

FULL BENCH.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Jardine
and Mr. Justice Candy.

BHĀ'U BIN POMMA'NNA, DECEASED, PLAINTIFF, v. RA'MCHANDRARA'O
BIN MAHIPĀTRĀ'O, DEFENDANT.*

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March 14.

Vatan Act (Bom. Act III of 1874), Secs. 5(1), 10(2) and 15(3), Cl. (2)—Amending Act V of 1886, Sec. 1 (4)—Deshamukhi vatan—Commutation of service—Gordon Settlement.

Section 10 of the Vatan Act (Bom. Act III of 1874) applies to *deshamukhi* service vatan with respect to which the liability to serve has been commuted under the Gordon Settlement.

*Reference by the Collector of Sátara.

(1) No vatandār shall, without the sanction of Government, sell, mortgage or otherwise alienate or assign any vatan or part thereof or interest therein to any person not a vatandār of the same vatan.

(2) When it shall appear to the Collector that by virtue of, or in execution of, a decree or order of any British Court any vatan, or any part thereof, or any of the profits thereof, recorded as such in the revenue records or registered under this Act and assigned under section 23, as remuneration of an officiator, has or have after the date of this Act coming into force, passed or may pass without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being; or that any such vatan or any part thereof, or any of the profits thereof, not so assigned has or have so passed or may pass into the ownership or beneficial possession of any person not a vatandār of the same vatan, the Court shall, on receipt of a certificate under the hand and seal of the Collector, stating that the property to which the decree or order relates is a vatan, or part of a vatan or that such property constitutes the profits or part of the profits of a vatan, or is assigned as the remuneration of an officiator, and is, therefore, inalienable, remove any attachment or other process then pending against the said vatan, or any part thereof, or any of the profits thereof, and set aside any sale or order of sale or transfer thereof, and shall cancel the decree or order complained of so far as it concerns the said vatan, or any part thereof or any of the profits thereof.

(3) *Clause 1.*—The Collector may, with the consent of the holder of a vatan given in writing, relieve him and his heirs and successors in perpetuity of their liability to perform service upon such conditions, whether consistent with the provisions of this Act or not, as may be agreed upon by the Collector and such holder.

Clause 2.—Any settlement made for this purpose before the date of this Act coming into force by any Collector or other officer acting on behalf of Government with the holder of any vatan shall have the same force as if made under this Act.

(4) (1) Without the sanction of Government it shall not be competent:

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REFERENCE by R. E. Candy, Collector of Sātāra, under section 10 of the Vatan Act (Bombay Hereditary Offices Act III of 1874).

One Rāmchandrārāo bin Mahipatrāo Ghorpade, resident of Bāhādurvādi in the Vālva Tāluka, Sātāra District, held certain "*deshamukhi*" service vatan lands in the villages of Bāhādurvādi and Kanegaum in that tāluka. The lands were mortgaged by him in March, 1873, to one Bhāu bin Pommāna as security for the repayment of loans amounting to Rs. 2,000. Subsequently both Rāmchandrārāo and Bhāu having died, Bhāu's son and heir A'mma brought two suits in the Court of the District Judge at Sātāra against the heirs of Rāmchandrārāo, namely, his two widows Vithābāi and Anandibāi, the latter a minor represented by the Collector as her administrator, for the recovery of Rs. 2,000 as principal and Rs. 2,000 as interest by the attachment and sale of the mortgaged property if necessary.

The Judge on the 24th March, 1886, awarded the plaintiff's claims. The Collector in his representative capacity preferred appeals Nos. 67 and 68 of 1886 to the High Court at Bombay which confirmed the decrees of the Judge on the 28th September, 1888.

On the 13th August, 1891, the Judge issued an order for the attachment and sale of the lands in satisfaction of the plaintiff's decrees and sent the decrees to the Collector for execution. But as the lands to be attached and sold were *deshamukhi* service lands which could not be alienated beyond the lifetime of the mortgagor, the deceased Rāmchandrārāo, the Collector granted two certificates under section 10 of the Vatan Act and forwarded them to the High Court in order that the order of the Civil (High) Court ordering the sale of the

(a) To a vatanḍār to mortgage, charge or alienate or lease, for a period beyond the term of his natural life, any vatan or any part thereof, or any interest therein to or for the benefit of any person who is not a vatanḍār of the same vatan;

(b) To a representative vatanḍār, to mortgage, charge, or lease or alienate any right with which he is invested, as such, under this Act.

(2) In the case of any vatan in respect of which a service commutation settlement has been effected, either under section 15 or before that section came into force, clause (a) of this section shall apply to such vatan, unless the right of alienating the vatan without the sanction of Government is conferred upon the vatanḍārs by the terms of such settlement, or has been acquired by them under the said terms.

lands might be set aside, and he asked for the cancellation of the orders of the District Court for the attachment and sale of the lands.

On receipt of the Collector's certificates the Court ordered that, before taking further action in the matter, notice should be given to the parties and the Government Pleader, as the question might arise as to whether the case fell under section 10 of the Vatan Act (Bombay Act III of 1874).

Ráo Sáheb Váśúdev J. Kirtikar (Government Pleader) appeared for the Government of Bombay.

Inverarity, (with Báláji A. Bhágvat) appeared for the plaintiff (judgment-creditor).

Bhaishankar Nánabhái appeared for the defendants (judgment-debtors).

SARGENT, C. J.:—In the present state of the authorities, I think it advisable that the question, whether the provisions of section 10 of the Vatan Act are applicable in the case of a vatan in respect of which a settlement has been made under Gordon's Settlement, should be referred to a Full Bench.

CANDY, J.:—The question is whether this Court is compelled to act on the certificate submitted by the Collector under section 10, Bombay Act III of 1874.

It is clear from the record of the case, in which the decree in question was passed, that the land which is to be sold under the decree is admittedly part of a *deskamukhi* service vatan, the liability to service connected therewith having been commuted by Gordon's Settlement.

The sanad granted under that settlement has not been produced in the present proceedings, but it is not disputed that in this case there was no condition of the settlement expressly allowing alienation of the vatan property.

The Division Bench of this Court, which confirmed the decree of the District Court permitting the attachment and sale of this property, as appears from the notes of the learned Judges, relied upon the ruling of the Full Bench in *Rádhábái v. Anantráo*⁽¹⁾ on the third

(1) I. L. R., 9 Bom., 198.

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question submitted to the Full Bench in that case, *viz.*, that lands of a service vatan become alienable when the services are abolished.

But, as pointed out in *Appaji v. Keshav*⁽¹⁾, the decision in the above case on that question had reference exclusively to a settlement under Bombay Act II of 1863; and the nature and effect of a Gordon Settlement was determined in the last quoted case, in which it was shown that at the time when the Gordon Settlements were made, service lands were regarded as the remuneration of the hereditary officer, and made inalienable by Regulation XVI of 1827 (as construed by the Courts) beyond the life of the actual incumbent, and that the settlements made by Gordon's Committee, unless it was otherwise specially provided by any particular settlement, were not intended by either party to those settlements to convert the vatan lands into the private property of the vatan-dars with the necessary incident of alienability, but to leave them attached to the hereditary offices, which, although freed from the performance of service, remained intact, as shown by the definition of hereditary office in the declaratory Act III of 1874.

The decision in *Jaggivandas v. Imlad Ali*⁽²⁾, by Westropp, C.J., and Kemball, J., showed that the fact that the services appertaining to a vatan had been commuted would not make a vatan alienable; and the intention of the Legislature to include within the terms of Bombay Act III of 1874 those vatan's the services appertaining to which had been commuted by Gordon's Settlement, is, as shown in the case before quoted, apparent from the definition of hereditary office in Bombay Act III of 1874. It may be remarked that the expression "ceased to be demanded" with reference to the services originally appertaining to a vatan has apparently direct application to the terms of the sanad usually given in cases under Gordon's Settlement, in which it is recited that "the said lands and cash allowances shall be continued *without demand of service*." (See Cordeaux's Compilation, p. 142.) The expression cannot apply to those vatan's, the services appertaining to which were useful to the village community, but which have now fallen into desuetude, for the term "hereditary office" in Bombay Act III of 1874 is limited to offices held for the performance of *duties connected with the civil administration*, whether those duties are now demanded or not.

(1) I. L. R., 15 Bom., at p. 22.

(2) I. L. R., 6 Bom., 211.

The result of these considerations is that *prima facie* a vatandár under Gordon's Settlement is within the terms of Bombay Act III of 1874, which so far changed the old law that, whereas the prohibition against alienation under section 20 of Regulation XVI of 1827 was restricted by the interpretations put on the section by the Sadar Adálat to alienations exceeding the lifetime of the incumbent or co-sharer, the alienation prohibited by section 5 of Bombay Act III of 1874 was *any* alienation without the sanction of Government. By Bombay Act V. of 1886 the prohibition was confined to alienations without the sanction of Government beyond the life of the alienor.

Now it is clear that the object of section 10 of Bombay Act III of 1874 was to give practical effect to the prohibitions against alienations by vatandárs as provided by sections 5 and 7 (see *Shankar v. Bábaji*⁽¹⁾). If, then, a vatandár under Gordon's Settlement comes within the provisions of section 5, the Collector can, in his case, act under the provisions of section 10.

But, it is said, the object of the provisions of section 10 is obviously to enable the Collector to preserve the vatan property for the purposes of the office. The general object is that land should be always forthcoming for the remuneration of the office—*Rádhobái v. Anantrávi*⁽²⁾. But where the services have ceased to be demanded, what interest has the Collector in interfering to protect the property? The successive vatandárs might assert their rights in the civil Courts under the law prohibiting alienation (whether generally or beyond the lifetime of the alienor), but there is no apparent reason why the Collector should interfere.

The answer to this argument is that, as shown above, vatandárs under Gordon's Settlement were purposely included within the terms of Bombay Act III. of 1874. Otherwise there was no object in the peculiar definition of "hereditary office." If, as the reports of the Gordon's Committee show, *Appaji v. Keshav*⁽³⁾, the intention both of Government and of the vatandárs was to leave the vatan lands attached to the hereditary offices, then there is no reason why the Collector should not intentionally have been given a discretion, enabling him to keep the lands so attached. Since Bombay Act V.

(1) F. L. R., 12 Bom., 552.

(2) I. L. R., 9 Bom., at p. 210.

(3) I. L. R., 15 Bom., at p. 23.

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of 1886 was passed, this discretion in the case of "unassigned" vatans would be limited to alienations without the sanction of Government and beyond the lifetime of the alienor. In the present case, the mortgage was effected in 1873, and by the then law was good only for the lifetime of the alienor. The alienor is now dead. It is clear that by the civil Court's order, dated 13th August, 1891, directing the attachment and sale of the property, part of the vatan in question may pass into the ownership or beneficial possession of a person not a vatandar. It is sufficient, then, for the Collector to certify that this property is part of a vatan. It "is, therefore, inalienable," and this Court must set aside the order for sale and cancel the decree. It has been held in *Kasturichand v. Balvantrav*⁽¹⁾, that the Collector acting under section 10 acts judicially, and his certificate, therefore, cannot be questioned by the Court. (See also *The Queen v. Collins*⁽²⁾.) It was argued that the use of the word *such* in describing "unassigned" vatans in section 10 must be taken as showing that a vatan to come within the terms of that section must be *assignable*. I cannot agree with that argument. Read strictly the words would mean "any vatan assigned under section 23, but not so assigned," which would be nonsense. I take it, therefore, that the word *such* is superfluous and must be rejected. As was said in *Radhábái v. Anantrav*⁽³⁾ "By section 5 of the Act the alienation of any vatan or part thereof is forbidden without the sanction of Government to any person not a vatandar of the same vatan, and by section 10 power is given to the Collector to set aside any sale or transfer thereof." If vatans under the Gordon Settlement are within the terms of section 5, then there is nothing to exclude them from the provisions of section 10. No doubt after the decision of the Full Bench in *Radhábái v. Anantrav*⁽⁴⁾, and dated January, 1885, that vatan lands become alienable when the services are abolished (a decision now admitted to have been founded on the erroneous idea that the settlement of a service vatan could be made under Bombay Act II of 1863), the idea was prevalent in some quarters that section 5 of Bombay Act III of 1874 could not be applicable to vatandars settled under the Gordon Settlement. Comparing the general rules in force in the Revenue Department, known as "Cordeaux's Compilation," page 127, with

(1) P. J. for 1887, p. 70.

(3) I. L. R., 9 Bom., at p. 202.

(2) 2 Q. B. D., 30.

(4) I. L. R., 9 Bom., 193.

the edition of the same compilation now being issued, page 192, it would seem that Government in Resolution No. 4235, dated 27th May, 1885, expressed that opinion, which naturally followed on the decision of the Full Bench just quoted, dated January, 1885. But the Legal Remembrancer had always held the contrary opinion (see Cordeaux's Compilation, pages 141, 142), and accordingly Bill No. II of 1885 to amend Bombay Act III of 1874 was introduced and became law (Bombay Act V of 1886). If it is shown that vatanárs under the Gordon Settlement did come within the provisions of Bombay Act III of 1874, and that the decision of the Full Bench on the 3rd question referred to them was founded on an erroneous idea, then the fact that Bombay Act V of 1886 was entitled an *amending* Act, instead of *amending* and *declaratory*, would not prevent the words of Bombay Act III of 1874 having the meaning which must be reasonably attached to them. As the difficulty in this case mainly arises from the decision of the Full Bench in *Rádhábái v. Anantráó*⁽¹⁾ on the third question submitted to the Full Bench in that case, regard being specially had to the paragraph beginning "it seems that this result" on page 214 of the report down to "landed property of the district" on page 215, I concur in the proposed reference to a Full Bench of the question now before us, *viz.*, whether section 10 of Bombay Act III of 1874 applies to a service vatan (*deshamukhi*) the liability to service connected therewith having been commuted under what is known as the "Gordon Settlement" without any condition as to power of alienation.

The question being referred to a Full Bench, it came on for argument before a Full Bench composed of Sargent, C. J., and Jardine and Candy, JJ.

Macpherson (with *Báláji A. Bhágvat*) appeared for the plaintiff (judgment-creditor).—The Collector was a party to the suit in his capacity as the administrator of the minor's estate, and he contended that the property being *deshamukhi* service vatan was inalienable under the provisions of the Vatan Act. We answered that as the service was commuted, the property became alienable like any other private property against the heirs of the mortgagors—*Rádhábái v. Anantráó*⁽¹⁾. The service was commuted under the Gordon Settle-

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ment. The effect of the Gordon Settlement is the same as that of the Summary Settlement Act. We submit that a commuted vatan does not fall under section 5 or section 10 of the Vatan Act. The amending Act (V. of 1886) not being retrospective has no application to the present case, because the alienation in dispute was made in 1873—*Bái Hariganga v. Tulsidás Kasandás*(¹).

[SARGENT, C. J.:—If the service be commuted, the hereditary office ceases, and then what remains is the vatan property minus the hereditary office.]

Just so. The whole object of section 10 is to secure and preserve the vatan property for the satisfactory performance of the duties of the office. Section 10 applies to vatans entered as such in the revenue records or under the Act, and assigned under section 23 of the Act. When service has been commuted, the vatan is incapable of assignment under section 23, and so we say that section 10 has no application.

Ráo Sáheb *Vásudev J. Kirtikar* (Government Pleader) appeared for the Government of Bombay:—The Gordon Settlement has not the effect of converting a vatan into the private property of the vatandár and alienable as such—*Appáji v. Keshav*(²). The object of the Vatan Act is to preserve the vatan property intact, whether service in connection with the vatan is rendered or not, and that being so, and the Gordon Settlement not having made any change in the nature of the vatan property, section 10 of the Vatan Act is applicable, and the Collector was justified in granting the certificates. The action of the Collector in granting the certificates was judicial, and the Court cannot question the validity of the certificates—*Kasturchand v. Balvantráo*(³).

Bháishankar Nánabhái appeared for the defendants (judgment-debtors).

The judgment of the Full Bench was delivered by

SARGENT, C. J.:—The question referred to us is whether section 10 of the Vatandár Act III of 1874 (Bombay) is applicable to vatans, which had been the subject of the Gordon Settlement prior to the

(¹) P. J., 1887, p. 69.

(²) I. L. R., 15 Bom., at p. 22.

(³) P. J., 1887, p. 70.

passing of the Act. The object of section 10 is to supplement the prohibition contained in section 5 against alienation by a vatandár to a person not a vatandár by enabling the Collector to undo an alienation which may have been effected since the passing of the Act by a decree or order of a civil Court. It will apply, therefore, wherever section 5 is applicable. By section 1 of the Amending Act V of 1886, that section is amended by restricting the prohibition to an alienation beyond the life of the vatandár, and also by making the section so amended applicable in the case of any vatan in respect of which a service commutation settlement has been made prior to the Act of 1874.

The important question arises as to what was the object with which this last amendment was made, was it to extend the operation of the Act to such vatans or to remove a doubt as to their being included in the Act of 1874. We think that looking at the definition of a vatan in the latter Act, and having regard to the circumstance that doubts had been entertained whether such vatans were within the contemplation of the Act, the latter was the true object. The definition of a vatan in the Act includes the case of a vatan in which the services have ceased to be demanded—language which appropriately expresses the state of things existing in the case of a vatan, the subject of a Gordon Settlement, for it is worthy of remark that the language of the sanáds issued under the Gordon Settlements is that Government undertake in the future not to require the services to be performed. But it remains to consider whether the Act was intended to have a retrospective effect. We think that such an intention is to be gathered from the language of section 15, clause (2), which would appear to have been introduced on the assumption that vatans, the subject of a settlement before the Act, were included in the Act, but required to be placed by express terms on the same footing as those which the Act contemplated becoming the subject of a settlement by virtue of the power in that behalf of the Act itself. We must, therefore, answer the question in the affirmative.

The Full Bench having decided the question, the case was sent back to the Division Bench (Sargent, C.J., and Candy, J.), which made the reference to the Full Bench, and the Division Bench passed the following judgment;—

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Judgment:—Having regard to the judgment of the Full Bench, to which the question whether section 10 of the Vatanár Act was applicable to the case of a vatan, in respect of which a settlement has been made under Gordon's Settlement, was referred, we must direct the District Court to cancel its order for the attachment and sale of the property in question.

District Court directed to cancel its order.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Jardine, and Mr. Justice Fulton.

CIVIL REFERENCE UNDER SECTION 46 OF THE INDIAN STAMP ACT.*

1895.

March 15.

Stamp—Stamp Act (I of 1879), Sch. I, Art. 21—Company—Winding up—Transfer of property by old to new company—Conveyance.

An instrument, which is in terms a conveyance of property at an agreed value, is a sale of such property at that price, and is governed by article 21, Schedule I of the Indian Stamp Act, (I of 1879). The circumstance that the transaction is a part of a larger transaction, cannot affect the character of the instrument.

THIS was a reference by J. M. Campbell, Collector and Superintendent of Stamps, Bombay, under section 46 of the Indian Stamp Act (I of 1879).

A certain deed of conveyance proposed to be entered into between the Chartered Mercantile Bank of India, London and China, Limited, of the first part, the liquidators of the said bank of the second part, and the Mercantile Bank of India, Limited, of the third part, having been taken to the Collector under section 30 of the Indian Stamp Act (I of 1879) for adjudication of the stamp duty which the deed required, and a question having arisen as to whether, for the purposes of the stamp duty, the deed was a conveyance or merely a transfer of property from one company to another for consideration, the Collector made a reference in the following terms:—

“By deed of conveyance proposed to be entered into between the Chartered Mercantile Bank of India, London and China, Limited, (hereinafter referred to as the old bank) of the first part, the liqui-

* Civil Reference, No. 2 of 1895.