was in the former Karvir State was concerned, the Hindu Law applicable in the rest of the Maharashtra State was not applicable even now, as the Digest of Hindu Law continued to apply to the Hindus in the

areas which were formerly governed by the Karvir State.

22. Thus, u/s 16 of the said Digest ^^ fganq dk;|kps fuca/k **

it was laid down :

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Section 17(4) says:--

?feydr vfoHkkT; vlsy vkf.k dqVqackr oMhydhpk fjokt "kkfcr gkbZy rj lokSr oMhy iq=kyk okjlk feyrh+?

In the present case when Babu Anna died on october 31, 1956, the suit lands were impartible and continued to be the private or separate property of defendant No.1, the elder male son, till Jan.1, 1963, when the Maharashtra Revenue Patels (Abolition of Office) Act, 1962 came into force.

23. Even thereafter, it is not open to the other members of the family to invoke the general rules of Hindu Law pertaining elsewhere as under the Digest of Hindu Law, which prevails still in the area governed by the Karvir State, un-like in the area of the Jahagirdar of Ichalkaranji who had powers of law making, to which the "Digest of Hindu Law" was not applicable, defendant No. 1 continued to be the absolute owner, Under that Digest of Hindu Law no other person could claim any right.

24. Mr. Pratap has further relied on the Kolhapur State (Application of Laws) Order, 1949, issued u/s 4 of the Extra-Provincial Jurisdiction Act, 1947, published at page 5 of the Part IV-A of the Bombay Government Gazette dated March 1, 1949. under which it was laid down in Section 10 :

"Continuation of Digest of Hindu Law -- Notwithstanding anything contained in this order, the provisions of the Rules (Digest) of Hindu Law, 1920, in force in the Kolhapur State immediately before the appointed day shall continue to be in force and have effect in the State, until provision to the contrary is made by a competent authority."

25. This position of the Hindu Law applicable to areas of Karvir State is referred to in Kalgonda Babgonda Patil Vs. Balgonda Kalgonda Patil, , on the basis of the discussion about this situation of Hindu Law by Gajendra-gadkar, J., as he then was, in Ramappa Vanappa Akale and Others Vs. Laxman Malyappa Akale, .

26. It cannot also be disputed that Maharaja of Kolhapur, however disproportionately and politically complicated the relation between him and the Jahagirdar may be had no powers to make laws for the area under the Jahagirdars like Ichalkaranji. No Vat Hukuro would apply to the Jahagir territory, under the arrangements which existed between the paramount British power, the Maharaja and the Jahagirdars under the various treaties, as a result of the relation of the State and the Jahagirs as it evolved through the British

connection. No Vat Hukum would apply to the territory of Jahagirdar in the former Kolhapur State, unless it was brought legally in force in the Jahagir by the Kolhapur Resident or the British Political Agent, with the approval of the British Government previously obtained.

27. Thus, in First Appeals Nos. 229 and 231 of 1949 decided on 11-3-1952 (Bom) by Bavdekar and Dixit, JJ. (un-reported), the Vat Hukums were held inapplicable ipso facto to the Jahagir. Even while bringing into force in Karvir State the "Digest of Hindu Law", on May 14, 1921, the Kolhapur Darbar excluded the Jahagir area of the "feudatory" Jahagirdar; as can be seen from the Mulki Vat Hukums of Karvir Sarkar

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Vol. I (at page 84) which runs as follows:-

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d- l xWW>sV Hkkx 1 rk- 21 es 1921

iku 77 rkjh[k 22 ekgs vkDVkscj lu 1021

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18 fn- vk- uacj] 337 rkjh[k 5 es 1921

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28. However, in the Treaties, "Engagements and Sanads" by C. U. Aitchison, Vol. VIII, at page 218, the relations between the Maharaja and the Jahagirdars or Jagirdars are correctly described as under :--

"These Jagirdars pay Nazarana to the parent State on the occasion of a succession, and the military services performed by them in former days have been commuted into money payments. They are all in some degree under the supervision of the Resident at Kolhapur, who acts, as far as circumstances permit, in co-operation with the Darbar. Minor Jagirdars are placed under the joint guardianship of the Darbar and the Resident. Any new law enacted or introduced by the parent State comes into force in these Jagirs with the consent of the British Government."

(underlining supplied.)

29. Having regard to this legal position of the Digest of the Hindu Law, in Karvir State, Mr. Pratap, therefore, submitted that even though the Full Bench, in First Appeal No. 372 of 1968, interpreted Section 4 of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955, in a way different from the way in which Section 4 of the Bombay Inferior Village Watans Abolition Act was

interpreted in *Kalgonda Babgonda Patil Vs. Balgonda Kalgonda Patil*, , the result of applying the ratio of the Full Bench decision cannot help the plaintiffs, in the present case, to contend that under the Hindu Law, prevailing even now in the area of the former Karvir State, of which Rukadi, Taluka Hatkanangale was a part, the suit lands were available for partition amongst the members of the family.

30. Mr. Limaye, the learned counsel, appearing for the respondents, found it impossible to argue to the contrary. He had to concede that so far as the area of the Kolhapur District within the former Karvir State was concerned, it had its own Hindu Code; and under that Code, the defendant No. 1 had become the absolute owner after the death of Bapu Anna (who incidentally was the compiler of the *Vat Hukums*) which were published by the Karvir Sarkar, Vol I of which is referred to above.

31. Mr. Limaye submitted that although, to the extent that the Digest of Hindu Law made specific provisions, the general principles of Hindu Law are not applicable to the Hindus in the areas which were formerly within the jurisdiction of the Karvir State; and with respect to whom the Maharaja of Kolhapur enacted the Digest of Hindu Law, -the general rule of Hindu Law about the blending of property was not abrogated in the Digest of Hindu Law; and in the present case, the learned Civil Judge did not merely rely on the unreported decisions which have been discussed in the *Kalgonda Babgonda Patil Vs. Balgonda Kalgonda Patil*, but also on the finding that the suit lands were acquired by Bapu Anna in exchange of Rayatawa land, at the time of the previous partition; and because he occupied a small portion of the Inam lands, described as Mohini lands the other Inam lands were given to him.

32. Mr. Limaye, therefore, submitted that Bapu Anna had in this way acquired the suit lands in exchange for Rayatawa lands and hence the incidents of Rayatawa lands always adhered to all the lands which were acquired by Bapu Anna; and although he was the holder of the Patilki watan, . the moment the watan was abolished all the lands became Rayatawa lands. He referred to the following passage in the judgment of the lower court in para. 12 of the judgment :

"It appears that according to law then prevailing in the Kolhapur State a person who did not hold any Mohini was not entitled to get Watan property. Dada Anna did not hold any Mohini while Bapu Anna held the Mohini of 10 gunthas. It is these 10 gunthas of Mohini which tipped the scales in favour of Bapu Anna who would otherwise not have been entitled to get the suit lands, being a junior member of the family. The question then is in what manner did Bapu Anna acquire Mohini Defendant No. 2 has admitted that he got it by exchanging some of the Rayatawa land of the family in favour of a person who held a Mohini. I have held that the Rayatawa lands were the joint family property in the hands of Bapu. If by transferring joint family property some other property is acquired in exchange it would also bear the stamp of joint family property because the

property acquired by exchange is so acquired with the help of joint family property. Hence the Mohini land of 10 gunthas must be held to be the joint family property in the hands of Bapu Anna. Now this Mohini land was the stepping stone to the further success of Bapu Anna. In fact, it was the very foundation of his claim to get the suit lands which were once held by Chandra-bai. I repeat that but for the Mohini held by Bapu Anna he did not have the ghost of a chance to get the suit lands because possession of Mohini land was a sine qua non for acquiring other Watan lands. Thus in a way the Mohini land actually helped Bapu Anna to get the suit lands. It would, therefore, be reasonable to hold that the Watan lands which were acquired with the help of joint family property also partook of the character of the joint family property."

33. Relying on the above passage, Mr. Limaye, submitted that there was nothing in the "Digest of Hindu Law", published, in Oct., 1920, which prevented a holder of the Watan land from treating it as the property of a joint family and blending it with the other properties of the family. He, further contended that Bapu Anna having done so, it was not open to the defendants to contend that the suit lands were not joint family property.

34. Mr. Pratap, the learned counsel appearing for the appellants submitted that even assuming that Bapu Anna had so blended, merely because Bapu Anna treated all the properties in his hands as the joint family properties, the Patilki Watan lands in the present case could not change their tenure or nature as the private properties as determined by the Vat Hukums of the Kolhapur Dar-bar into the joint family property in contravention of the Vat Hukum.

35. He also relied on a decision of the Supreme Court in K.V. Narayanan Vs. K.V. Ranganandhan and Others, and submitted that there was nothing in the present case which indicated that either Bapu Anna or defendant No. 1 had at any time blended the suit properties with other family properties or intended to treat the suit and as the joint family property.

36. At page 250, it is said in that case (at p. 1720 of AIR) :--

"It is true that property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with intention of abandoning his separate claim therein but the question whether a coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights. Such an intention cannot be inferred merely from the physical mixing of the property with his joint family or from the fact that other members of the family are allowed to use the property jointly with himself or that the income of the separate property is utilised out of generosity or kindness to support persons whom the holder is not bound to support or from the failure to maintain separate accounts for an act of generosity or kindness cannot ordinarily be regarded as an admission of a

legal obligation."

37. Moreover, Mr. Pratap rightly contended that in a case where the simple question arose of blending of partible property, only a question of fact would arise as stated in that case by the Supreme Court. Mr. Pratap submitted that, in the present case, it was not merely a question of fact but also a question of law inasmuch as, it was not open to Bapu Anna to treat the suit lands as anything but as his private properties held subject to the terms and conditions of the grant and the Vat Hukums made by the Kolhapur Darbar. An intention cannot be attributed to the holder of such lands to infringe the Vat Hukums still in force in Rukdi area of the Kolhapur State and act contrary to the principles laid down in the "Digest of Hindu Law" in that State.

38. It is also clear from the conduct of the parties in this case that even at the time of the former partition between plaintiff No. 1 and defendant No. 1, the suit lands were not regarded as the joint family lands. There was nothing which Mr, Limaye could point out in the "Digest of Hindu Law", which is applicable to the parties, which enabled them to convert what were impartible lands into partible lands merely because the grants were abolished under the Maharashtra Revenue Patels (Abolition of Office) Act, 1962.

39. The Abolition Act did not extend to the Hindus of the former Karvir State, the general rules of Hindu Law applicable to the other Hindus in the rest of the Maharashtra State. It must, therefore, be held that notwithstanding the abolition of the Patil Watans by the Maharashtra Revenue Patels (Abolition of Office) Act, 1962, under the Kolhapur Hindu Law as in force in areas of the former Karvir State, the suit lands continued to be impartible in the hands of defendant No. 1; and the plaintiff could not file a suit for partition of the said lands.

40. Moreover, as Bapu Anna "died, on Oct. 31, 1956, after the coming into force of the Hindu Succession Act on 17th June, 1956, Mr. Pratap rightly contended that the suit lands continued to be impartible having regard to the provisions in Section 5 of that Act, which lays down :--

"This Act shall not apply to

(i) xxx

(ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;"

41. Mr. Pratap submitted that the Vat Hukums and the Digest of Hindu Law, having been passed as enactments by the Darbar of Kolhapur and continued in Karvir area as already stated above, the estate descended to defendant No. 1, as the single heir in respect of the suit lands; and what was once vested in him could not be divested by anything contained in the provisions of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962.

42. It is thus, clear that notwithstanding the provisions contained in Section 3 of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962, which are in pari materia with the provisions of Section 4 of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1956, and notwithstanding the conditions of the grant under the Act which makes it partible with the sanction of the Collector, the ratio in the Pull Bench decision cannot assist the plaintiffs, in the facts and the circumstances of the present case; and it must be held, having regard to the Vat Hukums and the Digest of Hindu Law in the Karvir State that the suit lands continued to be the private and separate property of defendant No. 1; and not the family property of the plaintiffs and defendants. Applying the Full Bench decision, it must be held that the plaintiffs could not claim any share therein.

43. In the result, the First Appeal is allowed. The judgment and decree passed by the learned Civil Judge, Senior Division, Kolhapur on Oct. 31, 1968 are set aside and the plaintiff's suit is dismissed. Having regard to the near relations of the parties and the uncertainty about the legal position, which was the cause of this litigation between the parties, we direct the parties to bear their own costs throughout.

44. Appeal allowed.