

(1932) 02 BOM CK 0005
In the Bombay High Court
Case No : Second Appeal No. 212 of 1929

Bapu Appa Magdum

APPELLANT

Vs

Mahammad Imam Mulla

RESPONDENT

Date of Decision : 12-02-1932

Acts Referred:

Bombay Revenue Jurisdiction Act, 1876 — Section 4

Citation : AIR 1932 Bom 456 : (1932) 34 BOMLR 944

Hon'ble Judges : Baker, J

Bench : Single Bench

Judgement

Baker, J.—The plaintiffs, who are the owners of Mulanki service lands, sued the defendants for an injunction restraining the latter from obstructing the plaintiffs in their enjoyment of the suit property. The first Court, the Subordinate Judge at Chikodi, awarded the plaintiffs' claim, and this was confirmed on appeal by, the District Judge of Belgaum. The defendants make this second appeal.

2. This appeal involves two points of law, first, whether the suit is barred u/s 4 of the Bombay Revenue Jurisdiction Act, (X of 1876), and, secondly, whether it is barred by res judicata. The facts are as follows.

3. The holder of the Mulanki lands, Imam, the father of the pre-sent plaintiffs, sold them to the defendants on March 28, 1892, and the defendants took possession. Admittedly by the sanad this land is inalienable, and also as a general principle Mulanki land is inalienable, In 1911, during the lifetime of Imam, the present plaintiff, his eldest son, applied to the revenue authorities to be put in possession, and an order for placing him in possession was passed by the Prant Officer, which was confirmed on appeal by the Collector, and possession was taken. On appeal to the Commissioner, the Commissioner held that the laud could not be resumed as long as the persons in possession paid such rent as might be demanded from them by the Collector. But apparently this order was not carried out by restoring possession to the alienees. Subsequently the present defendants brought a suit for an injunction, or in the alternative for possession

against Imam and his sons, and obtained a decree. That is suit No. 470 of 1911. But no attempt was made to execute this decree, and apparently the plaintiffs remained in possession. In 1923 the defendants applied to the Commissioner, and he then passed an order to the following effect:

The Prant Officer's order, dated May 1, 1911, cannot be upheld as Government have no power to resume service lauds useful to the community and subjected to Summary Settlement under Act XI of 1852 and Bombay Act II of 1863 and alienated to strangers, the only course which can be followed in such cases is to recover full assessment from the strangers to whom the lands have been alienated, and to credit therefrom the judge due to Government and to pay the balance to the officiating muilm Tha Prant Officer's order upheld by the Collector is set said and the Collector is directed to restore the lands back to the alienees and to recover from them full assessment and to pay to the officiating muilas the difference between the assessment and the judi.

4. This order is dated September 6, 1923, and the present suit was filed within four days of it.

5. The first contention, which has been raised on behalf of the defendants, is that the present suit is a suit to avoid this order of the Commissioner, and therefore barred by Section 4 of the Bombay Revenue Jurisdiction Act. The second point which is taken is that the suit is barred by res judicata by reason of the decree in suit No. 470 of 1911 brought by the present defendants against the present plaintiff" and his father and brother in which they have obtained a decree for possession and injunction. Imam died in 1913. The first Court held that the present suit was not barred as the Commissioner's order of 1923 is a continuation of his order of 1911, and the plaintiffs' right to recover the land accrues after the death of Imam, and they do not claim through him, and as the order relates to the alienation by Imam, the plaintiffs are not affected by it. The District Judge held that the Commissioner's order does not fall within the Revenue Jurisdiction Act, nor is the present suit a suit to avoid it. The suit does not seek to avoid any order made by the Commissioner; originally the order of the Commissioner was that no steps need be taken, and in the order in revision of September 10, 1923, it was explained that the Government have no power to resume these lands, and all that the Commissioner has done is to say that the order for resuming the lands is passed without jurisdiction. He has not decided the question on the merits. At first sight it may appear that this argument is a strong one, but on consideration, I think there is very little doubt that the present suit is one which is brought in consequence of the order of September 5, 1923, which directs the restoration of possession to the defendants. The question is whether the present suit is barred u/s 4 of the Bombay Revenue Jurisdiction Act, Bom. Act X of 1876. That section bars the jurisdiction of the civil Court in claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognised under Bombay Act III of 1874 or any other law for the time being in force or of any other village officer or servant,

and suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorised in that behalf. Now there can be no doubt, in view of the definition of " hereditary office " in Section 3 of the Watan Act (Bom. III of 1874), viz., every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue, or with the village police, or with the settlement of boundaries, or other matters of civil administration, that a Mulla is not a hereditary officer within the meaning of the Watan Act, and therefore the present suit does not relate to any property appertaining to the office of any hereditary officer appointed or recognised under Bombay Act III of 1874 or any other law for the time being in force, under para. 1 of Section 4, Clause (a), but it is contended that it does refer to " any other village officer or servant." But as against that, this is not a claim against Government. The suit is not one against Government, but against the defendants; and para. 3 says, " suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorized in that behalf". In order, therefore, that the Bombay Revenue Jurisdiction Act should be a bar to the present suit under para. 1, the suit would have to be against Government regarding property appertaining to the office of any hereditary officer under the Watan Act or any other law for the time being in force or any other village officer or servant, and under para. 3 the suit would have to be one to set aside or avoid any order under the same Act or any other law relating to the same subject. This not being a suit against Government, para. I will not apply, and when we come to para, 3, the order which is sought to be set aside or avoided must be one relating to the subject referred to at the commencement of the section, i.e., the subject of a hereditary officer appointed or recognised under Act III of 1874 or any other village officer or servant. u/s 9 of the Civil Procedure Code, the jurisdiction of the Courts is declared to be universal except in the case of suits of which their cognizance is either expressly or impliedly barred, and it is a usual canon of interpretation that an Act like the Revenue Jurisdiction Act which fetters the jurisdiction of the Court should be strictly construed: see *Secretary of State v. Balvant Ganesh* ILR (1903) Bom. 105 : 5 Bom. L.R. 790 and *Balwant v. Secretary of State* (1905) 7 Bom. L.R. 497 Inasmuch as a Mulla is not a hereditary officer under the Water Act, the revenue authorities had no jurisdiction to pass orders for the resumption of his land, and in a sense the order of the Commissioner directing possession to be restored to the defendants really amounts to an order to the effect that the revenue authorities had no jurisdiction to interfere in the matter so far as regards the resumption of the lands. Though the revenue authorities can resume lands under the Watan Act, it is clear that a Mulla is not a watandar, and in *Maganekand v. Vithalrav* ILR (1912) Bom. 37 : 14 Bom. L.R. 793 it was held in a somewhat similar case in a Deshmukhi watan that the order was unauthorised under the Watan Act, and so the Bombay Revenue Jurisdiction Act was no bar to the suit. The whole proceedings regarding resumption of the land would appear to be unauthorised,

i.e, the original order by which possession was transferred to the Mulla as well as the subsequent order passed by the Commissioner, but the Commissioner has recognised that in his order, which only directs the restoration of the status quo ante. In these circumstances, I am of opinion that the suit is not barred by the Bombay Revenue Jurisdiction Act, inasmuch as the revenue authorities had no power to pass the orders they did, the land not being watan, and the suit not being covered by either para. 1 or para, 8 of Section 4, Clause (a), of the Bombay Revenue Jurisdiction Act, X of 1876.

6. The remaining question is as to the suit being barred by res judicata. On that point I agree with the view which has been taken by both the lower Courts that the parties being Mahomedans, the present plaintiff had no title to the land at the time of the decree in suit No. 470 of 1911, and his title only came into existence on the death of his father Imam on December 11, 1913. Consequently, the plaintiff is not litigating under the same title as he held in 1911. It has been contended by the learned advocate for the appellant that in that suit the plaintiff ought to have put forward the plea that he was a necessary party to the suit, and that any relief should be limited to the lifetime of his father. It seems that it was on the application of the present plaintiff in 1911 that the land was resumed and possession given to the Mullas. As a matter of fact, as long as his father Imam was alive, the present plaintiff had no title, and although he was in possession, he must have been in possession as a trespasser. After 1913 he acquires a title to hold the land under the sanad or the death of his father, and therefore he was not litigating under the same title in 1911 in which he is litigating now. In this aspect of the case, the view taken by the lower Courts on this point is correct. The District Judge says that the Sanad is in a regular form which has been the subject of judicial interpretation, and the lands held under such a Sanad are held by a tenure of successive life estates. But apart from that, the parties being Mahomedans, the plaintiff got no interest by birth in the property in suit, and his interest only arose on the death of his father, which did not occur till 1913 after the suit of 1911.

7. The result is that the decree of the lower Courts will be confirmed, and the appeal dismissed with costs.