

18 B. 516.

## [516] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

GOVIND SITARAM AND OTHERS (Original Defendants Nos. 4, 5 and 6)  
Appellants v. BAPUJI MAHADEO AND ANOTHER (Original Plaintiffs),  
Respondents.\* [28th April, 1893.]

1893  
APRIL 28.  
APPEL-  
LATE  
CIVIL  
18 B. 516.

*Kulkarni vatan*—Suit for partition and declaration to a specific share in the vatan and to officiate—Power of Civil Courts to make the declaration—Vatandars Act (Bombay Act III of 1874), s. 67†—Money grant—Vatan consisting exclusively of cash allowance—Collector's certificate—Pensions Act (XXIII of 1871), s. 4.

In a suit for partition of a kulkarni vatan, for a declaration that the plaintiffs were entitled to officiate as kulkarnis and for a third share in the moiety of the vatan belonging to the parties, it was contended that under the Vatandars Act (Bombay Act III of 1874) the suit was not maintainable in the Civil Court.

Held, that the Vatandars Act does not preclude the Civil Court from declaring the plaintiffs' right to the status of vatandars when the share defined is in respect of a share in the vatan belonging to the branch of the parties, and the declaration does not interfere with the rights of the Collector in any way as given by the Act. In preparing the register the Collector's duty as determined by s. 67 of the Act is confined to specifying the names of the heads of families and the proportionate part possessed by each head, and is in no way concerned with the rights of the members of a particular branch *inter se*.

[517] A suit for a declaration that the plaintiffs are vatandars of a share of a moiety of a kulkarni vatan consisting exclusively of a cash allowance from Government, is not a suit relating to a "money grant" within the contemplation of s. 4 of the Pensions Act (XXIII of 1871).

[R., 20 B. 203 (206) ; 29 B. 480 (504) = 7 Bom. L. R. 497 ; 11 Bom. L. R. 1339 (1343) (N) ; Expl., 36 B. 420 = 14 Bom. L. R. 395 = 15 Ind. Cas. 840 ; D., 25 B. 186 (188) ; 37 B. 91 = 14 Bom. L. R. 938 = 17 Ind. Cas. 661.]

SECOND APPEAL from the decision of L. G. Fernandez, First Class Subordinate Judge with Appellate powers at Nasik.

This action was instituted by plaintiffs Bapuji Mahadeo Thombare and Vinayak Mahadeo Thombare for a partition of their one-third share in the properties in suit, and for a declaration that they had a right to a third share in the moiety of the kulkarni vatan belonging to the parties and to officiate as kulkarni in alternate turns with the defendants whenever the turn of the *taksim* (share) of their family may come.

\* Second Appeal, No. 206 of 1892.

† Vatandars Act (Bombay Act III of 1874), s. 67 :—

67. In the register of lands and allowances in consideration whereof liability to serve still exists, the Collector shall specify—

- (a) the area of the lands, the names of the occupants, the survey number and assessment, the quit rent, if any, leviable, and the net revenue alienated by Government, the amount and nature of the cash or other allowances, the source from which they are payable, and the land and allowances assigned for the remuneration of officers ;
- (b) the names of the heads of families and of the representative vatandars ;
- (c) whether the service is performed by one representative vatandar or otherwise ; if, by several in successive periods, the order in which they are to succeed each other ;
- (d) the proportional share of the vatan possessed by each head of family which may be expressed in annas or fractions of a rupee ;
- (e) the number of officers required to perform the duties ;
- (f) the nature of the settlement of inferior village-vatans referred to in Part X of this Act ;
- (g) such other particulars as Government may (from time to time) order to be recorded.

1893  
 APRIL 28.  
 —  
 APPEL-  
 LATE  
 CIVIL.  
 —  
 18 B. 516.

Defendant No. 1. Ravji Vitthal admitted the claim.

Defendants Nos. 2, 4, 5 and 6 contended (*inter alia*) that under the Vatan Act (Bombay Act III of 1874) the plaintiff's claim with respect to the vatan was not maintainable in a Civil Court.

Defendant No. 3 did not appear.

The Subordinate Judge allowed the claim in so far as it related to the properties other than vatan, with respect to which he held that the Civil Court had no jurisdiction to entertain the suit under the Vatan Act.

On appeal by the plaintiff, the appellate Court varied the decree by declaring that the plaintiff had a third share in the moiety of the vatan in suit.

Defendants Nos. 4, 5 and 6 preferred a second appeal.

*Mahadeo Chimnaji Apte*, for the appellants (original defendants Nos. 4, 5 and 6).—Under the Vatan Act, a Civil Court has no jurisdiction to make a declaration that a particular individual has a specified share in a vatan or that he has a right to serve as a vatandar by turns—*Parsha v. Lagmya Shan* (1). Under the Vatan Act the share in the emoluments of a vatan is to be fixed by the Collector. A Civil Court can make a declaration that a particular individual is a vatandar, but it cannot fix his share in the emoluments of the vatan. We do not say that the plaintiffs are not vatandars. We admit that they are members of the vatandar [518] family. In this suit we only dispute their right to demand a specific share on the ground that a Civil Court has no jurisdiction to entertain such a suit. If Civil Courts were to determine the rights of the vatandars among themselves, then there would be nothing left for the Collectors to decide—*Khando Narayan v. Apaji Sadashiv* (2); *Chinto Abaji v. Lkshmbai* (3). We also contend that the suit is barred under the Pensions Act (XXIII of 1871), as the kulkarni vatan in dispute consists of cash allowance to be paid by Government to the kulkarni.

*Daji Abaji Khare*, for the respondents (original plaintiffs).—The defendants denied our right as a vatandar. A Civil Court has jurisdiction to make a declaration that a person is a vatandar co-sharer—*Ramchandra Dabholkar v. Anant Sat Shenvi* (4). If a Civil Court has jurisdiction to make such a declaration, then there is nothing either in the Vatan Act, or in the reported cases, to prevent a Civil Court from defining the share of a vatandar. Under s. 64 of the Vatan Act the Collector is authorized to do certain things with respect to vatandars; but s. 63 of the Act lays down that the provisions of s. 64 are applicable to hereditary village offices of lower degree than that of patel or kulkarni. Section 64 is, therefore, not applicable to the present case. The vatandars concerned in *Parsha v. Lagmya Shan* (1) were inferior vatandars.

The Pensions Act cannot bar the present suit, because we do not seek to recover our share in the cash allowance by virtue of the decree. When the allowance has reference to the officiator's remuneration, it is then that the Pensions Act applies, and not otherwise. We do not seek for a declaration to be an officiator, but only to recover our share in the allowance.

#### JUDGMENT.

SARGENT, C.J.—The District Court has declared the plaintiffs to be vatandars of one-third share in the moiety of the kulkarni vatan.

(1) 13 B. 88.

(2) 2 B. 370.

(3) 2 B. 375.

(4) 8 B. 25.

It has been argued by Mr. Apte, for the appellants, that the Vatan-dars Act precludes the Civil Court from making such a declaration.

[519] It has been long settled that the Civil Court has still the power to declare the plaintiffs' right to the status of vatan-dars—*Ramchandra Dabholkar v. Anant Sat Shenvi* (1). It was said, however, that the decree of the Court in this case does more than merely declare the plaintiff's status as vatan-dars, as it defines the amount of the share in the vatan. That is true, but the share so defined is in respect of the share in the vatan belonging to their own particular branch, and the declaration does not interfere with the rights of the Collector in any way as given him by the Act. In preparing the register, his duty as determined by s. 67 is confined to specifying the names of the heads of families and the proportionate part possessed by each head, and is in no way concerned with the rights of the members of a particular branch *inter se*. We are of opinion, therefore, that there is nothing in the Vatan-dars Act which takes away the power of the Civil Court to make such a declaration as the lower appeal Court has made in this case.

It was, however, said that as the vatan consisted exclusively of a cash allowance by Government, this was a suit relating to a "money grant" within the contemplation of s. 4 of the Pensions Act, XXIII of 1871, and one which the Civil Court cannot entertain. This objection, it is to be remarked, was unsuccessfully urged in *Ramachandra Dabholkar v. Anant Sat Shenvi* (1) under precisely similar circumstances. As the Vatan-dars Act itself precludes the suit being entertained except for the purpose of declaring the plaintiffs' status as vatan-dars, it cannot, we think, in its restricted form be regarded as a suit relating to a grant of money within the meaning of the above section. We must, therefore, confirm the decree with costs on appellants.

*Decree confirmed.*

18 B. 520.

[520] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice Bayley.*

SOIRU PADMANABH RANGAPPA (*Original Defendant No. 2*),  
Appellant v. NARAYANRAO BIN VITHALRAO AND ANOTHER (*Original Plaintiff and Defendant No. 1*), Respondent.\* [31st August, 1893.]

*Practice—Procedure—Appeal—Appeal between co-defendants—Hindu law—Joint family—Manager—Loan to Manager—Family purpose—Presumption—Evidence—Burden of proof.*

Where a Subordinate Judge dealt with a case at the hearing as raising not only a question between the plaintiff and defendants, but also as between the defendants,

*Held*, that one of the defendants could appeal against the decree as between himself and the other defendant.

*Gudadhar Banerjee v. Mussamat Mun Mohunee Dossa* (2) and *Atma Ram v. Balkishen* (3) distinguished.

There is no presumption that a loan contracted by the manager of a joint Hindu family has been contracted for a family purpose.

[*Appl.*, 7 Bom. L.R. 172 (173); *R.*, 21 B. 808 (815); 27 B. 157 = 4 Bom. E.R. 968 (970); 25 C. 565 (569); 31 C. 643 (644) = 8 C.W.N. 495; 28 M. 229 (235) = 15 M.L.J. 212; 16 C.P.L.R. 42 (44); 12 O.C. 260; *Cons.*, 3 N.L.R. 85 (87); *D.*, 34 A. 135 = 9 A.L.J. 54 = 13 Ind. Cas. 34.]

\* Second Appeal, No. 261 of 1892.

(1) 8 B. 25.

(2) 7 W.R. 366.

(3) 5 A. 266.