

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

1912 JIVAJI SAMBHAJI KAMBLI GAVKAR AND OTHERS (ORIGINAL
 January 16. PLAINTIFFS), APPELLANTS, v. FAKIB SABAJI KAMBLI AND OTHERS
 (ORIGINAL DEFENDANTS). RESPONDENTS.*

*Bombay Hereditary Offices Act (Bombay Act III of 1874), section 67†—
 Collector—Watandars—Service Register—Suit for declaration as head of
 family—Civil Court—Jurisdiction.*

The plaintiffs brought a suit to have it declared that they were entitled to a share of the watan and to have their names recorded as such in the Service Register kept by the Collector.

Held, that the suit fell under the ban of clause (d) of section 67 of the Hereditary Offices Act (Bombay Act III of 1874) and was not cognizable by the Civil Court.

Govind Sitaram v. Bapuji Mahadeo⁽¹⁾ and *Balkrishna Chimnaji v. Balaji Ramchandra*⁽²⁾, explained.

* Second Appeal No. 12 of 1911.

† The section in question runs as follows :—

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 officiators;

(b) the names of the heads of families and of the representative watandars;

(c) whether the service is performed by one representative watandar or otherwise: if by several in successive periods, the order in which they are to succeed each other;

(d) the proportional share of the watan possessed by each head of family which may be expressed in annas or fractions of a rupee;

(e) the number of officiators required to perform the duties;

(f) the nature of the settlement of interior village watans referred to in Part X; * * *

(g) such other particulars as Government may (from time to time) order to be recorded.

⁽¹⁾ (1883) 18 Bom. 516.

⁽²⁾ (1884) 9 Bom. 25.

SECOND appeal from the decision of H. S. Phadnis, District Judge of Ratnagiri, confirming the decree passed by N. R. Majmundar, Subordinate Judge at Malvan.

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Suit for declaration.

The *gaoki vatan* of the village of Rewandi belonged to the family of plaintiffs, defendants and their co-sharers. The *vatan* was held by the several branches of the family in turns. As holder of the office, they passed a *kabulayat* to Government every year, collected the land revenue of the village and paid it to Government who remunerated them by paying Rs. 20 a year. One of the branches of the family was headed by Sambhu Dhanaji. Sambhu had three sons : Subaji (the father of defendants) ; Jivaji (plaintiff No. 1) and Daji (father of plaintiffs Nos. 2—5). As the defendants represented the eldest member in Sambhu's branch, their names were recorded in the Service Register kept by the Collector. Whenever it was Sambhu's turn to officiate, the defendants did the work and earned the fees to the exclusion of the plaintiffs. The plaintiffs therefore filed a suit to have it declared that they were entitled to a two-thirds share in Sambhu's branch, to have the Government records corrected accordingly and to recover Rs. 20 as damages.

The defendant No. 1 contended *inter alia* that the suit was barred under the Hereditary Offices Act, 1874.

The lower Courts dismissed the suit on the ground that it was not maintainable by the Civil Courts.

The plaintiffs appealed to the High Court.

A. G. Desai, for the appellants :—We submit that the present suit which seeks a declaration that the plaintiffs are entitled to a share in the recognised share of their branch of the family, will lie in the Civil Courts. The Collector has authority only to determine who is the representative *vatandar* ; but he has no authority to determine who is a *vatandar*. In other words, he is in no way concerned with the determination of the rights of the members of a particular branch *inter se*. Cases falling within the latter class can properly be tried by

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Civil Courts. Refers to *Ramrao v. Secretary of State* ⁽¹⁾ *Govind Sitaram v. Bapuji Mahadeo* ⁽²⁾; *Ramchandra Dabholkar v. Anant Sat Shevi* ⁽³⁾; *Rahimkhan v. Dadamiya* ⁽⁴⁾; *Khando Narayan Kulkarni v. Apaji Sadashiv Kulkarni* ⁽⁵⁾; *Chinto Abaji Kulkarni v. Lakshmbai kom Sakharam Antaji* ⁽⁶⁾; *Balkrishna Chinnaji v. Balaji Ramehndra* ⁽⁷⁾ and *Raoji v. Gemu* ⁽⁸⁾.

S. S. Patkar and V. R. Sriv., for the respondents, were not called upon.

CHANDAVARKAR, J. :—The first question is, what is the relief which the plaintiff has asked for by his plaint in this suit and, secondly, whether that relief is barred by the provisions of the Vatan Act.

It is urged before us by Mr. Desai that the Civil Court has jurisdiction to entertain the suit, because what is asked by the plaintiff is not any relief which would be prohibited by section 67 of the Vatan Act, but a mere declaration that he is a member of Sambhu's branch, and that as such he has a two-thirds share in the Vatan belonging to that branch. We have had the plaint in the original read out to us and we have carefully considered its terms and its prayer. The summary of it as given by the Subordinate Judge in his judgment is substantially correct. In his plaint the plaintiff complains that he belongs to Sambhu's branch of the Vatan family; that Sambhu was the head of that branch so long as he was alive; that he dealt with the revenue authorities, executed *kabulayats* and owned a particular share; but that since Sambhu's death the defendant has been successfully posing as the head of the Vatan entitled to deal with the Collector and to pass *kabulayats*, and, therefore, entitled to be put upon the record under section 67 as the head of the branch. It is for the purpose of getting the defendant out of the way and having his own name recorded as the head of the branch in the Collector's

(1) (1896) P. J. 666.

(2) (1893) 18 Bom. 516.

(3) (1883) 8 Bom. 25.

(4) (1909) 34 Bom. 101.

(5) (1877) 2 Bom. 370.

(6) (1878) 2 Bom. 375.

(7) (1884) 9 Bom. 25.

(8) (1896) 22 Bom. 344.

Register that the suit has been brought. That is substantially the nature of the suit, and so it has been treated by both the Courts below. But Mr. Desai relies in support of his argument on the decision of this Court in *Govind Sitaram v. Bapuji Mahadeo*⁽¹⁾ where Sargent, C. J., held that the duty of the Collector as determined by section 67 of the Vatan Act was confined to specifying the names of the heads of families and the proportionate part held by each head, but that he was in no way concerned with the rights of the members of a particular branch *inter se*. The meaning of that decision is that it is for the Collector, in the first instance, to determine who is the head of a particular branch of a Vatan family. Having determined that, it is also the sole function of the Collector under the Act to determine the proportionate part possessed by that head. But given the head and the proportionate part he possesses, as determined by the Collector in the exercise of his exclusive jurisdiction, the question what the rights of the members of that branch *inter se* are, with regard to their shares in the proportionate part so determined is a question which (according to the decision cited) lies within the province of a Civil Court. The judgment in *Govind Sitaram v. Bapuji Mahadeo*⁽¹⁾ would at first sight seem to be in conflict with a prior decision of this Court to which Sargent, C. J., was also a party, *viz.*, *Balkrishna Chinnaji v. Balaji Ramchandra*⁽²⁾. But a close examination of both the cases satisfies us that there is no conflict. What the plaintiff in the latter case sought was a declaration of his share in the Vatan and of his title to have his name entered in the Vatan Register. That was under section 67. If he had asked merely for a declaration of his share in the Vatan without any reference to his title as the head of the family and the proportionate part which he possessed as such head, it would have been held that the suit lay. Sargent, C. J., pointed out in his Judgment that it was true that the Court could not make a declaration of his right to a one-fourth share of the Vatan, without first determining whether he was the adopted son of Chinnaji; but that "the

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declaration prayed for would be beyond the Court's jurisdiction." That declaration related to the question of headship and the share in respect of it. In the suit before us now, that is in substance the declaration prayed for.

For these reasons the decree must be confirmed with costs. There must be separate sets of costs.

BATCHELOR, J.:—I agree that this is a suit to obtain a declaration from the Civil Court to the effect that, the late head of the family, Sambhu, being now dead, the present head of the family is one of the plaintiffs and not one of the defendants; and that the plaintiffs are in consequence entitled to a proportional share of the Vatan. A suit of this character seems to me to fall directly under the ban of clause (d) of section 67 of the Hereditary Offices Act. The decision in *Govind Sitaram v. Bapuji Mahadeo*⁽¹⁾ can be of no assistance to the present plaintiffs who are not suing as Vatandars for the adjustment of any dispute between themselves as to their distributive shares in a total portion awarded by the Collector to the head of the family.

I agree, therefore, that this suit is not competent.

Decree confirmed.

R. R.

(1) (1893) 18 Bom. 516.

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Before Mr. Justice Russell and Mr. Justice Chandavarkar.

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BAI PARSON, WIDOW OF SELAT JIVRAM MAGANLAL, AND OTHERS
 (ORIGINAL DEFENDANTS), APPELLANTS, v. BAI SOMLI, WIDOW OF
 PRANSHANKAR MAGANLAL (ORIGINAL PLAINTIFF), RESPOND-
 ENT.*

Hindu Law—Mitakshara—Mayukha—Stridhan—Devolution—Daughter's sons take severally and not jointly—Coparcenary—Basic notion of coparcenary—Obstructed and unobstructed succession—Estate by partition—Estate by birth—Dayada—Rikhtā—Interpretation—Self-acquired property.

Property inherited by sons from their mother is not a joint estate but a tenancy-in-common, according to both the Vyavahara Mayukha and the Mitakshara.

*Second Appeal No 466 of 1911.