## APPELLATE CIVIL.

*Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.*

1939 *February* 10

TARABAI ALIAS VENUBAI WIFE OF SHRINIWAS NAIK GUTTAL AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS *v.* MURTACHARYA, SON AND HEIR OF THE DECEASED ANANTACHARYA BHEEMACHARYA BANKAPUR (ORIGINAL PLAINTIFF), RESPONDENT.*

*Bombay Hereditary Offices Act (Bom. Act III of 1874), s. 4—Watan Amending Act (Bom. Act V of 1886), s. 2—Alienation of watan property—Alienee not acquiring watan office—Alienee's family not a watandar family—Succession to property governed by ordinary Hindu law—Daughters entitled to inherit—"Watandar", meaning of.*

The lands in suit formed part of the Desai and Deshpande watans of Kallapur. Some time prior to 1818 the lands were granted by the original watandars to an ancestor of the plaintiff and defendants, who acquired the watan lands without acquiring office. The father of the plaintiff and the father of the defendants separated some time before 1927. On the latter's death, the defendants as his daughters succeeded to the property. In 1935, the plaintiff sued for a declaration that he was the preferential heir to the lands under the provisions of s. 2 of Bombay Act V of 1886.

*Held*, dismissing the suit, that the family of the plaintiff and the defendants could not be considered as a watandar family for the purposes of Bombay Act V of 1886, merely because they happened to hold part of the watan property of the Desais and Deshpandes of Kallapur and the succession to the property was governed by ordinary Hindu law and, therefore, plaintiff could not succeed as a preferential heir.

*Bodhrao Gopalrao* v. *Shriniwas Atmaram*,[1] *Anna* v. *Gojra*,[2] *Fakirgowda* v. *Dyamawa*,[3] *Hanmant Ramchandra* v. *The Secretary of State for India*[4] and *Appaji Bapuji* v. *Keshav Shamrav* and *Keshav Shamrav* v. *Appaji Bapuji*,[5] distinguished.

*Per Beaumont C. J.* "Watandar" within the definition of that term under s. 4 of the Bombay Hereditary Offices Act, 1874, means a person having a hereditary interest in a watan, i.e., the hereditary office and the property attached thereto and includes so far as watan property is concerned a person holding watan property acquired in the manner set out in the definition. But a person who merely acquires watan property without acquiring the office is not a watandar and to such a person and his family the special law of inheritance enacted by the Watan Amending Act of 1886, has no application.

* Second Appeal No. 492 of 1936.

[1] (1925) 50 Bom. 128.
[2] (1928) 30 Bom. L. R. 867.
[3] (1932) 57 Bom. 488.
[4] (1929) 54 Bom. 125.
[5] (1890) 15 Bom. 13.

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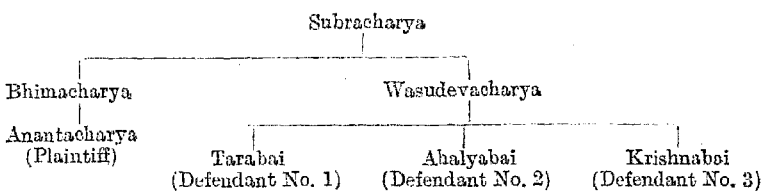
SECOND APPEAL against the decision of D. G. Kamerkar, Assistant Judge at Dharwar, reversing the decree passed by V. A. Samsi, Subordinate Judge at Haveri.

Suit for declaration.

The property in suit were three lands which formed part of the Desai and Deshpande watans of Kallapur. Some time prior to 1818 the lands were granted by the original watandars the Desais and Deshpandes to an ancestor of the plaintiff and the defendants. The lands continued to be shown as part of the Deshpande watans of Kallapur. In 1863 the services connected with the office were commuted by the Gordon Settlement.

In the year 1927 the holder of the property was one Wasudevacharya, who died in that year leaving the three defendants as his daughters.

On August 8, 1933, the plaintiff filed a suit for a declaration that he was a preferential heir to the suit lands. The plaintiff gave the following genealogy :—




It was alleged by the plaintiff that the suit lands fell to the share of Wasudevacharya at a partition between him and his brother Bhimacharya, father of the plaintiff ; that the lands were *pargana watan* lands and were subject to the Gordon Settlement, and therefore the plaintiff was a preferential heir to the lands as the defendants being daughters of the last holder could not succeed as heirs under s. 2 of the Watan Amending Act V of 1886.

The defendants contended *inter alia* that the suit lands were treated as private property of the family ; that the

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family of the plaintiff and defendants was not a *pargane-watandar* family; that the Government never gave the lands to them; that they were not acquired by the family by any legal right.

The Subordinate Judge found that the suit lands were watan properties but the family of the plaintiff and defendants was not a watandar family and therefore the property did not continue the character of watan in their hands. He, therefore, held that succession to the property was governed by ordinary Hindu law, and accordingly dismissed the suit.

On appeal, the Assistant Judge held that the lands were watan property and the plaintiff and defendants were members of a "Watandar family"; that therefore under s. 2 of Bombay Act V of 1886, the defendants were excluded from inheriting and the plaintiff was entitled to succeed as a preferential heir. The decree was reversed and the suit decreed.

Defendants Nos. 1 and 2 appealed to the High Court.

*G. P. Murdeshwar* and *V. S. Hattiangadi*, for appellants.

*H. B. Gumaste*, for the respondent.

BEAUMONT C. J. This is a second appeal from a judgment of the Assistant Judge of Dharwar. The plaintiff sued for a declaration that he was the preferential heir to the suit property under the provisions of the Bombay Act V of 1886, which is an Act amending the Bombay Watan Act III of 1874. The trial Judge dismissed the plaintiff's suit, but in appeal the learned Assistant Judge passed a decree in favour of the plaintiff.

In the year 1927 the holder of the property was one Wasudevacharya, who died in that year, leaving the three defendants, as his daughters, and the plaintiff, as the son of a deceased divided brother. There is no question that under Hindu law the daughters would succeed as heirs.

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But s. 2 of Act V of 1886 provides that every female member of a watan family other than the widow, mother or paternal grandmother of the last male owner, and every person claiming through a female, shall be postponed in the order of succession to any watan, or part thereof, or interest therein, devolving by inheritance after the date of the Act, to every male member of the family qualified to inherit such watan. The plaintiff claims under that Act to be heir to Wasudevacharya in preference to his daughters.

The material facts, which are not in dispute, and which in any case bind us in second appeal, are these. The suit property was undoubtedly originally watan property, that is to say it was given for services, as to part of it to a Desai and as to the other part to a Deshpande. But before 1818, when the British Government acquired authority in the locality of the watan property, this property had been alienated by the Desais and the Deshpandes to the ancestors of Wasudevacharya, and it is not disputed that before 1829, when the Regulations of 1827 came into operation, it was lawful to alienate watan property apart from the office. The alienees, however, of the Desais and Deshpandes never acquired the hereditary office to which these lands were attached; they acquired the watan lands without acquiring the office. In 1863 the services connected with this office were commuted by the Gordon Settlement. It is admitted that if Wasudevacharya was a watandar, then the plaintiff and the defendants are members of a watan family, an expression which is not defined in the Act V of 1886 or in the principal Act of 1874, and I think that the real question which arises is whether a person in the position of Wasudevacharya who acquires watan lands without acquiring the office and without being under any obligation to perform the services attached to the office is a watandar within the meaning of the Watan Act of 1874. That Act provides that the watan property, if any, and the hereditary office and the rights and privileges attached to them together

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constitute the watan; and "watan property" is defined as meaning the moveable or immoveable property held, acquired or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office. Then we come to the definition of "Watandar", and the Act provides that "Watandar" means a person having an hereditary interest in a watan, and as I have said the watan includes both the hereditary office and the watan property if any. Then the definition of "Watandar" continues in these terms:

> "It includes a person holding watan property acquired by him before the introduction of the British Government into the locality of the watan, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance."

It is argued for the plaintiff that, inasmuch as his ancestor acquired the watan property before the introduction of the British Government into the locality, he falls within the definition of a "Watandar", and accordingly he and the plaintiff are members of a watan family, as that expression is used in the Act of 1886. But, in my opinion, the plaintiff's argument is unsound. The primary definition of a watandar is that he is a person having an hereditary interest in a watan that is the office and the property if any. The subsequent words which I have read are merely explanatory of the primary definition, and do not curtail it. In my opinion the definition amounts to this, that watandar means a person having a hereditary interest in a watan, i.e., the hereditary office and the property attached thereto, and includes so far as watan property is concerned a person holding watan property acquired in the manner set out in the definition. But, in my opinion, a person who merely acquires watan property without acquiring the office is not a watandar, and to such a person and his family the special law of inheritance enacted by the Watan Amending Act of 1886 has no application. It is indeed difficult to see why the special rule of inheritance should be introduced in respect of

property which is not connected with the holding of an office or performance of any service, although it may still retain its character of watan property. In my judgment, therefore, the trial Court was right in dismissing the plaintiff's suit and the lower appellate Court was wrong. We have been referred to a good many cases, but none of them, in my judgment, covers the point we have to decide.

In my view it is not necessary for us to consider the further question on which the lower Courts differed as to whether the plaintiff's claim was barred by limitation. The trial Court considered that it was, and the lower Appellate Court considered that it was not. I express no opinion on that question.

The appeal will be allowed, the decree of the lower appellate Court set aside and the plaintiff's suit dismissed with costs throughout.

N. J. WADIA J. The suit relates to three lands, survey No. 87, pôt hissa Nos. 1 and 3, survey No. 41 and survey No. 32, which admittedly formed part of the Desai and Deshpande watans of Kallapur. Some time prior to 1818 the three lands were granted by the original watandars, the Desais and the Deshpandes, to some ancestor of the plaintiff and the defendants. The lands continue to be shown as part of the Desai and Deshpande watans of Kallapur. Bhimacharya, the father of the plaintiff, and Wasudevacharya the father of the defendants had separated sometime before Wasudevacharya's death in 1927. On the latter's death, the three defendants, as his daughters, succeeded to the property, and the plaintiff brought the suit for a declaration that he was the preferential heir to the lands under the provisions of s. 2 of Bombay Act V of 1886 by which every female member of a watan family, other than the widow, mother or paternal grandmother of the last male owner, and every person claiming through a female, is to be postponed in the order of

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succession to a watan, or part thereof, or interest therein devolving by succession after the date of the Act, to every male member of the family qualified to inherit such watan. No evidence has been led by the plaintiff to show that Wasudevacharya or any ancestor of the plaintiff was ever entered in the Watan Register as a member of the watan family of the Desais and Deshpandes of Kallapur, and it has been conceded before us that the plaintiff and the defendants have never been entered in the Watan Register as watandars of the Desai and Deshpande watans. The only ground on which the plaintiff claims that his family and that of the defendants is governed by the provisions of Act V of 1886 is, that the family holds some property which is admittedly part of the pargane-watan property of the Desai and Deshpande watans. The question in the appeal therefore is, whether the family of the plaintiff and the defendants can be considered a watandar family for the purposes of the Act of 1886.

" Watandar " is defined in s. 4 of the Bombay Hereditary Offices Act, 1874, as meaning a person having an hereditary interest in a watan, and the section explains that the watan property if any and the hereditary office and the rights and privileges attached to them together constitute the watan. Read along with this explanation " Watandar " must mean a person having an hereditary interest in the watan property if any and the hereditary office and the rights and privileges attached to them, and it is clear that so far as the hereditary offices in this case are concerned, namely the offices of Desai and Deshpande, the family of the plaintiff and the defendants has no hereditary interest. The definition of a watandar given in the Act says further that " watandar " includes a person holding watan property acquired by him before the introduction of the British Government into the locality of the watan, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance,

It seems to me that the word "person" must be taken to mean such person, that is a person having an hereditary interest in the watan property and in the hereditary office. It cannot mean that any alienee of watan lands whose alienation took place before the introduction of the British Government into the locality but who has no share whatever in the hereditary office could be treated as a watandar for the purposes of the Act. Watandar family, therefore, in s. 2 of the Act of 1886 must be taken to mean the family of a person who has an hereditary interest in the property of a watan and in the hereditary office and the rights and privileges attached to that office. It is clear, therefore, that the family of the plaintiff and the defendants cannot, merely because they happen to hold part of the watan property of the Desais and Deshpandes of Kallapur, claim the benefit of the special rule of succession which is laid down in the Act of 1886. The object of that provision was to keep the property of a watan family liable to render service to Government as far as possible in the hands of males who would be in a better position to render service. There would be no object in applying the rule of succession laid down in that Act, which is a deviation from the ordinary Hindu law of succession, to persons who had no interest in the hereditary office for safeguarding the duties of which the Act was intended.

No case has been cited to us in which it has been held that the definition of "watandar" given in s. 4 of the Act of 1874 would include a person who happens to hold watan property by alienation or gift but who has no interest in the hereditary office. Mr. Gumaste for the respondent has referred to several cases which he contends support his case. But all of them are, in my opinion, distinguishable. *Bodhrao Gopalrao* v. *Shriniwas Atmaram*[1] was a case of lands held by certain

[1] (1925) 50 Bom. 128.

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persons as Mutaliks or deputies of the Deshpandes. In such a case clearly the Mutaliks or deputies would be interested not merely in the watan property which they held but also in the hereditary office for the performance of which they were appointed as deputies. In *Anna* v. *Gojra*[1] the question was one of succession to watan property which had been held by one Rakhma who had succeeded to it as the mother of the last male holder. It had been contended that Rakhma's possession was adverse with regard to the plaintiffs who had claimed the estate as reversioners of Rakhma's son Hari. But it is clear that Rakhma was in that case holding the property as a member of the watan family and as representative watandar. There was therefore no question of the watan property having passed into possession of a stranger to the watan family who had no interest in the hereditary office. The case in *Fakirgowda* v. *Dyamawa*[2] is also clearly distinguishable. The question in that case was of succession to a woman who had inherited the watan property from her father prior to the passing of the Act of 1886. Here, again, although it was held that Sankawa who had inherited the property of her father had passed by marriage into the family of her husband, it was clear that Sankawa had been a member of the original watan family and she inherited the watan property and the right of service from her father, and her heirs therefore were clearly members of a watan family for the purpose of the Act of 1886. In *Hanmant Ramchandra* v. *The Secretary of State for India*[3] the question was of succession to one Huchava who had succeeded to the watan on the death of her mother. There was no question that she was a member of the watan family and entitled to the hereditary office. In fact she was entered as the representative watandar of the eight annas share and the service rights. Clearly, therefore, her heirs, whoever they were, were members of a watan family for the purpose of

[1] (1928) 30 Bom. L. R. 867. [2] (1932) 57 Bom. 488.
[3] (1929) 54 Bom. 125.

Act V of 1886. None of these cases, therefore, can be regarded as in any way supporting the claim made by the respondent plaintiff.

In *Appaji Bapuji* v. *Keshav Shamrav*, and *Keshav Shamrav* v. *Appaji Bapuji*,[a] a question somewhat similar to the question arising in this appeal came before the Court. The plaintiffs, who were the heirs of one Rudro, brought the suit to recover certain lands which had been sold to the defendants in execution of a decree against Rudro. They contended that the lands in suit, namely the village of Amangi, were watan property in their hands. It was found that the lands had originally formed part of the Desgat watan of the Desais of Wantmuri and the family of the plaintiffs were the Mutalik Desais of the watan. A dispute had been going on between the Wantmuri Desais and the Mutaliks with regard to the village which the Desais had throughout regarded as still part of their Desgat watan. Part of the village lands, namely the Chahurat lands, had been entered as watan in the name of the Mutalik Desais and the rest had been entered as Sarva Inam other than watan. It was held that the Mutalik Desais could be treated as independent watandars only in respect of the Chahurat lands, but that they could not be regarded as watandars with regard to the rest of the village. The whole village had formed part of the Wantmuri Desgat and had come into the possession of the Mutalik Desais from the Wantmuri Desais. The fact that it was nevertheless held that with regard to the portion of the village, other than the Chahurat lands, the Mutalik Desais were not watandars clearly goes against the respondent's contention that alienees or donees of watan lands prior to the introduction of the

[a] (1890) 15 Bom. 13.

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British Government into the locality of the watan could be regarded as watandars, and, therefore, as members of the watan family, even though they had no right to the hereditary office to which the watan is attached. I agree, therefore, that the family of the plaintiff and the defendants cannot be regarded as a watan family for the purposes of Act V of 1886, and that the appeal must be allowed and the suit dismissed.

*Appeal allowed.*

J. G. R.

## APPELLATE CIVIL.

### FULL BENCH.

*Before Sir John Beaumont, Chief Justice, Mr. Justice N. J. Wadia and Mr. Justice Lokur.*

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MARTAND JIWAJEE PATIL AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* NARAYAN KRISHNA GUMAST-PATIL AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

*Hindu law—Adoption—Adoption of a married man—Adopted person leaving a son in natural family—Adopted person retains his right to give the son in adoption.*

Under Hindu law, a married man who has gone in adoption to another family retains his right of giving away in adoption his son in his natural family born before his adoption.

*Kalgavda Tavanappa* v. *Somappa Tamangavda*,[1] *Manikbai* v. *Gokuldas*,[2] *Bai Kesharba* v. *Shivsangji*[3] and *Raghuraj Chandra* v. *Subhadra Kunwar*,[4] referred to.

APPEAL against the decision of D. R. Pradhan, Assistant Judge at Dharwar.

Suit to recover possession.

* First Appeal No. 98 of 1937.

(1) (1909) 33 Bom. 669.
(2) (1924) 49 Bom. 520.
(3) (1932) 56 Bom. 619.
(4) (1928) L. R. 55 I. A. 139 at p. 148, s. c. 30 Bom.L.R. 829.