

We, therefore, reverse the decree of the lower Court and dismiss the suit with costs throughout on the plaintiff.

Decree reversed and suit dismissed.

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DAGDU
VALAD SADU
v.
NANA
VALAD SADU.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

THE TALUKDARI SETTLEMENT OFFICER (ORIGINAL PETITIONER),
APPELLANT, v. CHHAGANLAL DWARKADAS (ORIGINAL OPPONENT),
RESPONDENT.*

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July 28.

Gujerath Talukdars' Act (Bom. Act VI of 1888), section 31⁽¹⁾—Land Revenue Code (Bom. Act V of 1889)—Talukdari tenure—Wanta lands (at Sarsa)—Alienated land—Attachment of income.

Wanta lands are lands held by Rajputs or the representatives of Rajputs who, after the Mahomedan conquest of Gujerath, received one-fourth of the land of certain villages on condition of keeping order in those villages. The lands were held either rent-free or at a small quit-rent.

* First Appeal No. 189 of 1909.

(1) Section 31 of the Gujerath Talukdars' Act (Bom. Act VI of 1888) as amended by Bombay Act II of 1905 is as follows:—

31. (1) No incumbrance on a Talukdar's estate, or on any portion thereof made by the Talukdar after this Act comes into force, shall be valid as to any time beyond such Talukdar's natural life, unless such incumbrance is made with the previous written consent of the Talukdari Settlement Officer or of some other officer appointed by the Governor in Council in this behalf, and after the death of a Talukdar no proceeding for the attachment, sale or delivery of, or any other process affecting the possession or ownership of, a Talukdari estate, or any portion thereof, in execution of any decree obtained against such Talukdar or his legal representative, except a decree obtained in respect of an incumbrance made with such consent as aforesaid, or made before this Act comes into force, shall be instituted or continued except with the like consent.

(2) No alienation of a Talukdar's estate or any portion thereof, or of any share or interest therein, made after this Act comes into force, shall be valid, unless such alienation is made with the previous sanction of the Governor in Council which sanction shall not be given except upon the condition that the entire responsibility for the portion of the jama and of the village expenses and police charges due in respect of the alienated area, shall thenceforward vest in the alienee and not in the Talukdar.

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Where *Sarsa Wanta* land, the income of which is attached in execution of a decree is proved to have been entered as alienated land under the Land Revenue Code (Bom. Act V of 1889), the Court may presume that it is not land held upon Talukdari tenure in the strict sense of the word.

The words "Talukdar's estate" in section 31 of the Gujerath Talukdars' Act (Bom. Act VI of 1888) are used in a technical sense limited to the Talukdar's interest in the estate held by him by reason of his status as a Talukdar.

Khodabhai v. Chaganlal⁽¹⁾ and *Bhachubha v. Vela Dhanji*⁽²⁾ followed.

FIRST appeal from the decision of G. V. Saraiya, First Class Subordinate Judge of Ahmedabad, in miscellaneous application No. 51 of 1908.

One Chhaganlal Dwarkadas obtained a decree, No. 60 of 1899, in the Court of the First Class Subordinate Judge of Ahmedabad, against Takhatsingji Ramsingji, the Thakore of Kherda. The defendant died on the 7th August and the decree was passed on the 8th August 1899. At the time of his death the defendant was entitled to revenues from three sources, namely, (1) Toda Giras allowance of Rs. 1,400 per annum, (2) the income of two Talukdari villages of Kherda and Rajpura, and (3) the income of certain *Wanta* lands in seven Government villages of Wasad, Anklavdi, Vera, Sarsa, Khanpur, Vaghasry and Adas. On the defendant's death, the whole of his estate was attached by Government officers under section 144 of the Land Revenue Code (Bom. Act V of 1889) and the Talukdari Settlement Officer claimed to have been in possession of the estate from that date. The plaintiff Chhaganlal applied for the execution of the said decree and a sum of Rs. 8,516, standing in the books of the Kacheri of the Mamlatdar of Anand to the credit of the estate of the defendant Thakore, was attached on the 19th June 1905, and subsequently on the 13th November 1907 another sum of Rs. 5,200 standing to the credit of the same estate was similarly attached.

The Talukdari Settlement Officer, thereupon, applied to the Court on the 9th July 1908 for the release of the said amounts from attachment on the grounds that they were not liable to be attached under section 5 of the Toda Giras Allowances Act

(1) (1907) 9 Bom. L. R. 1122.

(2) (1909) 34 Bom. 53.

(Bom. Act VII of 1887) and that the income of the estate of the Talukdar was not liable to the decretal debt after his death.

The plaintiff-opponent contended that the attached sums did not form parts of the collections made by the Talukdari Settlement Officer on account of Toda Giras Hak Allowances, that they formed part of the collections made by the said officer on account of the profits of *Wantu* lands at Sarsa, therefore, he was entitled to attach them and that the proper person to apply for the removal of attachment was the heir of the deceased judgment-debtor and not the Talukdari Settlement Officer.

The Subordinate Judge found that the Talukdari Settlement Officer could maintain the application under section 47 of the Civil Procedure Code (Act V of 1908), that the lands of the said seven villages which belonged to the deceased Talukdar did not form part of the Talukdari estate so as to attract the application of section 31 of the Talukdars' Act (Bom. Act VI of 1888) as amended by Bombay Act II of 1905, that out of the two sums attached, Rs. 3,301-6-6 was the amount of income of lands other than the property consisting of Toda Giras Hak and the Talukdari villages of Kherda and Rajpura, that the decree-holder was not entitled to attach the income of Toda Giras Hak and the Talukdari villages of Kherda and Rajpura and that Rs. 8,235-6-0 and Rs. 1,895-9-6 should be released from attachment.

The Subordinate Judge, therefore, passed the following order :—

I order that Rs. 8,236-9-0 do be released from attachment. I also order that Rs. 1,895-9-6 being the difference between Rs. 5,200 and Rs. 3,301-6-6 do be released from attachment. A letter to be written to the Talukdari Settlement Officer requesting him to send Rs. 3,301-6-6 being the amount which is held to be liable for the decretal debt.

The applicant (the Talukdari Settlement Officer) preferred an appeal.

R. W. Desai for the appellant (applicant).

T. R. Desai for the opponent (judgment-creditor), was not called upon.

SCOTT, C. J. :—On the 8th of August 1899 a decree was passed at a suit of the opponent Chhaganlal against the Thakore of

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Kherda in Suit No. 60 of 1899 in the Court of the First Class Subordinate Judge of Ahmedabad.

The defendant had died the day previous to the decree. At the time of his death he was entitled to revenues from three sources: Toda Giras allowance of Rs. 1,400 per annum, the income of two Talukdari villages, and the income of certain *Wantā* lands in seven different Government villages.

On the 20th of August 1899 the whole of the estate of the deceased defendant was taken under attachment by Government officers purporting to act under section 144 of Bombay Act V of 1879, and the Talukdari Settlement Officer who is the appellant in this case claims to have been in possession of the estate from that date.

On the 19th of June 1905 a sum of Rs. 8,516, standing in the books of the Government Kacheri of Anand to the credit of the estate of the Thakore, was attached by the judgment-creditor, and on the 13th November 1907 another sum of Rs. 5,200, standing to the credit of the estate of the Thakore, was similarly attached.

The Talukdari Settlement Officer instituted these proceedings in 1908 applying that the attached sums should be released from attachment.

In the lower Court a question arose as to the origin of the two sums attached, and upon issues being raised it was held that the sums of Rs. 8,236-9-0 and Rs. 1,895-9-6 forming part of the sum of Rs. 5,200, were the produce of property not liable to attachment, but that Rs. 3,304-6-6 was income derived from lands other than property consisting of Toda Giras Hak and Talukdari villages and was therefore liable to attachment.

An appeal has been preferred by the Talukdari Settlement Officer and a preliminary point was taken on behalf of the opponent that no appeal would lie as the Talukdari Settlement Officer was not representative of the judgment-debtor within the meaning of the Civil Procedure Code.

We thought it advisable, however, not to decide the preliminary point but to hear arguments upon the appeal on its merits.

We have now heard Mr. Ramdatt Desai who has argued the case very fully on behalf of the Talukdari Settlement Officer, and we are of opinion that the decision of the lower Court was right.

It has been proved that the lands from which the sum of Rs. 3,304-6-6 was derived were *Wanta* lands.

There is no question as to the nature of *Wanta* lands. That is made clear by Robertson's and Wilson's Glossaries, by the Ras Mala, and by the Judgment of Sir Michael Westropp in *Dolsang Bharsang v. The Collector of Kaira*⁽¹⁾. They are lands held by Rajputs or the representatives of Rajputs who, after the Mahomedan conquest of Gujerath, received one-fourth of the land of certain villages on condition of keeping order in those villages. The lands are held either rent-free or at a small quit-rent.

The first point taken in appeal is that these *Wanta* lands are part of the 'Talukdari Estate' in the strict sense of that expression and that consequently the attachment of the income derived from these lands cannot continue in face of the provisions of section 31 of the Gujerath Talukdars' Act as amended by Bombay Act II of 1905.

The Head Clerk to the Talukdari Settlement Officer gave evidence in the case and was cross-examined as to the nature of Talukdari tenure and as to whether the *Wanta* lands in question were held on Talukdari tenure. His evidence is as follows :—

"To my knowledge summary settlement is paid for the *Sarsa Wanta* land. There is some difference between the Talukdari estate and the Talukdar's estate. Talukdar's estate means estate of whatever tenure, that is, if a Talukdar holds some Government lands they are also called Talukdar's estate. The Talukdari estate means estate with full proprietary right held by Talukdar under what is called Talukdari tenure. There is no definition given of the Talukdari tenure in any enactment. I cannot give a definition of the Talukdari tenure but I can give illustration of it. The Land Revenue Code recognizes two kinds of land, alienated and unalienated. The Talukdari does not come under either of these categories because it is of full proprietary right and its origin antedated the British rule. The said two are the chief distinguishing characteristics of the Talukdari tenure."

It is proved in this case that the *Sarsa Wanta* land from which the attached sum is derived is entered as alienated land under

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the Land Revenue Code. We may therefore assume that it is not Land held upon Talukdari tenure in the strict sense of the word. That is sufficient, we think, to dispose of the first part of Mr. Ramdatt Desai's argument.

Mr. Ramdatt Desai's second point was that 'Talukdari Estate' in the section to which we have referred and generally throughout the Talukdars' Act is not to be interpreted as limited to estate held on Talukdari tenure but means the whole of the property of a person who answers to the description of a Talukdar, whether held by him by reason of his status as Talukdar, or otherwise.

In dealing with this argument we will assume (without deciding) that income derived from an estate is portion of the estate within the meaning of section 31.

We have the authority of two judgments of this Court to the effect that the words "Talukdar's estate" in section 31 are used in a technical sense limited to the Talukdar's interest in the estate held by him by reason of his status as a Talukdar: see *Khodabhai v. Chaganlal*⁽¹⁾ and *Bhachubha v. Vela Dhanji*⁽²⁾. We are bound by the decision in each of these cases.

We have, however, permitted full argument from Mr. Ramdatt Desai based upon the various enactments relating to Talukdars and the different sections of the Gujerath Talukdars' Act, and we entirely agree with the conclusion arrived at in those cases.

For these reasons we affirm the decision of the lower Court and dismiss the appeal with costs.

Decree affirmed.

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(1) (1907) 9 Bom. L. R. 1122.

(2) (1909) 34 Bom. 55.