

APPELLATE CIVIL.

Before Sir Stanley Bachelor, Kt., Ag. Chief Justice and Mr. Justice Shah.

1916.

RAOJI FAKIRA AND ANOTHER, SONS AND HEIRS OF THE DECEASED FAKIRA WALAD NEMBA MAHAR AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 3), APPELLANTS v. DAGDU WALAD HANMANTA MAHAR AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANTS NOS. 4 AND 5), RESPONDENTS.*

August 24.

Hereditary Offices Act (Bom. Act III of 1874 as amended by Bom. Act III of 1910), sections 25, 36, 63 and 64—Mharki Vatan—Suit to be declared a Vatandar—Civil Court—Jurisdiction.

The plaintiffs by a suit filed in the civil Courts sought a declaration that they were the Vatandars of a *Mharki Vatan*. It was contended that although the civil Courts had jurisdiction to make a declaration as to Vatandars claiming *Patilki* or *Kulkarniki* Vatan the Courts had no jurisdiction to make any declaration as regards *Mharki* Vatan.

Held, that it was competent to the civil Courts to grant a declaration that the plaintiffs were Vatandars of a *Mharki Vatan*.

Ramchandra Dabholkar v. Anant Sat Shenvi,⁽¹⁾ followed.

APPEAL against the order passed by K. H. Kirkire, First Class Subordinate Judge, A. P., at Nasik, reversing the decree passed by R. B. Gupte, Subordinate Judge at Sinnar.

Suit for declaration.

The plaintiffs alleged that the land in suit belonged to them as Vatandar Mhars of the village of Padli. They had an eight-annas share in the Vatan and the other eight-annas belonged to defendants Nos. 4 and 5. The defendants Nos. 1 to 3 acting in collusion with defendants Nos. 4 and 5 had wrongfully dispossessed the plaintiffs of their share. The plaintiffs, therefore, sued for a declaration that they were the rightful owners and Vatandars of the lands in suit and that defendants had no right or title to the same.

* Appeal from Order No. 46 of 1915.

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Defendants Nos. 1 to 3 set up their own title and contended that the whole sixteen-annas were of their exclusive ownership ; that their names had been entered in the Vatan Register as Vatandar Mhars and they had been put in possession by the Collector. They further stated that the civil Court had no jurisdiction to entertain the suit.

Defendants Nos. 4 and 5 stated that they were owners of eight-annas share in the Vatan and that defendants Nos. 1 to 3 had no right to the other moiety of which they had been wrongfully in occupation.

The Subordinate Judge found that the suit was barred by section 4, clause (a) of the Bombay Revenue Jurisdiction Act (X of 1876) and dismissed the plaintiffs' suit on that point.

The lower appellate Court held that the suit was not barred under any of the provisions of that Act in so far as the claim for a declaration that the plaintiffs were Vatandar Mhars was concerned. He, therefore, reversed the decree and remanded the suit for trial.

The defendants Nos. 1 to 3 appealed to the High Court.

W. B. Pradhan, for the appellants :—The civil Court has no jurisdiction to grant a declaration that the plaintiffs are the Vatandars of a Mharki Vatan. Under sections 25 and 36 of the Bombay Hereditary Offices Act, 1874, the civil Court has jurisdiction to grant declaration of status as Vatandar when the claimant is Patil or Kulkarni. These sections appear in Part VI of the Act, the application of which to Mharki Vatan is not permitted by section 3. Sections 63 and 64 empower the Collector subject to the general control of Government to declare who is a Vatandar of a Mharki Vatan.

D. C. Virkar, for the respondents:—The civil Court's jurisdiction to grant declaration of status as Vatandar when the claimant is a Patil or Kulkarni is independent of sections 25 or 36 : see *Ramchandra Dabholkar v. Anant Sat Shenvi*.⁽¹⁾ The discretion of the Collector comes into play only when he has to determine who is to act as a representative Vatandar. Section 64 does not lay down that the Collector has the authority to determine the status of a Vatandar of a Mharki Vatan. It only authorises the Collector merely to *register the names* of individual Vatandars. Jurisdiction of civil Courts must be withdrawn by clear words and not by doubtful inferences.

BACHELOR, Ag. C. J. :—The only question involved in this appeal is whether the lower appellate Court was right in its view that it is competent to the civil Court to grant a declaration that the plaintiffs are Vatandars of a Mharki Vatan. In our opinion the lower appellate Court was right. It is conceded that, as numerous decided cases show, no objection could be offered to the civil Court's making such a declaration in the case of plaintiff's claiming to be Vatandars of a Kulkarniki or a Patilki Vatan. But it is urged on behalf of the present appellants that the same rule does not hold in regard to the Mharki Vatan, and the reason is that the Kulkarniki and the Patilki Vatan are regulated by sections 25 and 36 of the Hereditary Offices Act, which sections, occurring in Part VI of the Act, do not apply to the case of a Mharki Vatan. This kind of Vatan, proceeds the argument, is governed by sections 63 and 64 which constitute Part X of the Act, and by section 64 it is provided that the power of deciding who are the Vatandars of these inferior village Vatan is vested in the Collector. But the only support which can be discovered for this contention

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is to be found in clause (a) of section 64, and that clause goes no further than to say that, subject to the general control of Government, the Collector is empowered to register the names of individual Vatandars as holders of the office. But the distinction between the power to register the Vatandars and the power to determine who are the Vatandars to be registered seems obvious, and section 64 says nothing on the point as to where the power to determine the Vatandars is to reside. That being so, there is no reason to think that this power is withdrawn from the jurisdiction of the civil Court. For that jurisdiction, if it is to be withdrawn, must be withdrawn by clear words, and not by doubtful inferences. This conclusion is confirmed by Mr. Justice West's decision in *Ramchandra Dabholkar v. Anant Sat Shenvi*.⁽¹⁾ It is true that, as an accidental circumstance, the Vatan there under consideration happened to be a Gavki or Patilki Vatan. That accident, however, had no influence upon the decision, which proceeds generally to consider the case of all Vatans, and the learned Judge observes that the discretion of the Collector comes into play only after those who are to be its subjects have been determined. That case was decided in 1883, and has ever since been consistently followed. It seems to us not a probable supposition that Mr. Justice West and all succeeding Judges have overlooked the provisions of section 64 of the Act. On these grounds we think that the lower appellate Court's decision is right and this appeal is dismissed with costs.

Order confirmed.

J. G. R.

⁽¹⁾ (1883) 8 Bom. 25.