

(1919) 01 BOM CK 0014
In the Bombay High Court

Hanmant Apparao Deshpande and Others	APPELLANT
Vs	
Ramabai Hanmant Meghashyam	RESPONDENT

Date of Decision : 30-01-1919

Acts Referred:

Contract Act, 1872 — Section 54

Citation : 51 Ind. Cas. 954

Hon'ble Judges : Basil Scott, C.J;Hayward, J

Bench : Division Bench

Judgement

1. The question in this appeal is whether the appellants are entitled to a fourth share of a cash allowance belonging to the descendants of Atmaram, Malhar and Meghashyam, the sons of Tukopant. The three branches of Tukopant's family were entitled each to one-third share of the Vatan property, and the plaintiffs' ancestor sued in 1864 to recover his proportionate share of the Vatan. In the course of the suit an agreement, Exhibit 44, was passed by the defendant to the plaintiffs in which the plaintiffs' father's right to a third share in certain lands was recognised, and also his right to a quarter share in the cash allowance of Rs. 63.

2. The learned Judge, holds that the share in the cash allowance was paid according to the agreement from 1865 to 1880, but it does not appear to have been paid after that date. The question of limitation did not arise in the lower Appellate Court, as that had been decided in favour of the plaintiffs by the trial Judge, who held that Article 131 of the Limitation Act applied and that time only ran from the date of demand and refusal in the case of a periodically recurring right such as a share in the cash allowance. The point of limitation was not pressed in the lower Appellate Court. The learned Judge, however, held that according to the Registration Act of 1864, which was in force when the agreement, Exhibit 44, was passed, the document could not be received in evidence as it related to Immovable property. He does not consider whether the provisions regarding the cash allowance were separable from the provisions

regarding the Immovable property, and whether the cash allowance would fall within the term "immovable property" in the Registration Act of 1364. But being of opinion that the document was compulsorily registrable, he held that it could not be used as evidence of the plaintiffs' claim, and accordingly dismissed the plaintiffs' suit.

3. The agreement has been set out by the learned Judge of the trial Court in his judgment. It provides that lands which are admittedly of the plaintiffs' father's share should be enjoyed by him, but with regard to the cash allowance one-fourth share being kept for remuneration for looking after Vatan business and for charity, according to custom, the plaintiffs' father should have one share with Ganesh, Meghashyam and Atmaram. The third clause provides that the one-third share in the one-third income of their branch of the Inam garden land should be given to the plaintiffs' father, and that the plaintiffs' father should receive his share of any miscellaneous income that might be received. The fifth Clause is, "there is a debt of a Savkar on account of mortgage of the Vatan effected previously by the Gumasta. Out of it, some has been paid, and there is a balance that will have to be paid to the Savkar hereafter. You should pay that to me according to your third share." The learned Judge of the lower Appellate Court reads it as meaning that the plaintiffs' father is to be liable for payment of his share of the balance which will have to be paid in future. The correctness of that interpretation is borne out by the opinion of the High Court Translator to whom we have referred the document. There was, therefore, at the time of the agreement no claim by the maker, Ganesh, against the plaintiffs' father for any debt already matured which the plaintiffs' father was bound to pay by way of contribution. The plaintiffs' father's liability in that respect lay in the future. There is, therefore, no reason to hold that under the agreement the pay me at of his share of what might have to be paid to the Savkar in the future would be a condition precedent to the receipt by him of his share of the cash allowance and we have the opinion of the lower Appellate Court that in fact the share of the cash allowance was received from 1865 to 1880.

4. Then we have to consider whether the provision regarding cash allowance can fairly be separated from the provisions regarding the Vatan land, so that the document may be looked at for the purpose of this claim to the share in respect of the cash allowance. In that connection we must first consider whether a cash allowance should be treated as Immovable property within the meaning of the Registration Act of 1864. Now the allowance is an allowance by Government to a Deshpande family, presumably as remuneration for public services, and it appears to fall within the category, referred to by Sir Charles Sargent in *Desai Motilal Mangal v. Desai Parashotam Nandlal* 18 B. 92 : 9 I. D. 570 of remuneration for a public office not incapable of being held by a person who is not a Hindu, and that being so, according to the judgment of Sir Charles Sargent, based upon the authority of the Privy Council judgment in *Maharana Fattehsangji v. Desai Kallianraji* 1 I.A. 34 ; 13 B.L.R. 254 ; 21 W.B. 178 ; 10 B.H.C.R. 281 ; 3 S. P.C.J. 306 the rule of Hindu Law by which remuneration for

hereditary offices was regarded as Immovable property would not apply. We have the authority of the Madras High Court in a case, which so far as we can ascertain has never been questioned, namely Thandavan v. Valliamma 15 M. 336 ; 2 M.L.J. 130 ; 5 I. D. 86 that the fact that a partition document relating to both Immovable and moveable property had not been registered did not prevent the party entitled from suing on that document in respect of the moveable property. For these reasons we are unable to agree with the judgment of the learned Judge that the plaintiffs' case must fail because Exhibit 44 has not been registered. The defendant cannot rely upon Section 54 of the Contract Act, since there was no reciprocal promise which required to be performed before the plaintiffs' father could claim payment of the cash allowance, and she cannot rely upon the Limitation Act, because the point of demand and refusal has not been supported by any evidence in the trial Court, and has been abandoned in the lower Appellate Court. The appeal must, therefore, be allowed and the decree reversed. There will be a declaration that the plaintiffs are entitled to receive Rs. 15-12-0 a year as their one-fourth share of the cash allowance, and a decree for Rs. 47-4-0 as the allowance for three years before suit. There will be a decree for the plaintiffs for the costs of suit throughout.