APPELLATE CIVIL.

Before Mr. Justice Batchelor.

1915.
March 5.

DAYA KHUSAL (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* BAI BHIKHI, DAUGHTER OF FAKIRA MOVJI (ORIGINAL DEFENDANT 2, SUBSEQUENTLY ADDED AS PLAINTIFF No. 2), RESPONDENT.*

Matadars Act (Bom. Act VI of 1887), sections 9 and 10(1)—"Heir next in succession"—Succession to matadari property—Succession not confined to the limits of matadar family—Heir to be ascertained by reference to the personal law governing the parties.

One R, the representative Matadar, who inherited his Mata from his mother's side, having died, disputes arose as to the succession to the Matadari property between B, who was the daughter of a maternal cousin of R, and D who was the grand-nephew of R.

Held, that D was the preferential heir to B, as in order to ascertain the heir of a deceased Matadar, the Court was not confined to the limits of the Matadar family and should have in the first instance reference to the personal law which governed the parties.

SECOND appeal against the decision of Motiram S. Advani, District Judge of Surat, confirming the decree passed by Naginlal V. Desai, Subordinate Judge of Olpad.

The plaintiffs sued for (1) a declaration that defendant No. 1 was not the heir to the Mata of Ratanji and that

* Second Appeal No. 976 of 1913.

(1) Sections 9 and 10 of Matadars Act (Bom. Act VI of 1887) are as follows :—

9. On the death of a representative or other matadar, the fact shall be reported by the village officers to the Collector, and the name of the heir next in succession, or, if there are two or more heirs of equal degree, the name of the senior heir, shall, subject to the provisions of section 2 of Bombay Act No. V of 1886 (an Act to amend Bombay Act III of 1874) be registered in his stead.

10. If at any time any person shall, by production of a certificate of heirship, or of a decree or order of a competent Court, satisfy the Collector that he is entitled to have his name registered under section 7 (*b*) or section 9 in preference to the person whose name the Collector has ordered to be registered, the Collector shall cause the entry in the register to be amended accordingly.

plaintiff 1 or any of the other plaintiffs was the heir, (2) for an injunction restraining him from enjoying the watan property specified in the plaint alleging that Sandhier was a Matadari village and that there was one Matadari family there known as Ramji's family; that in this family of Ramji one Ratanji Kasanji had a Mata, that Ratanji died in 1909 and that according to law and custom of the family defendant 1, who was a descendant of Ratanji's step-brother and was in no way descended through his mother or father from the Matadari family, had no right to inherit the Mata in question; that the Bombay Government had passed a resolution declaring defendant 1 to be the heir to Ratanji's Mata and thereby reversed the orders passed against him by the Collector of Surat and the Commissioner, Northern Division.

Defendant No. 1 contended that the Court had no jurisdiction to hear the suit; that there was no custom as alleged in the plaint; and that he was the heir next in succession under section 9 of Act VI of 1887 as the grand-nephew of Ratanji.

The Subordinate Judge held that plaintiff 2 was the heir next in succession and that the Court had jurisdiction to determine that plaintiff 2 was such an heir in preference to defendant 1. He observed as follows :—

"What strikes one in this case is that defendant 1 has not been able to find out a *single instance* in which an heir under the general Hindu Law succeeded to a mata even though he was not member of watandar family, *i. e.*, even though not descended from that family through a male or female. Defendant 1 (exhibit 72) admits that in the inquiries he has made he finds that an heir to a mata has been a descendant (through a male or female) of the matadar family * * *. Thus one must take it that in all these matadari villages no one, not descended from a male or female of matadar's family, succeeds to a mata * * *."

"What then is the popular meaning of the word family? In the same dictionary it is shown that it means children and descendants. But it is not necessary, I think, to go so far. When the Legislature have expressly said

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that 'family' shall include 'each of the branches of the family descended from an original watandar' it must on the principle of *expressio unius*, etc., be presumed that it intended to exclude all branches not so descended. I think collaterals not so descended do not come within the definition. Defendant 1 does not belong to any branch so descended. He is not a watandar of the same watan, for a watandar is defined to mean 'a person having an hereditary interest in a watan'.

Defendant 1 has no such hereditary interest and I have shown above that he cannot be said to belong to this family. The 'heir next in succession' must be sought for within the family and not outside it. Defendant 1 may be a collateral heir and the nearest one to Ratanjee, but he is not of this family, for he is not descended from it and looking to the scheme of the Act, I think defendant 1 is not the heir to Ratanjee's mata."

On appeal by defendant 1, the District Judge confirmed the decree of the Subordinate Judge on the following grounds :—

"So far the succession to a mata is concerned the law on the subject is embodied in the Matadars Act and the question has to be determined according to that Act."

The defendant 1 preferred a second appeal.

Dewan Bahadur G. S. Rao for the appellant :—I submit that for the purposes of succession, the ordinary Hindu Law applies. The Matadars Act merely defines the position, rights and obligations of a Matadar. It does not regulate succession. There is no indication in the Act to suggest that the heir next in succession is to be one not under the ordinary Hindu Law. The Court has to construe sections 9 and 10 of the Matadars Act and the words heir next in succession. Section 9 does not exclude the ordinary personal law of the parties. The appellant Dahya is under the Hindu Law the next heir to Ratanji : *Bai Devkore* v. *Amritram Jamiatram*[1].

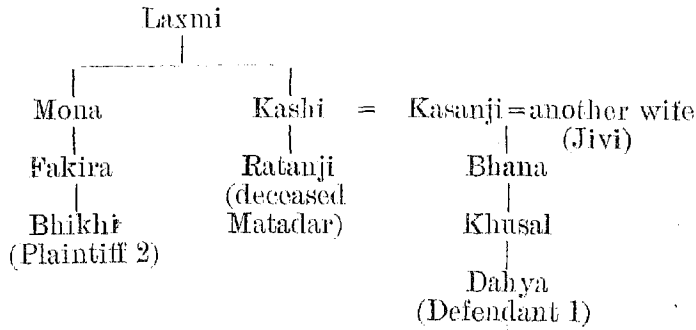
T. R. Desai for the respondent :—Dahya does not belong to the family of Laxmi to whom the Mata

[1] (1885) 10 Bom. 372.

belonged, and if his name is enlisted in the register, it would be adding to the number of the Matadar family; that is what is not contemplated by Watan Act: *Chinava* v. *Bhimangauda*[1]. Under the explanation clause of Matadars Act, certain provisions of the Watan Act have to be read as if part of the Act. Can it be said that Dahya is a watandar of the same watan? I submit not. He cannot, therefore, take either under the will of deceased Ratanji or as heir under the Hindu Law.

Rao in reply.

BATCHELOR, J.—This is a case in which the point involved is as to the right of succession to certain Matadari property. The appeal arises in the following state of facts. The genealogy of the parties is as follows:—



The present contest is between Bhikhi, the original 2nd plaintiff, and Dahya the 1st defendant. Ratanji Kasanji, the representative Matadar, died in 1908 or 1909 without issue. Disputes as to the succession to the Matadari property immediately arose, and the Collector of the district and the Commissioner of the division decided against the claim of the 1st defendant. The Government of Bombay, however, in 1912 took the other view, and reversing the orders of the Collector and the Commissioner declared the 1st defendant to be the next

[1] (1896) 21 Bom. 787.

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heir of the deceased, and accordingly ordered the entry of his name in the Mataḍari register. Thereupon Bhikhi and another brought the present suit for a declaration that one of the plaintiffs, and not the 1st defendant, was entitled to succeed to the Mataḍari property, and both the trial Court and the lower appellate Court have decided in favour of the plaintiff Bhikhi. My own view is that the appellant Dahya is entitled to succeed.

The question is regulated by sections 9 and 10 of Bombay Act VI of 1887. Section 9 enacts, so far as it is relevant to our present purposes, that on the death of a representative or other Mataḍar, "the name of the heir next in succession, or if there are two or more heirs of equal degree, the name of the senior heir, shall, subject to the provisions of section 2 of Bombay Act V of 1886 be registered in his stead." I apprehend as a matter of grammatical construction that the words "subject to the provisions of section 2 of Bombay Act V of 1886" govern as well the case of a single heir as the case of two or more heirs of equal degree; but the point is not now material, as neither side contends that the decision of the present appeal is affected by the modification of the rule introduced by the incorporation of section 2 of Bombay Act V of 1886. It is admitted, and, as the genealogy shows, rightly admitted, that if the ordinary Hindu Law is to be enforced, Dahya, and not Bhikhi, is the preferential heir; for Dahya is a *sagotra sapinda* of the deceased Ratanji's, whereas Bhikhi is a *bhinnagotra sapinda*. The lower Courts have decided in favour of Bhikhi on the sole ground that, as they understand the scheme of the Act, it overrides the general law, and provides that, in order to ascertain the heir of a deceased Mataḍar, the Court is confined to the limits of the Mataḍar family and can never travel outside those limits. I am obliged to

differ from the learned Judges below because I find nothing in the Act to justify this view, while if that had been the intention of the draftsman, it would have been easy to express it beyond the possibility of misconception. Not only is there no clear provision of that sort, but the section declares that the name of the heir next in succession in such a case as this shall be registered instead of the name of the deceased. Taking these words in their natural meaning they seem to me to denote that the heir is to be ascertained in the first instance by reference to the personal law which governs the parties, for instance, the Hindu Law in the case of Hindus and the Mahomedan Law in the case of Mahomedans. And by section 10 it is enacted that if at any time any person shall by production of a certificate of heirship, satisfy the Collector that he is entitled to have his name registered in preference to the person whose name the Collector has ordered to be registered, the Collector shall cause the entry in the register to be amended accordingly. Again the section contains no words which indicate that the Court in its inquiry as to who is entitled to be considered the heir shall adopt any other principles than those which a Court would necessarily follow unless plainly directed otherwise.

It was urged that in *Chinava* v. *Bhimangauda*[1], a case decided with reference to the Watan Act, this Court recognised that one leading object of this Watan legislation is to keep the Watan property intact in the same family. That is perfectly true, but the question still is how far this object is to be pursued, whether within the limitations expressed in the statute, or beyond those limitations into an unexpressed disregard of the established principles by which heirship is determined. I cannot find in the Act any warrant for this larger extension. And it seems clear that the Act

(1) (1896) 21 Bom. 787.

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cannot avail to prevent the occasional devolution of the Mata outside the original family, as, for instance, where a deceased Matadar leaves a daughter as his sole heir. It was urged by Mr. Desai that to allow the appellant Dahya now to succeed would have the effect of creating a new Matadar family, but the answer to that appears to me to be that the effect will rather be that Dahya will come from outside into the already existing Matadar family. Then Mr. Desai sought to support his case by reference to the addition made to section 2 of the Matadars Act by Bombay Act IV of 1910 which provides that in determining who is the heir to a Matadar for the purposes of the Act the rule of lineal primogeniture shall be presumed to prevail in the Matadar family. But that carries the case no further than this, that where there are lineal descendants of a deceased Matadar the rule of succession will be by primogeniture. Here we are dealing with a case where there are no lineal descendants. On these grounds, as I am unable to discover in the Matadars Act any authority for the view that the Court in ascertaining the heir of a deceased Matadar is disabled from looking outside the Matadar family, I am compelled to give my decision in favour of the appellant Dahya. The result is that this appeal is allowed, the decree of the lower appellate Court is reversed and the plaintiff's suit is dismissed with costs throughout.

Decree reversed.

J. G. R.