

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1892,
April 22.

CHANDRA NA'IK, (APPLICANT), v. BAHINA'BAI AND ANOTHER,
(OPPOSENTS).*

Watandárs Act (Bombay Act III of 1874), Sec. 10†—Certificate issued by Collector more than twelve years after death of last holder—Court bound to act on certificate—Limitation—Limitation Act (XV of 1877), Art. 178.

In execution of a decree against Nijaling Náik his lands were sold in February, 1876, and Hamantbhatt purchased them and took possession on 10th August, 1876. Nijaling Náik died in July, 1877, and in February, 1888, his son and heir alleging that the lands were *watan* applied to the Collector for a certificate under section 10 of the *Watandárs Act* (Bombay III of 1874). The Collector referred the matter to his subordinates for inquiry, and the certificate was not issued until the 13th March, 1890,—that is, more than twelve years after the death of the last holder, Nijaling Náik.

Held, that, although more than twelve years had elapsed, the Court could not refuse to act on the certificate of the Collector, as provided by section 10 of the *Watandárs Act*.

THIS was a reference made by Ráo Sáheb Raghavendraráo Rámchandra Gángoli, Subordinate Judge of Bágalkot, under section 617 of the Civil Procedure Code (Act XIV of 1882).

* Civil Reference No. 10 of 1891.

† Section 10 of the *Watandárs Act* (Bombay Act III of 1874):—When it shall appear to the Collector that by virtue of, or in execution of, a decree or order of any British Court any *watan* or any part thereof, or any profits thereof, recorded as such in the revenue-records or registered under this Act, and assigned under section 23 of this Act 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 *watan* or any part thereof, or any of the profits thereof, not so assigned has or have passed or may pass into the ownership or beneficial possession of any person not a *watandár* of the same *watan*, 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 *watan* or part of a *watan*, or that such property constitutes the profits or part of the profits of a *watan*, or is assigned as the remuneration of an officiator, and is, therefore, inalienable, remove any attachment or other process then pending against the said *watan* or any part thereof, or any of the profits thereof, and set aside any sale or order of the sale or transfer thereof, and shall cancel the decree or order complained of so far as it concerns the said *watan* or any part thereof, or any of the profits thereof.

On the 18th February, 1876, certain lands were sold in execution of a decree dated the 29th August, 1874, passed by the Subordinate Judge of Bágalkot against one Nijaling Náik in Suit No. 797 of 1874. At the Court sale the lands were purchased by Hanmantbhatt bin Bhimábhadd, who took possession of them on the 10th August, 1876.

Nijaling Náik died on the 4th July, 1877, leaving behind him his son and heir, Chandra Náik. On the 19th February, 1884, Chandra Náik applied to the Collector of Bijápúr for a certificate under section 10 of the Hereditary Offices Act, otherwise called the Watan Act (Bombay Act III of 1874). The Collector having referred the matter to his subordinates for inquiry and report, issued the certificate on the 13th March, 1890,—that is, more than twelve years after the death of the last holder, Nijaling Náik.

While the above proceedings were going on, Hanmantbhatt, the auction-purchaser, died, and his widow, Bahinábái, and a minor son having refused to part with the lands, and the Collector to whom the certificate was returned by the Subordinate Judge for reconsideration, having declined to cancel it, the Subordinate Judge referred the following question to the High Court:—

Whether he was bound to set aside the sale as desired by the Collector in the certificate issued, as it was, after twelve years from the death of the last holder?

The opinion of the Subordinate Judge was that the Collector's certificate was null and void.

Shivám Vithal Bhandárkar (*amicus curiæ*) for the applicant Chandra Náik:—The certificate is void, and cannot be acted upon, as it does not state the particulars required by section 10—*Rámangowda v. Shivápa*⁽¹⁾. Further, the Collector cannot now take any action in the matter owing to the provisions of the Limitation Act (XV of 1877). He ought to have taken steps to set aside the sale within three years from its date—Article 178, Schedule II of the Limitation Act (XV of 1877).

[SARGENT, C. J.:—The provisions of the Limitation Act refer to applications. There is no application in the present case.]

(1) P. J. for 1890, p. 263.

1892.

CHANDRA
NÁIK
v.
BAHINÁBÁI.

The Collector is not a party to this reference ; the parties are the representatives of the purchaser at the auction sale and the original judgment-debtor. Even if it be supposed that the Collector has of his own motion taken action in the matter, still the judgment-debtor or his representative cannot claim the benefit of sixty years' limitation under article 149, Schedule II of the Limitation Act, which applies strictly to Government. If he is acting on behalf of the *watandár* (judgment-debtor) he can claim only such limitation as the *watandár* himself could have claimed—*Gunga Gobind v. The Collector of the Twenty-four Pergunnahs*⁽¹⁾. Section 10 of the Watan Act must be read in connection with the provisions of the Limitation Act.

The right to get the sale set aside accrued when the auction-purchaser took possession on the 10th August, 1876. Ever since that time, that is, for more than twelve years, the auction-purchaser and his representatives have been in possession without any objection on the part either of the Collector or the *watandár*, who himself was the judgment-debtor. The auction-purchaser's title, therefore, is good by reason of his adverse possession. The property has been in the possession of the auction-purchaser and his representatives for more than twelve years ; it has, therefore lost its *watan* character—*Rádhábái v. Anantráo Bhagwant*⁽²⁾.

Ráo Sáheb *Vásudeo Jagannáth Kirtikar* (Government Pleader) for Government :—Article 178, Schedule II of the Limitation Act (XV of 1877) is not applicable to the present case, as no application has been made to set aside the sale. The Collector having held certain inquiry came to a judicial decision that the property was service *watan*, and that decision he communicated to the Subordinate Judge. It is not correct to say that the auction-purchaser's title has become complete by twelve years' adverse possession. It is true that the Collector granted the certificate after the expiration of that period ; but the judgment-debtor's son began to move in the matter in the year 1884, that is, about eight years after the auction sale. His right, title and interest cannot, therefore, be allowed to be prejudiced simply because the period of twelve years expired while inquiries were being made by the Collector.

(1) 11 Moore's Ind. App., 345.

(2) I, L. R., 9 Bom., 198 at p. 232.

As against the Collector no one can acquire a title by adverse possession till the expiration of the period of sixty years under article 149, Schedule II of the Limitation Act. The provisions of the Watandárs Act are similar to the provisions of the Bhágdári Act (Bombay Act V of 1862), and there are rulings to show that under the Bhágdári Act there was no period of limitation prescribed for making an application, and, therefore, such applications were not governed by any particular period under the Limitation Act—*The Collector of Broach v. Rájárám Láldás*⁽¹⁾; *The Collector of Thána v. Bháskar Mahádev*⁽²⁾.

SARGENT, C. J.:—The sending the certificate by the Collector as contemplated by section 10 of the Watandárs Act is not an application to the civil Court, but only a proceeding in the nature of a notification which, the Watandárs Act itself provides, shall be acted upon by the civil Court in a certain manner. Clause 178 of the Limitation Act has, therefore, no application to it. We think that the Subordinate Judge cannot refuse to act on the certificate of the Collector, as expressly required by section 10 of Bombay Act III of 1874. If the purchaser has, since his purchase, acquired a title by adverse possession, it will be for him to take the proper measures to assert it as against the Collector or any other party, as the case may be.

Order accordingly.

(1) I. L. R., 7 Bom., 542.

(2) I. L. R., 8 Bom. 264.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Candy.

CHIMNA'JI, (ORIGINAL PLAINTIFF), APPELLANT, v. SAKHA'RAM
AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

1892.

June 20.

Mortgage—Redemption—Suit for redemption by purchaser of equity of redemption—Evidence given by defendants of a mortgage other than the mortgage in respect of which suit brought—Right of plaintiff to have the question of latter mortgage determined—Practice—Procedure.

The plaintiff as purchaser of the equity of redemption sued for redemption. He alleged a mortgage, dated A.D. 1849, for Rs. 175. The defendants admitted a mortgage, but alleged that it was executed at a different time and for a larger

* Second Appeal, No. 255 of 1891.