

Authorities regarding an ordinary purchaser and not one *pendente lite* such as *Veyindramuthu Pillai v. Maya Nadan*,⁽¹⁾ cited by appellant's pleader, do not bear on this point.

I would, therefore, dismiss the appeal with costs.

MIRZA, J. :—I agree.

Appeal dismissed.

R. R.

⁽¹⁾ (1919) 43 Mad. 107.

APPELLATE CIVIL

Before Mr. Justice Madgavkar and Mr. Justice Patkar.

MAHADAJI AMRIT KULKARNI, APPLICANT *v.* THE COLLECTOR OF
SATARA AND ANOTHER, OPPONENTS.*

1927
November 24

Bombay Hereditary Offices Act (Bom. Act III of 1874), section 10—Watan Lands—Gift—Suit by donee against mortgagee for possession—Watandar not party to suit—Decree for possession—Cancellation of decree on production of Certificate from Collector, legality of.

One B, a widow of a Watandar, made a gift of Watan lands to A. A mortgaged the lands to J. A sued for redemption and obtained a decree for possession in 1923. To this decree the Watandar was not a party. In 1926, on production of the Certificate from the Collector, the Subordinate Judge set aside the decree in view of the provisions of section 10 of the Hereditary Offices Act, 1874, and ordered that A, the decree-holder, should deliver possession of the land either to the Collector or to the mortgagee. On an application being preferred to the High Court against the order,

Held, allowing the application and setting aside the order of the Subordinate Judge, that, the Watandar not being a party to the decree in the suit of 1923, section 10 of the Hereditary Offices Act, 1874, and the Certificate purporting to be given under that section had no application, and the Subordinate Judge had no power even under section 10 to pass the order compelling A to deliver possession to the Collector or the mortgagee.

Shankar Gopal v. Babaji Lakshman⁽¹⁾ and *Bhau Balapa v. Nana*,⁽²⁾ relied on.

Per MADGAVKAR, J. :—“The object of section 10 of the Hereditary Offices Act, 1874, was to give practical effect to the prohibition against alienations by Watandars as provided by sections 5 and 7, and where both parties were strangers section 10 had no application. The other view permitting intervention by the Collector in decrees to which the Watandar is not a party would widen the scope of section 10 beyond the bounds contemplated by the legislature and might lead to undesirable results.”

*Civil Revision Application No. 296 of 1926.

⁽¹⁾ (1888) 12 Bom. 550.

⁽²⁾ (1888) 13 Bom. 343.

1927

MAHADAJI
AMRITA

v.

THE COLLECTOR
OF SATARA

APPLICATION under extraordinary jurisdiction praying for reversal of the order of the Subordinate Judge of Vita.

The property in suit formed part of the Kulkarni Vatan of the village of Sonsal in Satara District. It originally belonged to one Baji. Baji had two sons, Manakeshwar and Balaji. Balaji had a son, Waman, and an illegitimate son, Amrita, father of Mahadaji (petitioner). Manakeshwar had no son, but he adopted Balaji's son, Waman.

In 1862, Bhagirthibai, widow of Waman, made a gift of Vatan lands to Amrita, the illegitimate son of Balaji.

In 1889, Amrita mortgaged with possession a portion of the land to Joti Swarupa (opponent No. 2), and the petitioner mortgaged to him with possession other portions of the land in 1892, 1895 and 1902.

In 1908, on an application made by Rangubai, the daughter-in-law of Bhagirthibai, the Bombay Government passed a Resolution No. 5717, dated June 9, 1908, under which the mortgage transactions were declared void, but the mortgagee (opponent No. 2) was allowed to remain in possession of the land and the Watandar Shankar Keshav was to get Rs. 20, the full rent of the land.

In 1920, the petitioner Mahadaji brought suit No. 65 of 1920 in the Subordinate Judge's Court at Vita for redemption of mortgaged lands against Joti (opponent No. 2) and obtained a declaration that Rs. 1,100 were due to the opponent No. 2. The petitioner paid the amount to the opponent but, as he would not give up possession, the petitioner was obliged to bring another suit. The suit No. 274 of 1923 was, therefore, filed against opponent No. 2 for possession of mortgaged lands. A decree for possession was passed on November 6, 1923.

On March 27, 1926, the Collector of Satara made an application to the Subordinate Judge of Vita alleging that Bhagirthibai had no power to make a gift of the Vatan lands to Amrita who belonged to another family and praying that the decree in suit No. 274 of 1923 be cancelled and the land should be taken from the possession of Mahadaji (petitioner) and be given into the possession of Watandar Yeshwant Keshav or, if that could not be done, an order for payment of full rent be passed. A certificate, purporting to be given by the Collector under section 10 of the Bombay Hereditary Offices Act, 1874, was produced with the said application.

1927
 MAHADAJI
 AMRIT
 v.
 THE COLLECTOR
 OF SATARA

The Subordinate Judge made an order cancelling the decree in suit No. 274 of 1923 and ordering the petitioner to deliver possession of the land to the Collector or to the mortgagee, judgment-debtor (opponent No. 2).

Against the order the petitioner applied to the High Court under its revisional jurisdiction.

Noronha, with *Y. V. Bhandarkar*, for the applicant.

P. B. Shingne, Government Pleader, for opponent No. 1.

J. L. Paralkar, for opponent No. 2.

MADGAVKAR, J.:—This is an application by Mahadaji Amrit, the mortgagor-decree-holder, in a suit for redemption, No. 274 of 1923, against the order of the Subordinate Judge of Vita on July 9, 1926, cancelling the decree in that suit on a certificate purporting to be under section 10 of the Watan Act, III of 1874, of the Collector of Satara, and ordering the petitioner to deliver over possession of the land in suit to the Collector or to the judgment-debtor-mortgagee.

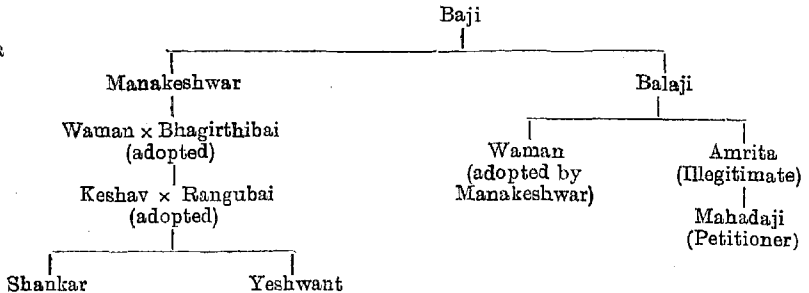
1927

MAHADAJI
AMRITA

v.

THE COLLECTOR
OF SATARA

The relationship between the parties is shown in the following genealogical tree :—



About the year 1862, and in any case prior to the passing of the Watan Act, Bhagirthibai, the widow of Waman, made a gift to Amrita, the illegitimate son of Balaji of the *watan* lands in suit. In 1889, Amrita mortgaged the lands to Joti, opponent No. 2, with possession. In 1908, the matter was taken up by the Collector and the Government Resolution No. 5717, Revenue Department, was passed on June 9, 1908, as follows :—

“ In this case the alienation is of long standing, there was no fraud, and the profits were actually in the possession of the alienee. There was, however, want of proper consideration. The alienation should, therefore, be declared null and void, but instead of transferring the possession of the land, the mortgagee should be required to pay the full rent to the *watandar*.”

In 1920, the petitioner Mahadaji instituted Suit No. 65 of 1920 in the Subordinate Court at Vita against the mortgagee Joti for redemption and obtained a declaration that Rs. 1,100 were due. The mortgagee did not, however, give up possession. The petitioner brought a second Suit No. 274 of 1923, and obtained a decree for possession, which, on the certificate of the Collector, dated March 27, 1926, has been set aside by the Subordinate Judge and the order above complained of made.

It is argued for the petitioner that, the *watandar* not being a party to the decree in Suit No. 274 of 1923

and it being between strangers to the *watan*, section 10 has no application, and that, in any case, the latter part of the order directing that the plaintiff should deliver over possession is *ultra vires*. It is argued for the opponent that the Government Resolution of 1908 sets aside the alienation or alienations, and the mortgagee, opponent No. 2, has practically violated the understanding on which alone he was allowed to remain in possession by Government from 1908.

It is not clear from the Government Resolution of 1908 whether the alienation declared null and void was the alienation by Bhagirthibai in favour of Amrita or the mortgage by Amrita in favour of opponent No. 2. To the former alienation made prior to the Act, section 9 of the Watan Act would apply, but not to the latter, to which section 11 at the most would be applicable. At the same time, the resolution purports, instead of transferring possession, to take the full rent, which points to clause (2) of section 9, rather than to section 11, and if so, to the gift by Bhagirthibai being declared null and void and not the mortgage by Amrita.

But however that may be, although section 10 in terms only requires that the ownership or beneficial possession should pass into the hands of a person other than an officiator *watandar* for the time being, and although it does not in express terms require that the possession should so pass under a decree against the *watandar*, it has been held by this Court since 1888 in *Shankar Gopal v. Babaji Lakshman*,⁽¹⁾ and in *Bhanu Balapa v. Nana*,⁽²⁾ that the object of section 10 was to give practical effect to the prohibition against alienations by *watandars* as provided by sections 5 and 7, and where both parties to the decree

1927

MAHADAJI
AMRITA
v.
THE COLLECTOR
OF SATARA

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1927

MAHADAJI
AMRIT

v.

THE COLLECTOR
OF SATARA

were strangers section 10 had no application. The other view permitting intervention by the Collector in decrees to which the *watandar* is not a party would widen the scope of section 10 beyond the bounds contemplated by the Legislature and might lead to undesirable results.

In the present case, the *watandar* was not a party to the decree in Suit No. 274 of 1923, and, in our opinion, section 10 and the certificate purporting to be under that section had no application, and in any case, the Subordinate Judge had no power even under section 10 to pass the order compelling the plaintiff to deliver over possession to the Collector or the mortgagee.

The application must, therefore, be allowed, and the order of the Subordinate Judge of July 9, 1926, be set aside. But we notice that even in the application made to the Court it was expressly stated that if possession could not be given to the *watandar*, Yashwant, an order for payment of full rent should be passed, similar, we presume, to the order of the Government Resolution of 1908. We understand from the learned counsel for the petitioner, Mahadaji, that he is willing to make the same payment to the *watandar* that the mortgagee made. The fair arrangement, in our opinion, would be that the petitioner should take the land subject to the same payment as the mortgagee made. By this arrangement it would not matter to the *watandar* so long as he gets the full rent whether the possession is with opponent No. 2 or with the petitioner.

The petitioner will get his costs in both the Courts from the Collector.

Rule made absolute.

J. G. R.