
(1932) 02 BOM CK 0023
In the Bombay High Court
Case No : Second Appeal No. 535 of 1929

Swamirao Shriniwas Parvatikar

APPELLANT

Vs

Bhimabai Padappa Desai

RESPONDENT

Date of Decision : 23-02-1932

Acts Referred:

Citation : AIR 1932 Bom 464 : (1932) 34 BOMLR 967

Hon'ble Judges : Baker, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Baker, J.—These appeals form two out of a group of nine appeals between the same parties occupying in different appeals the position of plaintiff and defendant. These two appeals relate to two suits for declaration of title to Survey Nos. 86 and 87 of Wadwadgi and Survey Nos. 52 and 53 of Areshankar. The history of the litigation, which is long and complicated, need not be given in this judgment. This is an off shoot of a case which went before the Privy Council and is the case of Padappa v. Swamirao ILR (1900) Bom. 556 : 2 Bom. L.R. 548. The facts in these two appeals are practically all admitted, and the only question is one of law, and so far as regards Survey No. 86 of Wadwadgi, the plaintiff Swamirao has already obtained a decree against which no second appeal has been presented, and therefore we are not concerned with that number. We are only concerned with Survey No. 87 of Wadwadgi, and Survey Nos. 52 and 53 of Areshankar, and the point in both cases is the same, i. e., whether the plaintiff has acquired title by adverse possession to the lands in dispute. For the purposes of this appeal, on the findings of the lower Court, and as is conceded by the learned Counsel on either side, it may be taken that the present plaintiff Swamirao was in possession of these lands from 1900 to 1917 adversely to the person who claims to be the owner, Padappa, the husband of Bhimabai, and afterwards Bhimabai herself. Padappa died in 1906. For the purposes of computing adverse possession, 1900 is the date taken—that is the year in which Padappa was successful in his litigation.

against the father of the present plaintiff Swamirao in the Privy Council, Now the property is watan property, and the first Court held that the plaintiff Swamirao had acquired a title by adverse possession, but on appeal that decree was set aside by the learned District Judge of Bijapur on the ground that, although Swamirao was in possession, his possession after the death of Padappa in 1903 has not ripened into ownership against Padappa's representative, the defendant in the case. She took possession rightly or wrongly in 1917, and the view of the learned Judge seems to be that while a stranger to the watan can successfully claim adverse possession against the watandar by holding adversely against him for the statutory period, he cannot allow that adverse possession to operate against his successor-in-title without defeating the object of the Watan Act. The learned District Judge has referred to a number of cases, to which I need not refer now. The learned advocate for the appellant has relied on *Tuka v. Ganu* (1935) 32 Bom. L.R. 1398 in which it is held that adverse possession of watan lands for twelve years under a gale deed passed by a watandar bars the claim of the succeeding watandars to the lands, and the full bench case of *Badhabai and Ramchandra Konher v. Anantrav Bhagvant Deshpande* ILR (1885) Bom. 198 is not overruled by the Privy Council in AIR 1923 205 (Privy Council) and lastly, a succeeding watandar derives his title as heir of the preceding watandar which is capable of being barred and extinguished by adverse possession, following *Padapa v. Swamirao* ILR (1900) Bom. 556 : 2 Bom. L.R. 548 which is between the representatives of the present parties. But the learned Counsel for the respondent has endeavoured to distinguish *Tuka v. Ganu* on this ground that in it the complete period of twelve years" adverse possession had been completed as against one watandar, so that his successors-in-title after his death were already barred and it does not apply to the facts of the present case, where twelve years had not elapsed from the date of the commencement of the adverse possession from the death of Padappa, and it is contended that a further period of limitation starts on the death of each watandar, so that if the statutory period of limitation has not been completed during the lifetime of one watandar, his heirs will not be barred by limitation, and would get a fresh period. This point has been referred to at pp. 1407-08 in *Tuka v. Ganu*, in which it is said that it was argued that the very nature of the estate prevents the bar of adverse possession against one holder from operating as a bar against his successor, whose rights spring into existence on the death of the previous holder. Now though the learned advocate for the appellant has argued that *Tuka v. Ganu* does deal with the point it does not as a matter of fact deal with it directly, and I should have had some difficulty in holding that it is covered by that ruling were it not for the fact that I find at p. 1408 a reference to *Rama v. Shamrao* (1904) 7 Bom. L.R. 135 which is directly on the point before us. There Sir Lawrence Jenkins held that the mere fact that one holder was not out of possession for the full period of twelve years did not distinguish that case from the principle involved in *Radhabai v. Anantrav*, and that the time during which adverse possession ran against him must be taken into account, with the result that there was no stopping of that time by reason of the minority of the plaintiffs. It was argued that the property being watan, the

interests of the several holders were a succession of life or limited estates, but Sir Lawrence Jenkins held that the view that a succeeding watandar claims under his predecessor appeared to him to receive support from what was said by Lord Davey in delivering the judgment of the Privy Council in *Padapa v. Swamirao*. The point which has been raised in the present case is, therefore, directly covered by *Rama v. Shamrao*, and therefore adverse possession which began in 1900, although it did not become complete by twelve years' adverse possession at the date of the death of Padappa in 1906, must yet be taken into account in computing the period of adverse possession, and there will be no stopping of the running of the time by reason of the death of Padappa in 1906. The result is that between 1905 and 1917 the plaintiff Swamirao has acquired a title by adverse possession to the lands in dispute, even though they are watan lands, as is shown by *Tuka v. Ganu* and *Rama v. Shamrao*. At the time the learned District Judge delivered his judgment, the case of *Tuka v. Ganu* had not been decided.

2. The result is that the decree of the lower appellate Court in both appeals must be set aside, and the decree of the trial Court restored, with costs throughout.