

1879
AUG. 4.
—
APPEL-
LATE
CIVIL.
—
5 B. 435.

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.

suit. The Subordinate Judge, on the 20th July, 1875, decided in favour of Ravlojirav's claim, holding that he was the adopted son of Tamajirav, and entitled to the whole estate of his adoptive father. He held the adoption of Jotajirav by the widow of Tamajirav's predeceased son disproved. That decision was upheld by the High Court on appeal (No. 56 of 1876), on the 10th January, 1878. In the meantime, the defendant Ravlojirav executed the decree of the Subordinate Judge, dated the 20th July, 1875, and obtained possession of the property awarded to him under it, including the village and house in dispute. The plaintiff Balvantrav was, consequently, dispossessed, on the 11th September, 1877. He, therefore, brought the present suit for possession of the property.

1880
AUG. 25.
—
APPEL.
LATE
CIVIL.
—
5 B. 437.

The defendant Ravlojirav denied the sale of the village and house by Tamajirav, and contended that it was not competent to him (Tamajirav) to sell the property, as it was a portion of the ancestral family *vatan*; that the sale was invalid under Regulation XVI of 1827, s. 20.

The Subordinate Judge, on the 29th September, 1879, allowed the plaintiff's claim, holding that the sale was proved, and that it was not open to the Civil Courts to inquire into the validity of an alienation of *vatan* property, as Regulation XVI of 1827 was repealed by Bombay Act III of 1874.

[439] The defendant Ravlojirav thereupon appealed to the High Court on the 22nd January, 1880.

Inverarity (with him *Manekshah Jehangirshah*), for the appellant.—The property in dispute being part of a *vatan*, its alienation by the defendant's father is not binding on him after the death of his father. The alienation being made while Regulation XVI of 1827 was in force, is invalid against the defendant, as held in *Kalu Narayan v. Hanmapa* (1). Such alienation was valid only during the lifetime of the alienor, under the interpretations of the late Sadar Adalat on Regulation XVI, s. 20, as observed by the High Court in *Krishnarav Ganesh v. Rangrav* (2).

Branson (with him *Gokaldas Kahandas*), for the respondent.—Regulation XVI of 1827, s. 20, which rendered the alienation invalid after the death of the alienor, was repealed by Bombay Act III of 1874. The validity of the transaction, therefore, remained unaffected after the repeal of that enactment. Moreover, the property had been in the adverse possession of the plaintiff for more than twelve years before he was dispossessed in execution of a decree to which he was no party.

JUDGMENT.

The following is the judgment of the Court delivered by WESTROPP, C. J.—The Subordinate Judge should have considered what was the law as to alienation of their *vatan*s by hereditary officers at the time of the alienation by Tamajirav, *viz.*, the 29th November, 1840, and not what it may be now. In 1840, Regulation XVI of 1827 was in full force, and invalidated, as against the heirs of the alienor, any alienation of *vatan* property: *Kalu Narayan v. Hanmapa*. See also the interpretations of Regulation XVI of 1827 made by the Sadar Adalat on the 23rd February, 1831, and the 5th December, 1834, which show that such an alienation was effective during the lifetime of the alienor only, and the observations in 4 Bom. H. C. R. 12 and 13, *et seq.*, and Ind. L. R., 1 Bom. 536, 537. The alienor in the present case, Tamajirav, died in A.D. 1869, as was established in Regular Appeal 56 of 1876, decided here on the 10th January 1878, when the adoption of the present defendant and

(1) 5 B. 435.

(2) 4 B.H.C.R. A.C.J. 1 (12, 13, 14).

1880
AUG. 25.
—
APPEL-
LATE
CIVIL.
—
5 B. 437.

[440]appellant Ravlojirav, *alias* Dinkarrav, was upheld. The present plaintiff Balvantrav was dispossessed on the 11th September, 1877: so he cannot have had twelve years' adverse possession of the village as against the appellant, whose title accrued in 1869 on the death of his adoptive father Tamajirav. It is unnecessary for us to say anything as to the state of the law at present with respect to alienation of *vatan* property, or of property which has been *vatani* in its nature. It is not denied that in 1840, when the alienation here took place, the village of Umbrani was a *deshgati vatan*. Tamajirav could only alienate it for his life. The alienation was, in its inception, void as against his heirs. We must, therefore, reverse the decree of the First Class Subordinate Judge, and make a decree for the defendant, with costs of suit and appeal. The plaintiff must refund to the defendant any mesne profits realized from the village (after allowing all proper expenses) since the plaintiff was put into possession of the village under the decree of the First Class Subordinate Judge, and the defendant (appellant) must be reinstated in possession.

5 B. 440.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Nanabhai Haridas.

BHIKHA (*Original Plaintiff*), *Appellant v.* SAKARLAL (*Original Defendant*), *Respondent*.* [22nd March, 1881.]

The Code of Civil Procedure, Act VIII of 1859, ss. 268 and 269—Order—Limitation.

A purchaser of immoveable property at a Court sale, having been obstructed by the defendant, made an application to the Court, under s. 268 of Act VIII of 1859, for the removal of the obstruction, but subsequently withdrew his application. The Court thereupon made an endorsement upon the application to the effect that, as the applicant did not wish to proceed further, no investigation was made.

Held that no such order had been made as was contemplated by s. 269 of Act VIII of 1859, that section contemplating, at least, an order against one party or the other, and that, therefore, the provisions contained in the same section as to the time within which a suit must be brought, did not apply to the case of the plaintiff.

[R., 22 B. 875 (883).]

THIS was a second appeal against the decision of E. Cordeaux, Judge of Khandesh, confirming the decree of R. S. Bodas, Subordinate Judge of Shirpur.

[441] The facts sufficiently appear in the judgment of the Court.

Yashvant Vasudev Athlye, for the appellant, the original plaintiff.

Shivram V. Bhandarkar, for the respondent, the original defendant.

JUDGMENT.

The judgment was delivered by

MELVILL, J.—The plaintiff is a purchaser of immoveable property at a Court sale. Having been obstructed by the defendant, he made an application to the Court in 1873, under s. 268 of Act VIII of 1859; but, subsequently, he presented a petition, saying that he did not wish to proceed with the application. The Court thereupon made an endorsement on the application, to the effect that, as the applicant did not wish to proceed further,

* Second Appeal No. 410 of 1880.