

made before him he was bound to come to a different conclusion and to hold that the defendants did hold the land under the *lavni* kabulayat or at all events that the defendant was estopped from saying that he did not. That is an argument which could properly be addressed to us, a Court of appeal, if an appeal lay to this Court; but we think that we ought not, when our extraordinary powers under section 622 are invoked, to exercise them in such a case. The Mámlatdár has not declined jurisdiction. He has considered the materials laid before him and has come to a conclusion adverse to the plaintiff's case. That conclusion, if erroneous, ought, we think, to be corrected in a regular suit and not by an application under section 622 and especially so when no substantial injustice appears to result from the Mámlatdár's decision. We discharge the rule.

Rule discharged.

APPELLATE CIVIL.

*Before Sir C. Furrán, Kt., Chief Justice, and Mr. Justice Strachey. **

YESU KOM KRISHNA SUTAR AND ANOTHER (ORIGINAL DEFENDANTS),
APPELLANTS, v. SITARAM, SON AND HEIR OF THE DECEASED GOVINDA
SUTAR (ORIGINAL PLAINTIFF), RESPONDENT.*

1896.

February 18.

Bombay Hereditary Offices Act (Bom. Act III of 1874), Sec. 4†—Amending Act (Bom. Act V of 1886)‡—“Hereditary office”—Village sutár—Hindu law—Bombay Government Resolution No. 512 of 1882§.

The duties with which section 4 of the Bombay Hereditary Offices Act (Bom. Act III of 1874) deals, are confined to duties in which Government a being responsible for the administration of the country is directly interested.

* Second Appeal, No. 126 of 1895.

† Section 4 of the Bombay Hereditary Offices Act (Bom. Act III of 1874) :—

(IV) In this Act, unless there be something repugnant in the subject or context,

“Watan property” means the moveable or immovable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office;

It includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise;

It includes cash payments in addition to the original watan property made voluntarily by Government and subject periodically to modification or withdrawal.

“Hereditary office” means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue, or with the village police, or the settlement of boundaries or other matters of civil administration;

the expression includes such office even where the services originally appertaining to it have ceased to be demanded.

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The definition of "hereditary office" does not extend to duties of a carpenter, which though useful to the village community are not matters with which Government has any direct concern.

Held, therefore, that the village sutár (carpenter) does not hold an "hereditary office" within the meaning of that section.

SECOND appeal from the decision of S. Tagore, District Judge of Sátára, confirming the decree of Ráo Saheb S. S. Wagle, Subordinate Judge of Karád.

The plaintiff sued for possession of certain service inám land, alleging himself to be the nearest male heir of the last holder of the said land. The service for the performance of which the land was held was that of village carpenter.

The plaintiff alleged that the land in question had belonged to his cousin Yamaji bin Bapuji Sutár, who died in 1887 leaving only a daughter (defendant No. 1) who was in possession. He claimed as the nearest male member of the watan family to be entitled to the land.

The Subordinate Judge held that the plaintiff was entitled to the land and passed a decree in his favour.

On appeal by the defendants the Judge confirmed the decree. The following is an extract from his judgment :—

"With regard to issue No. 3 (Is the plaintiff entitled to inherit in preference to defendant No. 1?) I find that under section 2 of Act V of 1886, which amends Bombay Act III of 1874, females other than the widow of the last male owner are to be postponed to males in regard to succession to watan property. Plaintiff is admittedly the nearest male relative of the deceased Yamaji, and is, therefore, entitled to inherit the property in preference to defendant, the daughter of the deceased. On these grounds

‡ Amending Act (Bom. Act V of 1886) Section 2 :—

Every female member of a watan family other than the widow of the last male owner, and every person claiming through a female, shall be postponed, in the order of succession to any watan, or part thereof, or interest therein, devolving by inheritance after the date when this Act comes into force, to every male member of the family qualified to inherit such watan, or part thereof, or interest therein.

The interest of a widow in any watan or part thereof shall be for the term of her life or until her marriage only.

§ Bombay Government Resolution No. 512 of 1882 :—

Bombay Act III of 1874 does not appear to be applicable to village servants useful to the community. All the sanads granted to village servants useful to the village community prohibit alienation of the property to which they relate. Under the terms of the settlement, land which ceases to be held as remuneration for service to the village community may be resumed. Venkatráo's Commentary to the Hereditary Offices Act, p. 106).

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the Collector has refused to register the name of defendant No. 1 in the watan register, and the plaintiff's name has been entered in place of the deceased watandár (Exhibits 28, 29). It is contended that the death of Yamaji having occurred before the Amending Act came into force, the defendant's right of inheritance was not affected, but this contention is untenable. Act V of 1886 came into force in January, 1887, whereas the date assigned in the plaint of Yamaji's death is March, 1887. This statement is not traversed by the defendants, and the objection now taken was not raised in the Court below, nor is any such objection taken in the grounds of appeal. It cannot, therefore, be now entertained."

The defendants preferred a second appeal.

Sadashiv R. Bakhle (for *Balaji A. Bhagavat*) appeared for the appellants (defendants):—We say that the land in question here which was granted for rendering service as village carpenter is not watan property, and the Watan Act is not applicable. Section 4 of the Act defines watan property. A carpenter's duty has no connection with the administration or collection of public revenue, &c.—Nairne's Hand-book, p. 525. Service inámdárs are divided into three classes—pátels, kulkarnis and Mhárs. Pátels and kulkarnis are directly concerned with the administration or collection of public revenue. The Mhárs are classed as watandárs, because they have to fix boundaries of villages.

Sutárs are called watandárs, because they are useful to the village community and not to Government. Government Resolution No. 512 of 1882 has laid down that the Watan Act is not applicable to persons who are useful to the community—*Baba Kakaji Shet Shimpi v. Nassaruddin*⁽²⁾; *Patu valad Walibai v. Dhondi valad Babaji*⁽³⁾.

Vishnu K. Bhatavdekar appeared for the respondent (plaintiff):—The Watandárs' Act makes no distinction between classes of watandárs. All classes of watandárs are governed by the Act. The watan in dispute would be included in Part X (Inferior village hereditary offices) of the Act. Section 64 of the Act invests the Collector with the power to register the names of the watandárs and to determine their rights and duties, and in the present case the Collector has exercised this power as is shown by Exhibits 28 and 29.

(1) See *supra* p. 734.

(2) I. L. R., 18 Bom., 103.

(3) P. J., 1884, p. 182.

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[FARRAN, C. J. :—You must bring the land in dispute within the terms of the Watan Act.]

Under the old system every village had *balutedárs*, and a carpenter was one of them. According to that system a carpenter was connected with a part of the civil administration, and, therefore, his service inám would fall under the definition given in the Act. Civil administration means civil administration in contrast with ecclesiastical administration—Grant Duff's History of the Maráthás, Vol. I., p. 23.

Salashiv R. Bakhle, in reply :—A carpenter has got nothing to do with civil administration. Part X of the Watan Act applies only to inferior classes of watanárs such as Rámoshis, who are village watchmen. The Collector's order, Exhibit 29, would have no binding effect if it be found that the Watan Act not applicable to the watan in dispute.

FARRAN, C. J.—The decision of this appeal turns upon the clause in section 4 of the Bombay Hereditary Offices Act which interpretes for the purposes of the Act the expression "hereditary office."

The defendant is the daughter of the deceased Yamaji Sutár, who was the last holder of the service inám land claimed in the plaint. The service, for the performance of which the land is held, is that of village carpenter. The plaintiff, who is the cousin of the deceased Yamaji, claims to recover the land from the defendant on the ground that he, and not the defendant, is the heir of the deceased in respect of this service inám property. No special custom is set up.

The ordinary Hindu law must govern the case, unless the provisions of Bombay Act III of 1874, as amended by Act V of 1886, by which females other than the widow of the last male holder are to be postponed to males in regard to succession to "watan property," are applicable to it. "Watan property" is defined to mean "property held for providing remuneration for the performance of the duty appertaining to an hereditary office." The question, therefore, is not as put by the lower

Courts whether a "sutár" is a village officer, but whether he holds an "hereditary office" as defined by the Act.

Now "hereditary office" means every office held hereditarily for the performance of duties connected (a) with the administration or collection of the public revenue, or (b) with the village police, or (c) with the settlement of boundaries, or (d) other matters of civil administration. It is clear that a carpenter does not perform duties connected with (a) or (b) or (c). Does he then perform duties connected with other matters of civil administration? Are the duties of a carpenter those of civil administration? Is he a civil administrator? We think not. The duties with which the section deals appear to be confined to duties in which Government as being responsible for the administration of the country is directly interested. The definition does not appear to us to extend to these duties, which, though useful to the village community, are not matters with which Government has any direct concern. This is the view which Government took of the question in 1882 (see Bombay Government Resolution No. 512 of 1882), and is, in our opinion, the correct one. As long as the duties of the village carpenter are performed, it is not material whether they are performed personally or by a deputy. Lands held for the performance of the duties of a Kázi have been held not to fall within the meaning of this Act, but for another reason—*Baba Kakaji v. Nassaruddin* (1). The precedent is, therefore, only valuable as showing that the scope of the Act is not to be extended beyond its apparent application. The orders passed by the Collector (Exhibits 28 and 29) are not binding upon the civil Courts. He has, we think, unduly extended the meaning of the Act. We must, for these reasons, reverse the decrees of the lower Courts, and dismiss the suit with costs.

Decree reversed.

(1) I. L. R., 18 Bom., 103.

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