

(1999) 06 BOM CK 0073
In the Bombay High Court
Case No : S. A. No. 176 of 1983

Chandbi and others

APPELLANT

Vs

Mansur Amin Mhaldar since deceased by his heirs and others

RESPONDENT

Date of Decision : 08-06-1999

Acts Referred:

Citation : (1999) 06 BOM CK 0073

Hon'ble Judges : H. L. Gokhale, J

Bench : Single Bench

Advocate : N. D. Hombalkar, for the Appellant;

Judgement

H. L. Gokhale, J.—Heard Mr. Hombalkar for the appellants. None present for the respondents though served. The appellants herein had filed Regular Civil Suit No. 172 of 1973 in the Court of Civil Judge, Junior Division, Ichalkaranji claiming that the suit land was a joint property in common enjoyment. It was stated in the plaint that the land was a hujur sanadi inam land and that the 1st Appellant and her children, who were the plaintiffs Nos. 2, 3 and 4, were entitled to the share of her husband after his death. The suit was resisted by the respondents by contending that they alone had the right to the suit land. This was on the basis that it was an inam land and the father of the defendant No. 1 was a "Nawawala" (a person in whose name the land stands) he was then called. The learned Trial Judge framed necessary issues and after examining the material on record he came to the conclusion that the plaintiffs had failed to make out a case and dismissed the suit.

2. The appellants herein filed Regular Civil Appeal No. 372 of 1979 which also came to be dismissed by the order passed by the learned Extra Assistant Judge, Kolhapur on 30th September, 1982. Two judgments of this Court and one judgment of the Supreme Court was brought to the notice of the learned Judge, namely (1) Koli vs. Koli, 75 BLR 290 (2) Dale vs. Date, 79 BLR 234 and (3) Nagesh Bisto Desai and Others Vs. Khando Tirmal Desai and Others, , where the vatan property came to be held as joint family property. The learned Appellate

Judge, however, after framing issues, in para 18 of the judgment took the view that the parties in the present matter were Mohamedans and therefore those judgments would not apply.

3. Mr. Hombalkar, learned counsel appearing for the appellants herein, brought to my notice an unreported judgment of Pendse, J. (as he then was in this Court) dated 31st March, 1982 in Second Appeal No. 339 of 1976 in the case of Kasim Mulani vs. Ibrahim Mulani, wherein apart from considering the aforesaid judgments, the learned Judge referred to another unreported judgment of Kantawala, C.J. dated 1st December, 1977 in Second Appeal No. 216 of 1971. In that judgment, the learned Chief Justice had held that "on the abolition of Inam and the re-grant, the advantage conferred by the Government would enure for the members of the family who were entitled to succeed to the deceased Mohamedan and the re-grant cannot be enjoyed exclusively by the grantee." The facts in the present case are almost similar to the one which was before Pendse, J. where he followed the judgment of Kantawala, C. J. in the above referred judgment.

4. In the circumstances, the judgments given by both the Courts below will have to be set aside. The ground No. 9 in this appeal specifically raises the issue that it was wrong on the part of the courts below to hold that the decisions in 75 BLR 290, 79 BLR 234 and Nagesh Bisto Desai and Others Vs. Khando Tirmal Desai and Others, pertaining to the vatan property are not applicable to the facts of this case as the parties are Mohamedans. The submission raised on this ground will have to be accepted. Accordingly, both the judgments of the Courts below are set aside. The suit filed by the appellants-plaintiffs will accordingly stand decreed. There will be no order as to costs.

Certified copy is expedited.