

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

PURSHOTTAM TALVAR (ORIGINAL PLAINTIFF), APPELLANT, v.

MUDKANGAVDA SHIDANGAVDA (ORIGINAL DEFENDANT), RESPONDENT.*

1883
July 13.

Hereditary offices—Talvar or shetsanadi vatan—Lease—Alienation of talvar lands—Regulation XVI of 1827, Secs. 19 and 20; Act XI of 1843, Secs. 15; Bombay Act III of 1874, Secs. 9, 23 and 64.

In 1866 the defendant took a lease of lands pertaining to a *talvar* or *shetsanadi vatan* (the holders of which, under Regulation XVI of 1827, sections 19 and 20, and Act XI of 1843, section 15, are hereditary district or village officers) from the last owner, who, as sole occupant of the *talvar* office, was entitled exclusively to the emoluments attached to it. When the Vatan Act (Bombay Act III of 1874) came into operation, no order as regards remuneration was made, but the plaintiff, subject to objection, was appointed to officiate. The plaintiff thereupon sued to eject the defendant.

Held that the lease to the defendant as a partial alienation was invalid under Regulation XVI of 1827, section 20; that the invalidity thereof was not removed by the Collector not being called upon to declare it to be null and void under section 9, clause 1 of Bombay Act III of 1874; and that the plaintiff, as life owner, was entitled to possession.

THIS was a second appeal from the decision of A. C. Watt, Judge of Dharwar, reversing the decree of Rav Bahadur Babaji Lakshman, First Class Subordinate Judge of Dharwar.

The plaintiff on the 29th of November, 1880, sued the defendant to eject him from certain lands pertaining to a *talvar* or *shetsanadi vatan*. He alleged that he had been appointed to officiate, and was exclusively entitled to the profits of the said lands by virtue of this appointment, and as alienee of Nagawa, widow of Ningya, the son of Lenkya, the last holder. The defendant answered that Lenkya, who died on the 24th of November, 1877, had on the 12th of September, 1866, leased the lands in question to him for an annual rental of Rs. 24; that, on the death of Lenkya, his widow Malawa succeeded to his estate, and not his son's widow, the son having predeceased Lenkya, and the widow having remarried before the alienation; and that, consequently, the plaintiff had no right to oust the defendant.

* Second Appeal, No. 300 of 1882.

The Subordinate Judge on the authority of *Bhimappa v. Mariappa*(1) and *Kuria v. Gururav*(2) held that the lease to the defendant was void, and that the Collector could assign the whole proceeds of the *vatan* to the officiator, who was entitled to retain such proceeds as his remuneration—*Bai Suraj v. The Government of Bombay* (3); and finding that the plaintiff was the rightful holder of the *vatan* to which the lands were inseparably attached, decreed in favour of the plaintiff—*Tammiraju Ramazogi v. Pantina Narsiah*(4). The District Judge reversed his decree. He said: “The issue for decision in this case is whether plaintiff has proved his right to recover possession of the lands, and I certainly find he has not. The lands pertain to a *talvar* or *shetsanadi vatan*, and it is admitted on both sides that the last owner of them was one Lenkya, who is stated in the plaint to have died in November, 1877. Lenkya’s widow is called Malawa, his son is called Ningya, and Ningya’s widow is Nagawa.

In her examination Nagawa says that Lenkya died seven or eight days after her husband; that is, the son Ningya predeceased his father Lenkya. Under Hindu law, therefore, Lenkya was full owner as admitted, and after him his widow, and not his daughter-in-law, was heir. Plaintiff grounds his claim to the land on two facts: first, that Government have entered his name in the accounts as *talvar* and entered the land in his name; second, that Nagawa relinquished her rights in his favour. As regards the first ground, there is a copy of an order passed by Mr. Wiltshire, Second Assistant Collector, dated 26th September, 1878, in which that gentleman says: “If there be no other objection let the lands, in accordance with the consent of Nagawa, be entered in the name of Purshottam (plaintiff), who is a son of the relations, and take service from him.” Mr. Wiltshire probably did not know that Nagawa’s consent to plaintiff’s right could, under Hindu law, have no effect at all, if such consent were given after her ‘*pat*’ marriage; she, by such marriage, cutting herself off from all right to her first husband’s property. If given before such marriage, the consent could not operate as a valid transfer or alienation, as Nagawa’s only interest in the land was

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(1) 3 Bom. H. C. Rep., 128; A. C. J.

(3) 8 Bom. H. C. Rep., 83, A. C. J.

(2) 9 Bom. H. C. Rep., 282.

(4) 6 Mad. H. C. Rep., 351.

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a possible lien on it for her maintenance. The heir of Lenkya was his widow Malawa, who is said to have gone away in the famine. How long she has been away does not very clearly appear, but from the evidence it is clearly less than seven years before the plaint, and under sections 107 and 108 of the Evidence Act she cannot be presumed to be dead. Plaintiff, therefore, does not appear to have any right to bring the suit at all. I cannot see either that Mr. Wiltshire's order gives him any title. The order was provisional on there being no objection, and there is nothing to show that defendant ever had any opportunity to make objection. And, apart from this, the entry of the land in plaintiff's name and the order to take service from him does not constitute him owner of the land, or confer any such title on him as to justify him ousting the man in possession, namely the defendant. If the Collector had, under the Hereditary Officers' Act, assigned this land for the remuneration of the officiating 'talvar,' and had he then appointed plaintiff to the office, the case might have been different. It is not even alleged that any such assignment was made. I, therefore, hold that plaintiff has proved no right or title."

The plaintiff, therefore, appealed to the High Court.

Manekshah Jehangirshah for the appellants.

Ghanusham Nilkanth Nadkarni for the respondent.

WEST, J.—The lands in this case, as the District Judge has found, "pertain to a *talvar* or *shetsanadi vatan*, and it is admitted on both sides that the last owner of them was one Lenkya" from whom Mudkangavda took a lease in 1866. Now, according to Regulation XVI of 1827, sections 19 and 20, as construed by Act XI of 1843, section 15, the *shetsanadis*, who from time to time held the *vatan* in question in succession, were hereditary district or village officers. The land being held, and entered in the Government account, at a fraction of the full assessment was, as to the residue of the interest in it, assigned as remuneration for the duties to be performed by the functionary. Lenkya became the sole occupant of the office, and from that moment the emoluments annexed to it became inalienable under the provision of section 20 of the regulation. By his lease, therefore, which

is a partial alienation, Mudkangavda acquired no title at all. It would be directly opposed to the regulation.

When Bombay Act III of 1874 came into operation the land in question was already assigned, and, according to section 23 of the Act, the assignment is to be "taken to have been made under this section." Now, *vatan* property assigned to the officiating officer, he being of the lower class, is subject to the provisions of section 64 of the Act, but it does not appear that, in the present instance, any new order as to remuneration, or any exonerating the land from its complete subjection to the service, had been made. The *vatan* stood at the institution of the suit as it had stood when the *Vatandars'* Act came into operation. It was competent to the Collector, or his deputed assistant, under section 9, clause 1, of the Act, to declare as to the alienation made by the deceased Lenkya—supposing that alienation, by its terms, gave an interest extending beyond Lenkya's life—that the alienation was void. The Collector has not, apparently, acted on that section, or been called on to do so, but the nullity of the lease under the regulation is not removed by that. What was void in its inception is not made valid by the lapse of time, except when that particular consequence is enacted by the Legislature. Purshottam has been appointed to the office. To him the *vatan* consequently belongs, and the occupant under an entirely void title may be ejected by him who, as life owner, is entitled to possession.

For these reasons we must reverse the decree of the District Court, and restore that of the Subordinate Judge, with costs throughout on the respondent Mudkangavda.

Decree reversed.

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