

APPELLATE CIVIL.

Before the Hon'ble Mr. Justice Chandavarkar, Acting Chief Justice, and
Mr. Justice Heaton.

BHACHUBHA MAVSANGJI (ORIGINAL DEFENDANT), APPELLANT, v.
PATEL VELA DHANJI AND ANOTHER (ORIGINAL PLAINTIFFS); RE-
SPONDENTS.*

1909.

July 7.

*Tálukdárs' (Gujaráth) Act (Bom. Act VI of 1888), section 31†—Tálukdár's
estate—Tálukdári estate—Estate held by a Tálukdár on any other tenure.*

The expression Tálukdár's estate means only the estate held by a Tálukdár on Tálukdári tenure and not property held on any other tenure which is distinguishable from the former.

Khodabhai v. Chāganlal(1) followed.

SECOND appeal from the decision of N. R. Majmundar, First Class Subordinate Judge of Ahmedabad with appellate powers, reversing the decree of G. M. Pandit, Second Class Subordinate Judge of Dhanduka and Gogha.

The two lands in dispute situate at the village of Bhadiyad belonged to the minor defendant's deceased father Mavsangji Samatsangji who had mortgaged them with possession to the plaintiffs' deceased father under a registered deed, dated the 15th May 1903. Subsequently Mavsangji died leaving him surviving a son, the minor defendant. Mavsangji being a Tálukdár, the Tálukdári Settlement Officer, Gujaráth, became the guardian of

* Second Appeal No. 245 of 1908.

† Section 31 of the Gujaráth Tálukdárs' Act (Bom. Act VI of 1888) is as follows:—

31. (1) No incumbrance on a Tálukdár's estate, or on any portion thereof, made by the Tálukdár after this Act comes into force, shall be valid as to any time beyond such Tálukdár's natural life, unless such incumbrance is made with the previous written consent of the Tálukdári Settlement Officer, or of some other officer appointed by the Governor in Council in this behalf.

(2) No alienation of a Tálukdár's estate or of any portion thereof, or of any share or interest therein, made after this Act comes into force, shall be valid, unless such alienation is made by the previous sanction of the Governor in Council, which sanction shall not be given except upon the condition that the entire responsibility for the portion of the jama and of the village expenses and police charges due in respect of the alienated area, shall thenceforward vest in the alienee and not in the Tálukdár.

(1) (1907) 9 Bom. L. R. 1122.

1909.

BHACHUBHA
MAVSANGJI
v.
PATEL VELA
DHANJI.

the minor defendant and took charge of his estate. Under the order of the Tálukdári Settlement Officer, the Taláti of the village in the year 1906 attached the produce and recovered the income of the mortgaged fields which under the mortgage-deed were in the possession of the mortgagee. The mortgagees thereupon brought the present suit against the minor defendant represented by his guardian the Tálukdári Settlement Officer for an injunction against the defendant restraining him from taking the produce of the mortgaged property and for the recovery of Rs. 67-13-0 illegally levied by the defendant from the plaintiffs on account of the produce and income of the lands.

The defendant did not admit the mortgage-bond sued on or payment of any consideration therefor, and contended that the deceased Mavsangji was the Tálukdár of Bhadiyad and other villages and that the plaintiffs' mortgage transaction was invalid as it was entered into without the sanction of the Tálukdári Settlement Officer.

The Subordinate Judge found that the mortgage sued on, though proved, was void for want of sanction under the Tálukdárs' Act. He, therefore, dismissed the suit.

On appeal by the plaintiffs the appellate Court found that the mortgage in suit was not ineffectual under section 31 of the Tálukdári Settlement Act (Bom. Act VI of 1888). It, therefore, reversed the decree and allowed the claim. The reasons were as follows:—

It is contended on behalf of the defendant that the fields mortgaged are a Tálukdár's estate within the meaning of section 31 of the Tálukdárs' Act and that the mortgage is not binding on the defendant as it was not effected with the sanction required by that section. The mortgaged fields Survey Nos. 1082 and 1092 are situated in the village of Bhadiyad. This village is a Government and not a Tálukdári village (exhibit 31); and in the Revenue Records Survey No. 1082 has been described as 'Political Inan' and Survey No. 1092 as Government land (see exhibit 29). I agree therefore with the lower Court that the lands in question are not a 'Tálukdári estate.' That Court however seems to have held that the words 'Tálukdár's estate,' as used in section 31 of the Tálukdárs' Act means every sort of landed property belonging to a Tálukdár; and for this position reliance has been placed on *Parshotam v. Bai Punji*, 4 Bom. L. R. 817. This case, however, simply decided that the expressions a Tálukdári estate and a Tálukdár's estate are not synonymous, that the former expression means "an estate of Tálukdári tenure;" and that an estate of that

tenure, though held by a person other than the Tálukdar, is none the less a Tálukdarí estate. "It does not give the meaning of the term 'Tálukdar's estate'. The meaning of that expression is given in the recent case of *Khodabhai v. Chaganlal*, 9 Bom. L. R. 1122. It lays down that the expression 'Tálukdar's estate' must be interpreted as meaning an estate held by the Tálukdar as a Tálukdar". Here one of the mortgage fields has been held by the defendant as an occupant and the other as an Inamdar. They cannot, therefore, be called a Tálukdar's estate; and so no sanction was necessary for their mortgage.

The defendant preferred a second appeal.

Jayakar with *R. W. Desai* for the appellant (defendant).

Setalvad with *L. A. Shah* for the respondents (plaintiffs).

CHANDAVARKAR, Ag. C. J.:—The question of law in this case is whether the expressions "Tálukdar's estate" and "Tálukdarí estate" occurring in section 31 of the Tálukdars' (Gujarath) Act VI of 1888 include the estate held by a Tálukdar on any other tenure than Tálukdarí.

The question is really beset with difficulties of construction, because the language of the section itself, and, in fact, of the Act, are rather obscure upon the point. Very careful arguments have been addressed to us on either side; and if the question were *res integra*, I should have taken time to consider it more carefully. But I think that, in principle, the point arising in the present case is the same as that decided in *Khodabhai v. Chaganlal*⁽¹⁾. There it was held that the expression 'Tálukdar's estate' meant only the estate held by a Tálukdar on Tálukdarí tenure, and not property held on any ordinary tenure, which is distinguishable from the former.

That is a decision of a Division Bench of this Court. It was passed two years ago, and, unless I find that it is clearly erroneous, we must follow it. If I could not agree with that decision, the case would have to be referred to a Full Bench. I see no reason to disagree, and I do not think that the circumstances of this case call for any such reference. The Act is obscurely worded and if the decision in *Khodabhai v. Chaganlal*⁽¹⁾ is wrong, the Legislature is at hand to correct that decision and amend the law.

(1) (1907) 9 Bom. L. R. 1122.

1909.

BHACHUBHA
MAYBANGJI
".
PATEL VEDA
DHANJI.

1909.

BHACHUBHA
MAYSANGJI
v.
PATEL VELA
DHANJI.

Accordingly the decree must be confirmed with costs.

HEATON, J.:—As a party to the decision in *Khodabhai v. Chaganlal*⁽¹⁾, there are a few words I should like to say. I have heard a very elaborate argument and after hearing and considering it there is not one word in my judgment in the previous case which I should wish to alter. There we came to a decision on the ground that the property under consideration was not property held by a Tálukdár as such and therefore was not property which was covered by the provisions of section 31. And that is precisely the reasoning which seems to me right in determining the present case.

It is found as a fact by both the lower Courts that the lands which are now in dispute are not held under a Tálukdári tenure, that is to say, they are not held by a Tálukdár as such. That being so, it seems to me that they are not lands of a kind on which section 31 is intended to operate.

It is perfectly true that Bombay Act VI of 1888 is a very difficult Act to understand; indeed, speaking for myself, I can say, in some particulars, it is an Act which it is impossible to understand. But giving it the best attention I can, I see no reason whatever for doubting that the decision arrived at two years ago was a correct one.

Decree confirmed.

G. B. R.

(1) (1907) 9 Bom. L. R. 1122.