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opinion of Pontifex J. quoted by the Judicial Committee in *Doulut Ram* v. *Mehr Chand*[1]. It does not follow that the defeat of one co-owner who desires to redeem will bar the exercise of the same right by another: hence arises the necessity for joining all parties interested in one suit.

It must not be taken from the above remarks that we assent to the view that the provision of the Code which refers to representative suits can properly be applied to suits on behalf of a Hindu family by its manager.

We affirm the decree and dismiss the appeal with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Hayward.

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October 12.

THE ASSISTANT COLLECTOR OF KAIRA (ORIGINAL OPPONENT), APPELLANT *v.* VITHALDAS VALLAVADAS AND OTHERS (ORIGINAL CLAIMANTS), RESPONDENTS.*

Land Acquisition Act (I of 1894), section 32—Bhagdari and Narvadari Act (Bom. Act V of 1862), section 3†—Unrecognised sub-division of a narva *holding—Compulsory acquisition.*

[1] (1887) L. R. 14 I. A. 187 at p. 196.

* First Appeals Nos. 182, 183, 184 and 185 of 1912.

† The material portion of section 3 of the Bhagdari and Narvadari Act (Bom. Act V of 1862) runns as follows:—

It shall not be lawful to alienate, assign, mortgage or otherwise charge or incumber any portion of any bhag or share in any bhagdari or narvadari village other than a recognized sub-division of such bhag or share, or to alienate, assign, mortgage or otherwise charge or incumber any homestead, building site (gabhan) or premises appurtenant or appendant to any such bhag or share or recognised sub-division, appurtenant or appendant thereto, apart or separately from any such bhag or share, or recognized sub-division thereof.

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The provisions of section 32 of the Land Acquisition Act (I of 1894) cannot be made applicable to a case where the land compulsorily acquired is an unrecognised sub-division of a *narva* holding.

Per BATCHELOR, J.—"The only case contemplated by the draughtsman (in section 32 of the Land Acquisition Act, 1894) was the case where the legal estate was in a person possessing only a limited interest, while outstanding rights were in a beneficiary or reversioner who, upon the exhaustion of the limited estate, would become, in the words of the clause, 'absolutely entitled' to the land."

FIRST appeals from the decision of C. N. Mehta, Joint Judge at Ahmedabad.

The Government of Bombay acquired compulsorily pieces of land at Nadiad, for the purposes of the Hostel to the Nadiad High School. The pieces of land acquired formed unrecognised sub-divisions of a *narva* holding.

The Collector awarded compensation for the land so acquired.

The claimants were not satisfied with the award: and the Collector made references to the Civil Court under section 19 of the Land Acquisition Act, 1894. The amounts awarded by the Collector were not accepted by the claimants; they were therefore sent to the District Court under section 32 (2) of the Act. The claimants took away the moneys from the Court under protest.

It was contended by the Assistant Collector *inter alia* that the amount of compensation awarded by the Collector was appropriate; and that the pieces of land acquired being unrecognised sub-divisions of a *narva* holding, of which the claimants had no right of disposal, the amounts of compensation should not be paid over to the claimants but dealt with as provided by section 32 of the Land Acquisition Act, 1894.

The learned Judge enhanced the rate at which compensation should be awarded; and held that the

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provisions of section 32 of the Land Acquisition Act 1894 did not apply on the following grounds :—

Under section 32 of the Land Acquisition Act, the Court has to make an order of investment in cases where the land belonged to a person who had no power to alienate it. I am no doubt inclined to agree with the learned Government Pleader that a long term lease is an alienation prohibited under section 3 of Bombay Act V of 1862. But I do not think a case like the present falls within the *spirit* of section 32 of the Land Acquisition Act. It was meant, I think, to apply to cases where possessor of the land had a limited interest in it, *e.g.*, a tenant-for-life, guardian, trustee, widow, administrator, &c. And I do not think a *narvadar* holding a portion of a *narva* is in any sense a tenant-for-life or a trustee for his successors or other *narvadar* of the same *narva* or any other person. The main object of the Narvadari Act appears to be to prevent a *physical* dismemberment of the *narva*. This prevention of dismemberment may be advantageous to Government, in so far as their revenue is concerned, inasmuch as the total lump assessment leviable in respect of the whole *narva* would be recoverable from all the *narva* lands in gross and from the whole body of *narvadars* of the same *narva*, jointly and severally (vide *Dolsang* v. *The Collector of Kaira* I. L. R. 4 Bom. 367, at p. 374; *Manohar* v. *Chutabhai*, I. L. R. 8 Bom. 347 and *Parshotam* v. *Hira*, I. L. R. 15 Bom. 172). But the acquisition in the present case has been made by Government who will, according to their practice hitherto, presumably reduce the assessment to the extent of the acquisition (*vide* the Talati, Exhibit 101). And for the balance of Government assessment payable in respect of the remaining land, the same *narvadars* and the remaining land in gross will remain liable to Government. In all other respects, the portion falling to the share of each *narvadar* is treated as his absolute property. Supposing, *e.g.*, that all the *narvadars* of a particular *narva* join in selling the whole *narva* to a stranger in such a case, the price realized will be divided among the several *narvadars*, each of whom will appropriate his share to himself as if it were his separate private property, free from the claims of his successors and other *narvadars* of the same *narva*. It accordingly appears to me that a *narvadar* holding an unrecognized portion of a *narva* is not a trustee for anybody else, and that accordingly a case like the present does not fall within the spirit of section 32 of the Act.

The Assistant Collector appealed to the High Court, contending that the compensation money should be dealt with as provided by section 32 of the Land Acquisition Act (I of 1894); and that the rate of compensation awarded was too high. The claimants filed cross-objection contending that the rate was too low.

S. S. Patkar, Government Pleader, for the appellant.—The piece of land which is compulsorily acquired being an unrecognized sub-division of a bhag and inalienable by its owner, the Court is bound to invest the compensation money in the manner provided for in section 32 of the Land Acquisition Act (I of 1894). The terms of the section are imperative. Further, every portion of a *narva* holding being responsible for the whole assessment payable to Government the order of investment of compensation money is necessary. The section is expressed in wide terms: and is not confined in its operation to cases of tenants-for-life or trustees, &c.

G. N. Thakor for the respondents.—Section 32 does not apply. It refers only to land which "belonged to any person who had no power to alienate the same." The power of alienation contemplated seems to be absolute. In the case of an unrecognised sub-division of a bhag, the only restriction upon alienation is that there must be no dismemberment of a particular bhag. The Bombay Bhagdari and Narvadari Act (Bombay Act V of 1862) presents no difficulty to alienation of the bhag as a whole, that is, all the several owners of a particular bhag can join together to alienate the bhag. See the preamble and section 5 of the Bombay Bhagdari and Narvadari Act, and *Parshotam Bhaishankar* v. *Hira Parag*[1]. Further the meaning of sub-section(i) of section 32 is made clear by its clauses (*a*) and (*b*) and (i) and (ii). It is not possible in the case of bhagdari lands to invest the compensation money "in the purchase of other lands to be held under the like title and conditions of ownership" as the land acquired [sub-clause (*a*)], nor can the money be applied "in the purchase of such other lands as aforesaid" [sub-clause (*i*)],

(1) (1890) 15 Bom. 172.

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and sub-clause (*ii*) makes it clear that the person may at some further stage become "absolutely entitled" to the land, a contingency which can never befall to a bhagdari land.

T. R. Desai, for the respondent in the companion cases refered to *Manohar Ganesh Tambekar* v. *Chutabhai Mithabhai*[1].

S. S. Patkar, in reply refered to *Collector of Belgaum* v. *Bhimrao*[2] and *Shiva Rao* v. *Nagappa*[3].

BATCHELOR, J. :—These are appeals brought from decisions of the learned Joint Judge of Ahmedabad in certain references made to him by the Assistant Collector of Kaira under section 18 of the Land Acquisition Act of 1894. The appellant is the Assistant Collector of Kaira, and the appeals raise a point of law which is attended with some little difficulty and a question of fact upon which, I think, there is no difficulty.

The question of law arises from the fact that the land in controversy formed part of an unrecognized subdivision of a *narva* holding, and that being so, the question is, whether the case is governed by section 32 of the Land Acquisition Act. The learned Joint Judge held in the negative. The contention for the appellant is that since under section 3 of the Bhagdari and Narvadari Tenures Act (Bombay Act V of 1862) it was not lawful to the claimants to alienate this parcel of land, therefore section 32 of the Land Acquisition Act must apply, and an order should be made under that section. The question, which appears to be *res integra*, requires careful consideration of the provisions of the Acts. Section 3 of the Bhagdari and Narvadari Act

(1) (1884) 8 Bom. 347. (2) (1908) 10 Bom. L. R. 657.
(3) (1905) 29 Mad. 117.

provides, so far as its provisions are now material, that :—

"It shall not be lawful to alienate...any portion of any *bhag* or share in any Bhagdari or Narvadari village other than a recognized sub-division of such *bhag* or share."

Section 32 of the Land Acquisition Act, so far as the section is now material, lays down that—

"[Where] it appears that the land [acquired]...belonged to any person who had no power to alienate the same, the Court shall—(*a*) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership...or (*b*) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit; and shall direct the payment of the interest...from such investment to the person or persons who would for the time being have been entitled to the possession of [such] land, and such moneys shall remain so deposited and invested until the same be applied—(*i*) in the purchase of such other lands as aforesaid, or (*ii*) in payment to any person or persons becoming absolutely entitled thereto."

The argument for the appellant is that the only condition prescribed for the operation of section 32 is that the land should be land belonging to a person who had no power to alienate it, and, since that condition is satisfied here, the section must apply. The learned Judge below, in disallowing this argument, explains his reasons in these words —

"I do not think a case like the present falls within the spirit of section 32 of the Land Acquisition Act. It was meant, I think, to apply to cases where the possessor of the land had a limited interest in it, *e.g.*, a tenant for-life, guardian, trustee, widow, administrator, &c. And I do not think a *narvadar* holding a portion of a *narva* is in any sense a tenant-for-life or a trustee for his successors or other *narvadars* of the same *narva* or any other person."

While I am timorous about appealing to the spirit of a statute in order to avoid, or evade, the apparent meaning of its words, I think the learned Judge's conclusion is right. And I think so, because that conclusion seems to me to do far less violence to the language of section 32 than the opposing theory. For, the

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most that can be said for the appellant is, as I have indicated, that the words of the conditional clause in section 3 "if it appears that the land...belonged to any person who had no power to alienate the same," are wide enough to include the case of an unrecognised sub-division of a *narva*. *Prima facie* that no doubt is so. But the section, so far as we are concerned with it, consists of but a single sentence, and in order to measure the sweep or ambit of the conditional clause we must, I think, have regard to the consequent clause. That, indeed, amounts to no more than stating the familiar principle that the section must be read as a whole. So reading it, I am satisfied, especially from clause (2), that the only case contemplated by the draughtsman was the case where the legal estate was in a person possessing only a limited interest, while outstanding rights were in a beneficiary or reversioner who, upon the exhaustion of the limited estate, would become, in the words of the clause, "absolutely entitled" to the land. Familiar instances of such possession are supplied by the case of a Hindu widow or a tenant-for-life. But no such consequences as the section prescribes can ensue in the case of *narva* land. For the moneys deposited could not be applied either in the purchase of other lands to be held under the like title and conditions of ownership or in payment to any person becoming absolutely entitled. For the present or late holder of this *narva* was himself absolutely entitled in the sense that no one except himself had any claim to the land, and no succeeding holder's title could be more absolute than his was. That being so, I think that the apparent generality of the conditional clause must be restricted so as to correspond with the scope of the consequences expressed, and since this latter excludes the case of a *narva* holding, that holding must be excluded from the operation of the section.

Though it is probable, I think, that the case of a *narva* holding is a *casus omissus* from the Government of India Act, the conclusion which I adopt is, in my opinion, capable of reconcilement with the provisions of section 32; for, whereas that section contemplates an absolute disability to alienate in the person to whom the land belonged, the disability of the *narvadar* is not absolute but only conditional. He can alienate any portion of his holding in certain circumstances, provided, for instance, he joins with it another parcel, so that the whole subject of the alienation is a recognised sub-division. Moreover, the phraseology of section 32 suggests that the disability contemplated is only a personal disability, whereas here the disability is not in the person but is in the land itself which, so long as it is an unrecognised sub-division of a *narva*, is incapable of alienation in whosesoever hands it may be held. On these grounds, I think, that the conclusion of the learned Judge below is right.

The other opinion, it seems to me, has nothing to recommend it except a seeming conformity with the words of the conditional clause, while it is wholly incapable of being reconciled with all the succeeding provisions of the statute.

As to the question of fact, that is, as to the amount of the awards made by the learned Joint Judge, they have been attacked as excessive by the learned Government Pleader and as inadequate by the learned pleaders for the claimants. It is not, I think, necessary to reinvestigate this matter, upon which the learned Judge below has given us a careful and well-considered judgment. It is enough for me to say that I have heard nothing which, in my opinion, would entitle us to differ from the estimate adopted by the learned

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Judge after a full consideration of all the evidence bearing upon the point.

On these grounds I think that the appeals and the cross-objections should be dismissed with costs.

In the taxation of costs pleaders' fees will be calculated on the difference between the award of the Collector and the award of the Joint Judge.

HAYWARD, J.—I concur. I have only a few remarks to add upon the question of law which is not free from difficulty. It seems to me that this is not a case of disability attached to a person holding land, but of a disability attached to the land held. No particular person has been deprived in favour of any other person of the power to alienate, but the condition of inalienability has been imposed on the land. No particular person, in other words, has been restricted to a limited estate in favour of any other person vested with a reversionary estate, but the land itself has been shorn of the usual attribute of alienability by statute. That appears to me to be the strict interpretation of the words "it shall not be lawful to alienate...any portion of any *bhag*...other than a recognized sub-division of such *bhag*" and "any alienation...contrary to the provisions of this section shall be null and void" of section 3 of the Bhagdari Act, V of 1862.

It would appear that the former, viz., the limited owner, not the latter, the circumscribed property, has been contemplated by section 32 of the Land Acquisition Act. The material words of that section are these: "If.....it appears that the land.....belonged to any person who had no power to alienate.....the Court shall order the money to be invested in the purchase of other lands to be held under the like title.....or if such purchase cannot be effected forthwith, then in..... approved securties.....and shall direct the payment of

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the interest.....to the person or persons who would, for the time being, have been entitled to the possession of the said land,...until the same be applied in the purchase of such other lands.....or in payment to any person or persons becoming absolutely entitled." It appears to me that the expressions 'if it appears that the land belonged to any person who had no power to alienate' and 'any person becoming absolutely entitled' could be applied completely and without practical difficulty only to limited owners. It could not be adapted without strain of language to absolute owners of circumscribed properties. Such adaptation, therefore, was, in my opinion, not contemplated by section 32 of the Land Acquisition Act.

We ought, therefore, in my opinion, to dismiss the appeals and cross-objections with costs and to affirm the decisions of the learned Joint Judge.

Appeals dismissed.

R. R.

CRIMINAL REVISION.

1915.
October 13.

Before Mr. Justice Batchelor and Mr. Justice Hayward.

EMPEROR *v.* MANILAL MANGALJI.°

Bombay Prevention of Gambling Act (Bombay Act IV of 1887), section 3 †—Instruments of gaming—Book used for recording bets already made is an instrument of gaming.

A book which is used for recording entries of the bets made by persons frequenting a place, is an instrument of gaming, within the definition of that term in section 3 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887).

° Criminal Application for Revision No. 250 of 1915.

† The material portion of the section runs as follows :—

In this Act the expression "instruments of gaming" includes any article used as a subject or means of gaming.