

## APPELLATE CIVIL.

*Before the Honourable Chief Justice Farran and Mr. Justice Parsons.*

VENKATESH NARA'SINHA NA'RA'YANPETHKAR (ORIGINAL DEFENDANT No. 4), APPELLANT, *v.* GOVINDRA'O BIN SHEKOJI AND ANOTHER (ORIGINAL PLAINTIFF), RESPONDENT.\*

1895.

September 19.

*Vatan Act (Bom. Act III of 1874), Sec. 10†—Redemption suit—Decree for possession—Possession obtained by plaintiff under decree—Decree reversed in appeal—Collector's certificate under the Vatan Act (Bom. Act III of 1874).*

Where an erroneous decree of the District Court is reversed by the High Court and the decree of the original Court restored, the successful party has a right to be replaced in the same position as if the District Court had not made an erroneous decree. If in obtaining this right he is restored to possession of vatan land, such a restoration does not fall within the scope of section 10, Bombay Act III of 1874. —*Rachapa v. Amingovda* (1).

REFERENCE by L. G. Deshmukh, Acting Collector of Sholapur, in the matter of a certificate issued by him under section 10 of the Vatan Act (Bom. Act III of 1874).

In a redemption suit, the Subordinate Judge passed a decree directing the plaintiff to redeem the mortgaged property on payment of Rs. 992-3-9 to the defendant. On appeal by plaintiff the Judge reversed the decree and ordered that plaintiff should be put in possession without any such payment, but simply on payment of costs. In execution of that decree, the plaintiff recovered possession.

\* Civil Reference, No. 8 of 1895.

† Section 10 of the Vatan Act (Bom. Act III of 1874):—

10.—When it shall appear to the Collector that by virtue of, or in execution of, a decree or order of any British Court any vatan, or any part thereof, or any of the profits thereof, recorded as such in the revenue records or registered under this Act and assigned under Section 23, as remuneration of an officiator, has or have after the date of this Act coming into force, passed or may pass without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being; or that any such vatan or any part thereof, or any of the profits thereof, not so assigned has or have so passed or may pass into the ownership or beneficial possession of any person not a vatandar of the same vatan, the Court shall, on receipt of a certificate under the hand and seal of the Collector, stating that the property to which the decree or order relates is a vatan or part of a vatan, or that such property constitutes the profits or part of the profits of a vatan, or is assigned as the remuneration of an officiator, and is therefore inalienable, remove any attachment or other process then pending against the said vatan, or any part thereof, or any of the profits thereof, and set aside any sale or order of sale or transfer thereof, and shall cancel the decree or order complained of, so far as it concerns the said vatan, or any part thereof, or any of the profits hereof.

(1) I. L. R., 5 Bom., 283.

1895.

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On second appeal by the defendant, the High Court reversed the decree of the District Judge and restoring that of the Subordinate Judge awarded to the defendant absolute possession on failure of plaintiff to pay Rs. 992-3-9 within six months from the 1st May, 1894.

The plaintiff having failed to pay the amount within the specified time, the defendant applied to the Subordinate Judge to be restored to possession in execution of the High Court's decree. The property in dispute being *pátílki vatan*, the plaintiff applied to the Collector for a certificate under section 10 of the Vatan Act (Bombay Act III of 1874). The Collector issued the certificate and forwarded it to the High Court.

*Náráyan Ganesh Chandávarkar*, for the appellant (original defendant No. 4):—The defendant (mortgagee) is entitled to get back possession in spite of the Collector's certificate, he having been deprived of the possession in pursuance of the District Judge's decree which was reversed by the High Court. The High Court restored the decree of the first Court, and the defendant has now a right to restitution—*Ráchapa v. Amin-govda*<sup>(1)</sup>; *Mookoond Lál Pál Chowdhry v. Mahomed Sami Meah*<sup>(2)</sup>; *Rohni Singh v. J. Hodding*<sup>(3)</sup>; *Virarágháva v. Venkata*<sup>(4)</sup>.

Section 10 of the Vatan Act (Bombay Act III of 1874) does not apply to transfers or alienations made before the Act came into force. In the present case, the mortgage with possession was made in the year 1871.

*Mahádeo B. Chaubal*, for respondent (plaintiff):—It seems that possession of defendant's assignor Krishna commenced under a previous decree (No. 1169 of 1875) on the 16th November, 1875. Therefore this was an alienation after the Vatan Act (Bombay Act III of 1874) came into force, and the Collector's certificate is legal and binding.

FARRAN, C. J.:—The Collector is under a misapprehension as to the facts of this case. The plaintiff sued for redemption. The District Judge reversing the decree of the Subordinate Judge

(1) I. L. R., 5 Bom., 283, at p. 293.

(3) I. E. R., 21 Cal., 340.

(2) I. L. R., 14 Cal., 484.

(4) I. L. R., 16 Mad., 287.

(which ordered the plaintiff to recover possession of the property mortgaged upon payment of Rs. 992-3-9 and costs) directed the plaintiff to be put in possession without such payment, simply on payment of costs. In execution of that decree, the plaintiff, on payment of costs, was put in possession of the land.

The High Court reversed the decree of the District Court and restored that of the Subordinate Judge. This carried with it the right of the defendant to be replaced in the same position as if the District Court had not passed an erroneous decree, and such is the position to which he now asks to be restored *quantum valeat*. The Full Bench ruling in *Ráchappa v. Amingovda*<sup>(1)</sup> shows that such a restoration does not fall within the scope of section 10 of Bombay Act III of 1874, and that the defendant notwithstanding the Collector's certificate is entitled to be restored to possession.

It would seem that the defendant No. 4's predecessor in title (Krishnāpa, deceased defendant No. 1) obtained possession of the property in question under the decree in Suit No. 1169 of 1875. If that be so, the Collector may be able to get that decree set aside by the Court which passed it and to have the plaintiff restored to possession; but the facts are not fully before us. So we give no opinion on that part of the case.

We accordingly return the certificate to the Collector with a copy of this judgment. The plaintiff to pay the costs of this reference.

*Order accordingly.*

(1) J. L. R., 5 Bom., 283.