

(1925) 09 BOM CK 0053
In the Bombay High Court
Case No : First Appeal No. 13 of 1934

Bodhrao Gopalrao Mutalik

APPELLANT

Vs

Shrinivas Atmaram Jog

RESPONDENT

Date of Decision : 02-09-1925

Acts Referred:

Bombay Regulation Act, 1827 — Section 20

Citation : (1926) 28 BOMLR 399 : (1926) ILR (Bom) 128 : 94 Ind. Cas. 649

Hon'ble Judges : Madgavkar, J;Fawcett, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Fawcett, J.—The main facts underlying this litigation are as follows:-

The Deshpande of the Karadgi Mahal granted certain lands to the plaintiffs' ancestor, on condition that he should enjoy the same as remuneration for his services as a Mutalik (i.e., deputy) of the Deshpande. The lands came into the possession of Narso Venkaji, who was the father of the plaintiffs Nos. 4, 5 and 8, and in execution of a decree passed against Narso the lands were sold to one Bashetappa at a Court auction in 1869, Baahetappa sold the lands to one Mahantappa, who in turn sold them to Balvant, the father of the defendant No. 4. The sale to Bashetappa was subject to a mortgage, and in 1881 the father of defendant No, 3 brought a suit against the mortgagees in possession of the lands. He obtained a decree, in execution of which he got possession of the lands in suit, and the defendants have been in possession ever since. Narso died on September 30, 1916, and the plaintiffs sued to recover the lands on the allegation that the alienation of the lands was only valid for Narso's life-time, so that upon his death they became entitled to them.

2. The lower Court has held that the plaint lands were service watan lands of the Deshpandes of Mahal Karadgi, that the plaintiffs are the hereditary Mutaliks of these Deshpandes, that the plaint lands were assigned to the plaintiffs' family

for the performance of the duties of this Mutalikship, and that the plaintiffs are watandars in respect of those lands. But, on the other hand, it has held that Narso was the absolute owner of these lands in 1869, and that the Court sale in that year was a valid sale of such absolute ownership. The learned First Class Subordinate Judge holds that, in the circumstances, the sale is not affected by Section 20 of Regulation 16 of 1827, and that accordingly the plaintiffs are not entitled to recover the lands. He dismissed their suit with costs.

3. The main question, therefore, in this appeal is whether the alienation of 1869 is one which falls within the prohibition contained in Section 20 of the Regulation of 1827. This section must be read with the preceding Section 19, which prescribes that the Collector shall keep a book recording the lands and allowances attached to hereditary District or village offices, and that record shall specify the allowances, whether from land, ready money, fees or other perquisites, etc, received for such offices. Then Section 20 clause first, says :-

The allowances so derived by a solo proprietor or occupant of an hereditary District or village revenue office, shall in future be considered strictly as the official remuneration of the person filling the office, and as such shall not be subject to alienation by any incumbent.

4. It has been held by this Court in *Ravlojirav v. Balvavtrav Venkatesh* ILR (1880)5 Bom. 437 and by the Privy Council in *Padapa v. Swamirao* ILR (1900) 24 Bom. 556 : 2 Bom. L.R. 548 that an alienation which contravenes these provisions is void ab initio as against the heir of the alienor. But the question on which the appellant has to satisfy us is that these lands are allowances attached to the office of Mutalik, which come within the benefit of the prohibition against alienation. On this point I find no error in the reasoning of the Subordinate Judge, who has discussed the question after hearing full arguments upon it. It is quite clear that the Collector's books have all along shown these lands not as part of the allowance attached to the Mutalikship, but as an allowance attached to the office of Deshpande. This is, for instance, shown by the statement in the judgment of 1842, Exhibit 77, that these lands were Chavrat lands of the Deshpande, Again in the sale certificate of 1869 the lands are described as standing in the Khata of the Deshpandes Rangrao and Shamrao. In the judgment in the suit of 1870, Exhibit 80, it is stated that the land in suit is one of the Deshpandes Inam lands and has been entered in the account in their names. The Alienation Register under the Bombay Land Revenue Code similarly shows it as part of the Deshpande land, while the Sanad given to the plaintiffs is only in respect of a cash allowance and shows no service lands as attached to the office of Mutalik Deshpande. On the other hand, the lands do appear in the Sanad which has been issued to the Deshpande. Accordingly, it seems to me, that Section 20 only covers the case of an alienation of these lands by an incumbent of the hereditary office of Deshpande, and not an alienation by any grantee of that incumbent. Being a section which is opposed to the ordinary right of the subject to transfer lands without restriction, it must be construed strictly, and I

think the Subordinate Judge is right in holding that it does not cover the alienation of 1369. Nor do I think that assistance is given to the plaintiffs by the provisions of Bombay Act III of 1874. First of all; those provisions, as pointed out by the Subordinate Judge, cannot have retrospective operation so as to affect an alienation made prior to the Act coming into force, unless there is some clear provision in the Act to the contrary. There is nothing in that Act, which operates to bring the Case under the terms of Section 5(1)(a) of the Act,, and no authority for holding that Section 5 (1)(a) applies has been cited to us. The Act clearly differentiates between alienations prior to the date of the Act coming into force and alienations subsequent to that date. Thus Section 10 does not render it obligatory on the Collector to deccre an alienation made prior to the Act's commencement null and void, whereas u/s 11 he is required in the case of an alienation made after the Act has come into force to declare such alienation null and void. Action has been taken accordingly in this case by the Revenue authorities who have, on the ground that the alienation was prior to the Act coming into force, refused to interfere. There certainly seems no proper ground for the civil Courts to take a different view, having regard to the provisions of Section 20 of the Regulation, to which I have already referred.

5. I would, therefore, dismiss the appeal with costs.

Madgavkar, J.—I agree. The appellants are watandars but Mutalik watandara under the Deshpande watandars. The land in suit is watan land appertaining not to the Mutalik watan but to the Deshpande watan. The incumbent within the meaning of Section 20 of Regulation 16 of 1827 is the Deshpande and not the Mutalik, as is clear from the Sanad of 1864. From the Sanad of 1864 to the Mutalik Deshpande and the view of the Collector and Commissioner from 1888 onwards, it follows that whether it is or is not open to a Deshpande to question the alienation by his predecessor, a Deshpande watan-dar in respect of this land it is not so open to the appellants, because they are watandara of a watan other than the one to which these lands appertain, and because they obtained the grant of these lands from the Deshpande.

2. The appeal, in my opinion, fails and must be dismissed with costs.