APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.
April 8.

BALKU SIDU KUMBHAR AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* VYANKATESH VAMAN DESHPANDE (ORIGINAL PLAINTIFF), RESPONDENT *.

Vatan—Alienation of Inami and Mirasi rights—No evidence to show that mirasi rights were acquired independently of Inami rights—Resumption of Vatan lands—Alienation of mirasi rights not saved—Alienation of Vatan lands whether effected by the Court or by Vatandar—Alienation inoperative beyond the lifetime of Vatandar.

Where there is no evidence to show that the mirasi rights were independently acquired by the original Vatandar, and the lands are treated as Vatan lands, the alienation of mirasi rights cannot be saved when the lands are sought to be resumed on the ground that the alienation of Inami rights have ceased to be operative after the lifetime of the original Vatandar.

An alienation of Vatan lands whether effected by the Court or by the Vatandar himself is inoperative beyond the lifetime of the Vatandar.

Appaji Bapuji v. *Keshav Shamrav* [1], relied on.

SECOND Appeal against the decision of N. S. Lokur, Assistant Judge of Satara, reversing the decree passed by P. Shriniwas Rao, Subordinate Judge at Karad.

Suits to recover possession.

These were several suits filed by the plaintiff to recover possession of the plaint lands alleging that they were the Deshpande Vatan Inam of plaintiff's family, that the original Vatandars alienated the lands either by private sales or through Court between the years 1863 to 1874; that original Vatandars died in 1905 and the plaintiff as their heir was entitled to resume the lands under section 5 of Vatan Act (Bombay Act VII of 1874). The suit was brought in 1917.

* Second Appeal No. 48 of 1920 (with Second Appeals Nos. 927, 928, 940, 941, 950 of 1919, and Nos. 108, 129, 319 to 322 of 1920.)

[1] (1890) 15 Bom. 13.

The defendants contended *inter alia* that the plaint lands were not Vatan properties; that they were *Isafat* lands; that the alienations of mirasi rights of the plaintiff in the lands could not be affected by the provisions of the Vatan Act.

The Subordinate Judge held that the properties were not Vatan, nor their alienation void and dismissed the suit.

On appeal, the Assistant Judge held that the lands in certain suits were Deshpande Vatan lands and in rtain other suits were Isafati lands, but the nature of the Isafati lands was the same as that of Deshpande lands and they were so made inalienable under Regulation XVI of 1827 and were subject to Gordon Settlement; that alienations of Inami as well Mirasi rights were void under the Vatan Act. He, therefore, awarded the plaintiff's claim in all the suits.

The defendants appealed to the High Court.

Munshi with *H. B. Mandavle* and *M. H. Metha*, for the appellants.

Coyaji with *K. N. Koyajee*, for the respondent.

SHAH, J. :—These appeals (Second Appeals Nos. 927, 928, 940, 941, 950 of 1919 and 48, 108, 129, 319, 320, 321 and 322 of 1920) relate to the alienations either of the Inam or Mirasi rights of the Vatandar. The plaintiff is the successor of the original Vatandars whose right ittle and interest were either sold at Court sales or by private transfers. The plaintiff claims to recover possession of these lands on the ground that these are Vatan lands and that the alienations have ceased to be operative after the lifetime of the original Vatandars.

The lands in question have been found to be Vatan lands. It is clear that the alienations made after Regulation XVI of 1827 came to be applied to the District of Satara would not be operative beyond the

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lifetime of the Vatandar. All these alienations except one were effected during the years 1863—74, i.e., after the Regulation XVI of 1827 was made applicable to this district and before the Bombay Hereditary Offices Act (III of 1874) came into force. It is also found by the lower appellate Court, and there is no reason to doubt the correctness of the finding, that the settlement of this Vatan was made on the lines of the Gordon Settlement; and the provisions of the settlement point to the same conclusion though not in terms. It is clear from the decision in *Appaji Bapuji* v. *Keshav Shamrav* [1] that the alienations of such lands, whether effected by the Court or by the Vatandar himself are inoperative beyond the lifetime of the Vatandar. It is not seriously disputed that so far as the Inam rights in the lands are concerned, the alienations have ceased to be operative. But the only ground upon which some of the appeals, in which the alienations of the Mirasi rights are involved, are sought to be saved is that though the alienations of the Inam rights in the Vatan lands may be inoperative there is no reason to extend the restriction on the power of alienation to the Mirasi or occupancy rights unless it be shown that such rights formed part of the grant.

Assuming without deciding that such a distinction is permissible in the case of Vatan lands, there is no evidence in this case to show that the Mirasi rights were independently and separately acquired by the original Vatandar. The record, such as it is, shows that the lands were treated as Vatan lands. No Sanad is produced in the case. Beyond the fact that these lands are Vatan lands, we have no information as to the terms of the settlement with reference to these lands which could throw any light on the question as to whether the Mirasi rights were independently

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acquired originally by the Vatandar. In the absence of any such evidence it is clear to my mind that the distinction sought to be made in the appeals, in which the alienations of the Mirasi rights are involved, cannot be maintained. No case has been cited to us in the course of the argument in which the ordinary presumption which applies to the Inams and Jagirs has been extended to the Vatan lands; and the accuracy of the observations in *Amrit Vaman* v. *Hari Govind*[1] bearing on the point with reference to the Vatan lands has not been challenged on behalf of any of the appellants in these appeals. I am, therefore, of opinion that the lower appellate Court was right in holding that, whether the alienations were of the Inam rights or of the Mirasi rights, they were operative only during the lifetime of the Vatandars whose right, title and interest were alienated and that, therefore, after their deaths, the successor was entitled to the possession of the lands in question. I would, therefore, dismiss all the appeals preferred on behalf of the alienees with costs.

As regards Appeal No. 129 of 1920 preferred by the plaintiff, he has not been able to show that the alienation in question was made after the Regulation of 1827 came to be applied to the district. In the absence of any restrictive provisions against alienations applicable to the particular alienation it is clear that the alienation is binding upon the successor of the Vatandar; and it must be taken to be on the same footing as an alienation by the owner of his ordinary immoveable property. That appeal also must be dismissed with costs.

MACLEOD, C. J.—I agree.

Decrees confirmed.

J. G. R.

[1] 1919) 44 Bom. 237.