
(1918) 08 BOM CK 0005
In the Bombay High Court
Case No : Second Appeal No. 305 of 1917

Savla Tukaram Mali

APPELLANT

Vs

Santya Parsha Mahar

RESPONDENT

Date of Decision : 19-08-1918

Acts Referred:

Bombay Revenue Jurisdiction Act, 1876 — Section 4(a)

Citation : AIR 1918 Bom 99 : (1918) 20 BOMLR 993

Hon'ble Judges : Heaton, J;Hayward, J

Bench : Division Bench

Judgement

Hayward, J.—The plaintiffs are villagers seeking an injunction to prevent the skins of their dead animals being taken by the defendants who are village Mahars claiming the right as Vatandars.

2. The issues raised were-whether defendants had the right, whether they were Vatandar Mahars, and whether the suit was cognisable by the civil Courts. The two former issues were not decided as it was held that the suit was barred by Section 18 of the Vatan Act, 1874, and Section 4(a) of the Bombay Revenue Jurisdiction Act, 1876.

3. It seems to me the suit must be remanded for trial on the merits. The skins would prima facie belong to the villagers who owned the dead animals as pointed out in the case of Yellapa Bhimapa v. Mankia (1827) 8.H.C.R. (A.C.J.) 27, and the villagers would prima facie be entitled to the injunction sought against the Mahars. This might, however, be rebutted by showing a certain, continuous, immemorial and reasonable custom in favour of the Mahars as would appear from paras 423 to 439 of Vol. X of Halsbury's Laws of England. But if the right should be, as here pleaded, attached to an hereditary office vested in the Mahars, then the definition of its nature and extent would devolve exclusively on the Collector by Section 18 of the Vatan Act, 1874, read with the third para of Clause (a) of Section 4 of the Bombay Revenue Jurisdiction Act, 1876. It seems to me, therefore, that the villagers would be entitled to their injunction unless

the Mahars should succeed in showing that there is an hereditary office, that is to say, an office held hereditarily for the performance of duties connected with the administration within the meaning of the fourth para and that they are Vatandars of that Vatan within the meaning of the sixth and seventh paras of Section 4 of the Vatan Act, 1874. If that should be established the parties would have to be referred for the settlement of their disputes to the Collector u/s 18 of the Vatan Act, 1874. It seems to me that the question whether there is a Mahar Vatan is within the jurisdiction of the civil Courts. Provision has been made for the creation of new Vatan and for the commutation of service and management of old Vatan but no provision has been made for enquiry into the existence of old Vatan by the Vatan Act, 1874. Nor would such enquiry appear to be barred by anything in the Revenue Jurisdiction Act, 1876. It has been recently held on a parity of reasoning in the case of Raoji Fakira Vs. Dagdu Hanmata Mahar, that the question who are Vatandars of a Mahar Vatan is likewise within the jurisdiction of the civil Courts. It seems to me, therefore, that the suit must be remanded for these two matters to be determined and for disposal in the light of the above remarks under Order XLI, Rule 23, Civil Procedure Code. Costs to be costs in the cause.

Heaton, J.

4. I concur.