

APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice F.D. Melvill.

KALU NARAYAN KULKARNI (Original Plaintiff), Appellant v.
HANMAPA BIN BHIMAPA (Original Defendant), Respondent.*
[4th August, 1879.]

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5 B. 435.

Regulation XVI of 1827, s. 20—Alienation of vatan property—Bombay Act III of 1874.

A mortgage by a *vatandar* of *vatan* property, executed at a time when Reg. XVI of 1827 was still in force, was, in its inception, void against the heir of the said *vatandar*; nor did it become in any way validated against the heir by reason of the repeal of that Regulation by Act III (Bombay) of 1874.

[Apr., 24 B. 556; R., 5 B. 437; 18 B. 22 (32); 34 B. 175=12 Bom. L.R. 143=5 Ind. Cas. 866; 15 Bom. L.R. 266 (272)=19 Ind. Cas. 558.]

[436] THIS was a second appeal from the decision of C. F. H. Shaw, Judge of the District Court of Belgaum, affirming the decree of the Second Class Subordinate Judge of Saundatti.

The plaintiff, Kalu Kulkarni, sued to recover possession of a field, alleging that the property was a *vatan* attached to the office of *kulkarni* of his village, and that he was entitled to the possession of it, as he performed the duties of the *kulkarniship*. The plaintiff's father died on the 16th September, 1874, and he brought the present suit in 1877.

The defendant, Hanmapa, answered, *inter alia*, that the field had been mortgaged to him by the plaintiff's father for Rs. 900, under a deed dated the 12th July, 1871, and that, under it, he was to remain in possession of the mortgaged property for a period of twenty years.

Both the lower Courts found the mortgage proved, and rejected the plaintiff's claim, on the ground that he was not entitled to the possession of the property till the satisfaction of the mortgage-debt. They were of opinion that, Reg. XVI of 1827 having been repealed by Bombay Act III of 1874, it no longer now in any way affected the mortgage in question.

The plaintiff thereon appealed to the High Court.

Gokaldas Kahandas, for the appellant.—Both the lower Courts were wrong in holding that the alienation of the field was valid against the plaintiff. The alienation of *vatan* property by an incumbent of a hereditary office cannot endure beyond his lifetime in favour of the alienee. The mortgage became extinguished, by the death of the mortgagor, on the 16th September, 1874: *Krishnarav Ganesh v. Rangrav* (1). The defendant, therefore, has no right to the possession of the property.

The respondent did not appear.

JUDGMENT.

The following is the judgment of the Court delivered by

WESTORPP, C.J.—The mortgage relied upon by the defendant was executed in 1871, when Reg. XVI of 1827 was yet in force; consequently that mortgage was, in its inception, void as against the heir of the then *vatandar* (the mortgagor). The subsequent [437] repeal of Reg. XVI of 1827 cannot validate the mortgage against the heir. It

* Second Appeal No. 171 of 1879.

(1) 4 B.H.C.R. A.C.J. 12, (13).

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may be that the heir is, in respect of property of his father other than that annexed to the *kulkarniship*, liable to pay his father's debts; but the Regulation exonerated the *vatan* appendant to the *kulkarniship* from the mortgage, or other alienation, by the father for any period beyond his own life (1). We, therefore, must reverse the decree of the District Judge, and direct that the plaintiff do recover the land mentioned in the plaint from the defendant. We refuse to give mesne profits, but the defendant must pay to the plaintiff his cost of the suit and both appeals.

5 B. 437.

APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
Mr. Justice F. D. Melvill.*

RAVLOJIRAV BIN TAMAJIRAV (*Original Defendant*), *Appellant v.*
BALVANTRAV VENKATESH (*Original Plaintiff*), *Respondent.**
[25th August, 1880.]

*Reg. XVI of 1827, s. 20—Alienation of vatan property by a hereditary vatandar—
Bombay Act III of 1874—Limitation—Adverse possession.*

A sale by a *vatandar* of *vatan* property, executed at a time when Reg. XVI. of 1827 was still in force, was, in its inception, void against the heir of the *vatandar*; nor did it become in any way the more valid against such heir by reason of the repeal of that Regulation by Act III (Bombay) of 1874.

Adverse possession only begins to run against the heir from the time when he is entitled to succeed to the possession of the *vatan* property, *i.e.*, from the date of the death of the *vatandar*.

[F., 10 B. 372; R., 9 B. 198; 14 B. 404 (407).]

THIS was an appeal from the decision of A. M. Cantem, First Class Subordinate Judge of Belgaum, in Original Suit No. 954 of 1877.

The plaintiff Balvantrav brought this suit to recover possession of a village and a house therein, alleging that the property had been sold to his father Venkatesh by Tamajirav, father of the defendant, for Rs. 14,001, on the 29th November, 1840; that he had been in possession of it and paid the Government dues on it; that he had been dispossessed of it in execution of a decree to which he was no party.

[438] The facts of the case, which it is necessary to state here, are these: In 1871, the defendant Ravlojirav brought a suit (No. 899) in the Subordinate Court of Belgaum for possession of the estate of one Tamajirav, deceased, on the ground that he (Ravlojirav) was the adopted son of the said Tamajirav, who died on the 3rd September, 1869, and as such, entitled to the whole property of his adoptive father. Ravlojirav's claim was opposed by his two adoptive mothers and by the widow of a son of Tamajirav, who had predeceased his father. The said three widows, together with one Jotiajirav (a minor), who was joined with them on the application of the widow of Tamajirav's predeceased son—she alleging her adoption of the said Jotiajirav—were made defendants to the suit. Jotiajirav denied the adoption of Ravlojirav by Tamajirav, and set up his own adoption by the widow of Tamajirav's predeceased son with the permission of Tamajirav. The plaintiff Balvantrav was no party to that

* Appeal No. 19 of 1880.

(1) See the remarks on Reg. XVI of 1827 in 4 B.H.C.R.AC.J. 12 and 13.