

(1926) 03 BOM CK 0032
In the Bombay High Court

Vaman Balvant Pophale

APPELLANT

Vs

Jagannath Govind Pophale and Others

RESPONDENT

Date of Decision : 08-03-1926

Acts Referred:

Citation : AIR 1926 Bom 364

Hon'ble Judges : Macleod, C.J

Bench : Division Bench

Judgement

Macleod, C.J.—We think the decisions of the lower Courts were correct. The plaintiffs sued to recover a half share in the commuted cash allowance belonging to a kulkarni vatan of which the parties were vatandars. It is admitted that the kulkarni vatan service was commuted to a cash allowance of Rs. 111 a year. The plaintiffs belong to the junior branch of the family of Mahadev, who was originally the sole vatandar. They claim that when the service ceased to be rendered and a reduced cash allowance was granted by Government, it was not granted to the representative vatandar only and the members of the family in his branch. The defendant remained absent throughout the hearing, and no evidence was led on his behalf. It is difficult then to know on what his defence rested except, his written statement, which is to the effect that the vatan service continued in the elder branch, so that the elder branch was in effect the sole owners of the vatan; and when the vatan allowance was commuted, the elder branch was solely entitled to the commuted allowance.

2. On the other hand, it appears that, when the services ceased, the vatan family still continued as such, and any allowance paid by Government as compensation for the commutation should, be considered to belong to the whole, family. That appears to have been the view of this Court in *Desai Maneklal Amratlal v. Desai Shivilal Bhogilal* [1884] 8 Bom. 426. There the parties, who were desais of Mahudha, in addition to their "desaigiri" allowance enjoyed an allowance called "amin sukhdi." In 1866 an arrangement was come to under which a sum of Rs. 40-2-0 was to be actually available over and above the remuneration of the

officiator. On July 9, 1867, the defendant received this sum for the first time. In 1873, a new arrangement was effected under which the service was abolished, "the Government resuming half of the allowance, and giving up the other half freed from service unconditionally to the desais. On October 4, 1878, the plaintiff brought his suit to establish his right to a share of the moiety of the "amin sukhdi" allowance given to the desais by the Government and to recover his share of the amount received by the defendant. The defendant contended that the allowance was impartible and in the nature of a personal gratuity exclusively enjoyable by himself. It was held that, independently of its origin and the light in which it was regarded by the Government and the parties, the "amin sukhdi" allowance having been actually included in and dealt with as part of the desaigiri vatan and a moiety of it having been subsequently freed from the obligation of service, the desai, who happened to officiate at the time the allowance was freed from service, had no right to hold the moiety exclusively as a personal allowance to himself. Mr. Justice Kemball said (p. 431):

It is clear that, in course of time, the allowance came to be included in, and dealt with, as part of the vatan, and that although it was stated to have been in its inception an additional grant, made later than the original vatan, for the remuneration of officiating members what hereditary share had become insufficient, the whole of it was not subsequently appropriated for service. That being so, it is difficult to see upon what grounds the officiator at the time of the non-service settlement can claim to hold the portion, continued to the desais, as a personal allowance to himself.

3. Some light might have been thrown on the question if we had the original order directing the payment of Rs. 111 at the time of non-service settlement. It was for the defendant to have produced this, if he wished to show that the commutation allowance was impartible. We think the appeal must be dismissed with costs.