

(1912) 01 BOM CK 0010

In the Bombay High Court

Case No : Second Appeal No. 12 of 1911

Jivaji Sambhaji Kambli

APPELLANT

Vs

Fakir Sabaji Kambli

RESPONDENT

Date of Decision : 16-01-1912

Acts Referred:

Hereditary Offices Act, 1874 — Section 67(d)

Citation : (1912) 14 BOMLR 395

Hon'ble Judges : N.G. Chandavarkar, J;Batchelor, J

Bench : Division Bench

Judgement

Chandavarkar, J.—The first question is what is the relief which the plaintiff has asked for by his plaint in this suit and, secondly, whether that relief is barred by the provisions of the Vatan Act.

2. It is urged before us by Mr. Desai that the Civil Court has jurisdiction to entertain the suit because what is asked by the plaintiff is not any relief which would be prohibited by Section 67 of the Vatan Act, but a mere declaration that he is a member of Sambhu's branch, and that as such he has a two-thirds share in the Vatan belonging to that branch. We have had the plaint in the original read out to us and we have carefully considered its terms and its prayer. The summary of it as given by the Subordinate Judge in his judgment is substantially correct. In his plaint the plaintiff complains that he belongs to Sambhu's branch of the Vatan family; that Sambhu was the head of that branch so long as he was alive; that he dealt with the revenue authorities, executed kabulayats, and owned a particular share; but that since Sambhu's death the defendant has been successfully posing as the head of the Vatan entitled to deal with the Collector and to pass kabulayats, and, therefore, entitled to be put upon the record under 9.6y as the head of the branch. It is for the purpose of getting the defendant out of the way and having his own name recorded as the head of the branch in the Collector's Register that the suit has been brought. That is substantially the nature of the suit, and so it has been treated by both the Courts

below. But Mr. Desai relies in support of his argument on the decision of this Court in *Govind Sitarc v. Bapuji Mahadeo* ILR (1893) 18 Bom. 516, where Sargent C. J. held that the duty of the Collector as determined by Section 67 of the Vatan Act was confined to specifying the names of the heads of families and the proportionate part held by each head, but that he was in no way concerned with the rights of the members of a particular branch inter se. The meaning of that decision is that it is for the Collector, in the first instance, to determine who is the head of a particular branch of a Vatan family. Having determined that, it is also the sole function of the Collector under the Act to determine the proportionate part possessed by that head. But given the head and the proportionate part he possesses, as determined by the Collector in the exercise of his exclusive jurisdiction, the question what the rights of the members of that branch inter se are, with regard to their shares in the proportionate part so determined is a question which (according to the decision cited) lies within the province of a civil Court. The judgment in *Govind Sitarc v. Bapuji Mahadeo* ILR (1893) 18 Bom. 516 would at first sight seem to be in conflict with a prior decision of this Court to which Sargent C. J. was also a party, viz., *Balkrishna Chimnaji v. Balaji Ramchandra* ILR (1884) 9 Bom. 25. But a close examination of both the cases satisfies us that there is no conflict. What the plaintiff in the latter case sought was a declaration of his share in the Vatan and of his title to have his name entered in the Vatan Register. That was u/s 97. If he had asked merely for a declaration of his share in the Vatan without any reference to his title as the head of the family and the proportionate part which he possessed as such head, it would have been held that the suit lay. Sargent C. J. pointed out in his judgment that it was true that the Court could not make a declaration of his right to a one-fourth share of the Vatan, without first determining whether he is the adopted son of Chimnaji; but that "the declaration prayed for would be beyond the Court's jurisdiction." That declaration related to the question of headship and the share in respect of it. In the suit before us now, that is in substance the declaration prayed for. For these reasons the decree must be confirmed with costs. There must be separate sets of costs.

Batchelor, J.

3. I agree that this is a suit to obtain a declaration from the civil. Court to the effect that the late head of the family, Sambhu, being now dead, the present head of the family is one of the plaintiffs and not one of the defendants; and that the plaintiffs are in consequence entitled to a proportional share of the Vatan. A suit of this character seems to me to fall directly under the ban of Clause (d) of Section 67 of the Hereditary Offices Act. The decision in *Govind Sitaram v. Bapuji Mahadeo* (1893) ILR 18 Bom. 516 can be of no assistance to the present plaintiffs who are not suing as Vatandars for the adjustment of any dispute between themselves as to their distributive shares in a total portion awarded by the Collector to the head of the family.

4. I agree, therefore, that this suit is not competent.