

## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Beaman.*

1917.

BAI LAXMI DAUGHTER OF PRANSUKHRAM DINANATH AND OTHERS.  
(ORIGINAL DEFENDANTS NOS. 2. TO 4), APPELLANTS *v.* MAGANLAL  
JAMIETRAM AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.

June 25.

*Hereditary Offices Act (Bom. Act III of 1874), sections 4 and 53 and (Bom. Act V of 1886) section 2—Vatan—Family—Meaning of the term 'family' as used in the Act.*

One Gopinath the original acquirer of a Vatan died without leaving any lineal descendant. At the time of his death his nearest relations were his first cousins Girdharlal Bhulabhai (senior uncle's son) and Mahasukhram Maharajji (younger uncle's son). In 1868, two commutation Sanads were issued by Government in respect of the Vatan and the grantees were Dinanath Girdharlal and Dinanath's great nephew Venilal Maneklal. The actual possession and enjoyment of the Vatan property thus continued with the family of Girdharlal down to the time of its last male holder Pransukhram and afterwards with his widow until her death. On widow's death the defendants (daughter and daughter's sons of Pransukhram) retained possession. The plaintiffs, therefore, representing the branch of Mahasukhram claimed to be entitled to possession of the Vatan property on the strength of section 2 of Bom. Act V of 1886. Both the lower Courts held that the plaintiffs were members of the family qualified to inherit and as such excluded the female defendants. In second appeal it was contended that the respondents (plaintiffs) were not descended from the original Vatandar and therefore they were not members of his family and were not entitled to oust the females in possession.

*Held*, that the term 'family' as used in the Vatan Act 1874 meant those descended from a common progenitor who must be a Vatandar, and that the respondents were not entitled to oust the appellants from possession.

SECOND appeal against the decision of P. J. Taleyarkhan, District Judge of Broach, confirming the decree passed by B. H. Desai, Subordinate Judge at Wagra.

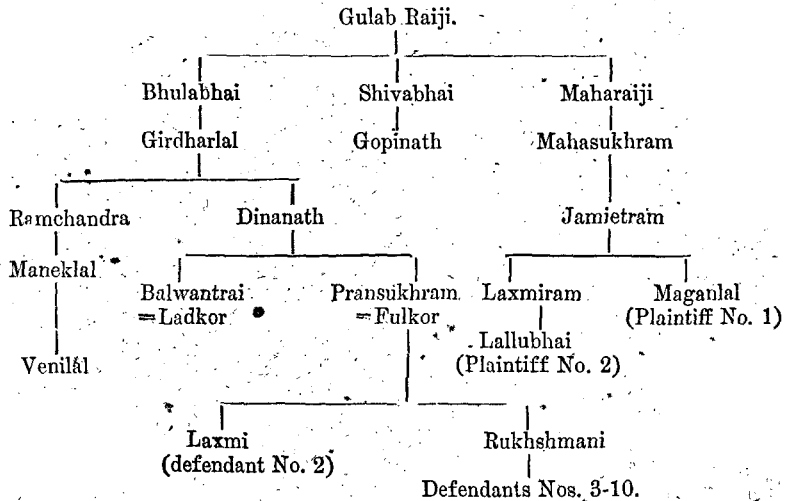
Suit for a declaration and possession.

The lands in suit were Desaigiri Vatan properties situate in the villages of Muller, Amod, Rahod and Keshvan in Wagra Taluka. The original acquirer of

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the Vatan lands was one Gopinath Shivabhai. He died without leaving any lineal male descendant. His genealogical table so far as material for the purposes of this report is as follows :—



At the time of Gopinath's death his nearest relations were his first cousins Girdharlal Bhulabhai (son of the elder uncle of Gopinath) and Mahasukhram Maharaiji (son of the younger uncle of Gopinath).

In 1868, commutation Sanads were issued by Government in respect of this Vatan (Exhibits 109 and 130). Exhibit 109 related to the lands in Amod and Rahod and the grantee under the Sanad was Venilal Maneklal, his Vahiwardar being Jamietram Mahasukhram. Exhibit 130 related to the lands in Muller and the grantee under this Sanad was Dinanath Girdharlal, whose Vahiwardars were stated to be Venilal Maneklal and his son Balwantrai Dinanath. After Dinanath's death, the last male holder of the Vatan was his son Pransukhram. Pransukhram died on the 7th April 1900, leaving behind his widow Bai Fulkor and two daughters Bai Laxmi (Defendant No. 2) and Rukshmani. Bai Fulkor was possessed of the properties after

her husband's death and retained possession thereof as a widow till her death on the 2nd December 1900. On her death the properties were taken possession of by the defendants. The Plaintiffs, therefore, sued for a declaration that they were the nearest Pitrais (reversionary heirs) of Pransukhram and as such they were entitled to recover possession of the Vatan lands from the defendants on the strength of section 2 of Bom. Act V of 1886. The suit related only to the lands in the villages of Amod and Rahod.

Defendants (defendant No. 1 was the sister's son of Balwantrai Dinanath, defendant No. 2 daughter of Pransukhram and defendants Nos. 3 to 10 heirs of Rukshmani, another daughter of Pransukhram) contended *inter alia* that the plaintiffs were not the direct descendants of Pransukhram; that they were not the heirs of Pransukhram nor were they members of the Vatan family; that the plaintiffs' family and that of Pransukhram were different and Vatan properties were separately enjoyed; that the Government had recognised Pransukhram's family as a separate family by issuing fresh Sanads and hence the Bom. Acts III of 1874 and V of 1886 did not derogate the rights of defendants Nos. 2 and 3 to 10; that the defendants were the only heirs of Pransukhram qualified to inherit and the suit was barred by limitation.

The Subordinate Judge decreed the plaintiffs' claim holding that the plaintiffs were the members of the family of both Gopinath and the last holder Pransukhram Dinanath and they were, therefore, qualified to inherit the plaint properties in preference to the defendants.

The District Judge confirmed the decree observing that both the branches of Girdharlal and Mahasukhram were descended from the original acquirer Gopinath

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and they together constituted the Vatan family as defined in section 4 of the Bom. Act III of 1874.

The defendants Nos. 2 to 4 appealed to the High Court.

*G. N. Thakor*, for the appellants:—I submit section 2 of Bom. Act V of 1886 has no application. To exclude the appellants, the respondent must be a male member of the family qualified to inherit the Vatan. 'Family' is defined in section 4 of the Vatan Act, 1874. It includes a branch of the family descended from the original Vatandar. No doubt the definition is inclusive, but whether you take a branch as the family or the whole family, the 'family' must be *descended* from the original Vatandar. Descent from the original Vatandar must be, therefore, the necessary qualification of one who claims to be a member of the 'family'.

Throughout the Vatan Act, the word 'family' is used to denote a branch: see section 4 'Head of a family'; also section 53. Section 53 shows that the words "a member of the same family" are narrower than "a Vatandar of the same Vatan" and even in the latter case the qualification of descent from the same original Vatandar is necessary. Section 29, clause 1 also bears out my contention.

The meaning of 'family' in Webster's and Murray's Dictionaries helps me. It certainly does not go against my contention. It is not unreasonable to assume for the purposes of the Vatan Act that the Act contemplates the original Vatandar, as the starting point of descent.

I further submit there being two separate Sanads for the two Vatan, it must be assumed that each branch was treated as a distinct 'family'. So treated the respondent is not a member of the 'family' at all. The

case of *Ramangavda v. Shivapagavda*<sup>(1)</sup> is under section 10 and has no application. Section 10 is enacted for a different purpose and the wording is different.

Act V of 1886 being in derogation of the ordinary law of inheritance ought to be strictly construed particularly as Gujarat Vatan in Surat and Broach have been held to be alienable.

*G. K. Parekh*, for the respondents :—I contend that the word 'family' includes all agnates. The common progenitor need not be a Vatandar. The respondent and the appellants are all descended from a common ancestor. The respondent is therefore a member of the 'family'. He is entitled to inherit the Vatan as he is not excluded. He, therefore, satisfies the conditions of section 2 of Bom. Act V. of 1886.

The definition of 'family' is not exhaustive. It is merely inclusive. The object of the Act is to prevent Vatan going into the families of strangers. That object is served by giving the word 'family' a liberal interpretation. It is frustrated by putting a narrow meaning on the word. The issue of separate Sanads is no indication of the families being treated as distinct. Besides the cash allowance Sanad was issued jointly. This means that the family was regarded as one.

The case of *Ramangavda v. Shivapagavda*<sup>(1)</sup> shows that the issue of separate Sanads does not convert the Vatan into two separate Vatan.

The suit relates to the lands which are now covered by the Sanad in which Jamietram's name appears. The respondents are, therefore, members of the 'family' as regards those lands.

SCOTT, C. J. :—According to the findings of the two lower Courts land in certain villages became the Vatan property of the original Vatandar named Gopinath.

(1) (1896) 22 Bom. 601.

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Gopinath had no descendants, and so far as we can tell, at the time of his death his nearest relations were Girdharlal, the son of his father's elder brother Bhulabhai, and Mahasukhram, the son of his father's younger brother Maharaiji. In 1868, fresh Sanads were issued by Government apparently to meet the situation created by the death without issue of the original Vatandar. There was a Sanad of September 1868, Exhibit 130, which related to the village of Mullera. There was a Sanad of December 1868, Exhibit 109, which related to the villages of Amod and Rahod, and there was in the same year a Sanad, Exhibit 110, relating to cash allowances. At the time of the issue of Sanad, Exhibit 130, Dinanath, son of Girdharlal, was apparently alive, and he is stated to be the holder of the land in the village of Mullera, his Vahivatdars being Venilal Maneklal, his great nephew, descended from an elder son of Girdharlal, and his son Balwantrai Dinanath. In the Sanad, Exhibit 109, of December 1868, Dinanath Girdharlal is not mentioned. If he was dead, the representative member of the eldest branch of Girdharlal's family would be Venilal Maneklal. He is mentioned in the Sanad as the holder of the lands in the villages of Amod and Rahod, and his Vahivatdar is stated to be Jamietram Mahasukhram belonging to the younger branch descended from Gopinath's younger uncle. The cash allowance was allotted to representatives of the families of Girdharlal and Mahasukhram jointly.

The present suit relates to the lands in the villages of Amod and Rahod which were enjoyed up to July 1911 by members of Girdharlal's family or their widows. Upon the death of the last widow on that date the defendant entered into possession. She is the granddaughter of Dinanath. The plaintiffs representing the branch of Mahasukhram claim to be entitled to possession of the Vatan lands in these villages on the strength

of section 2 of Bom. Act V of 1886, which provides that "every female member of a Vatan family other than the widow of the last male owner ... shall be postponed, in the order of succession to any Vatan, or part thereof, or interest therein, devolving by inheritance after the date when this Act comes into force, to every male member of the family qualified to inherit such Vatan, or part thereof, or interest therein."

The learned Judges in the lower Courts have held that the plaintiffs are male members of the family qualified to inherit, and as such exclude the female defendants.

It is contended on behalf of the appellants that that decision is incorrect, for 'family' is defined by section 4 of the Vatan Act III of 1874 in these terms: it "includes each of the branches of the family descended from an original Vatandar," and it is contended that the original Vatandar being Gopinath, the parties to the suit are not descended from him. They are, therefore, not members of his family, and the plaintiffs not being male members of the family are not entitled to oust the females in possession, and *a fortiori* if the Vatan family is to be taken to be the family of Girdharlal, whose son Dinanath was the representative of the senior branch at the time of the issue of the Sanads, then the plaintiffs are not members of that family. That according to the scheme of the Act the original Vatandar is the source of title to succession or service, is, it is contended, shown by section 53, which provides that ordinarily "every deputy appointed under the Act should be a member of the same family to which the representative Vatandar whose duty it is to officiate belongs, if there be a member of such family fit and willing to officiate, or, in default of such member, a Vatandar of the same Vatan who is fit and willing to officiate, and who is descended from the same original

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Vatandar as the representative Vatandar whose duty it is to officiate."

The learned District Judge in dealing with the definition of 'family' observes that it is inclusive and not exclusive, that is to say, that it does not exclude the application of the ordinary meaning of the word 'family'. Now the Dictionaries of Webster and Murray are both agreed in giving as one of the meanings of the word 'family,' (which would be an appropriate meaning in the present connection) "those descended (really or putatively) from a common progenitor". In the case of a "Vatan family," taking the expression family in the ordinary non-technical sense it does not appear to be unreasonable to assume that the common progenitor must be a Vatandar, and if so, there was no Vatandar before Gopinath in the family, and excluding Gopinath, Dinanath was the first Vatandar holding a Sanad under Government. Jamietram Mahasukhram never appeared in the Sanads as a Vatandar, but only as a Vahivatdar. It is, therefore, clear that Jamietram Mahasukhram, and his sons, the present plaintiffs, are not members of the family of Dinanath Girdharlal, taking him to be a Vatandar, nor are they persons descended from a common progenitor Gopinath whose name appears in the proceedings. Therefore in either case they cannot come in to exclude the present defendants who claim directly through Dinanath Girdharlal. We therefore allow the appeal, set aside the decree of the lower Courts, and dismiss the suit with costs throughout on the plaintiffs-respondents.

BEAMAN, J. :—It is common ground that the acquirer of the Vatan was Gopinath who died without leaving any lineal descendant. I do not know the exact date of his death, or what was done by his collaterals immediately following thereon. But in the year 1868, five years after the Summary Settlement of 1863, commutation

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Sanads were issued by Government in respect of this Vatan pursuant to the Summary Settlement. These Sanads are Exhibits 109 and 130 in the case, the first relating to lands in Amod and Rahod, and the second to lands in Mullera. The dates of the Sanads were December and September 1868 respectively. The grantees were in the case of Amod and Rahod lands, Venilal Maneklal, and incidentally it was mentioned that his Vahivatdar was Jamietram Mahasukhram, and in the case of the Mullera lands Dinanath Girdharlal whose Vahivatdars were stated to be Venilal Maneklal and his own son Balwantrao Dinanath. The question arises, first, whether these Sanads represent a distribution of the Vatan between the collateral branches of the family of the original acquirer Gopinath. It should be mentioned that the cash allowance, as distinct from the lands, was in the year 1868, similarly granted, but jointly, to Venilal and Jamietram, described as the heirs of Gopinath, Exhibit 110. Whatever arguments may be founded upon the insertion of the name of Jamietram in Exhibit 109 as Vahivatdar of the land, it cannot be disputed but that these Sanads, ordinarily construed, grant the respective portions of the original Vatan mentioned in them to members of the family of Girdharlal, and it is equally common ground that the actual possession and enjoyment of the lands at any rate remained with the members of that family down to the time of the last male holder Pransukhram, and afterwards with his widow until her death. It is perfectly clear, therefore, that after the extinction of the line of the original acquirer Gopinath, the lands by grant or adverse possession, remained indisputably in the family of Girdharlal.

The only dispute in the case turns upon the proper interpretation of the term 'family' as used in the Vatan Act generally, and more particularly in section 2 of

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the Amending Act V of 1886. I adopt the interpretation put upon this term by my Lord the Chief Justice for the purposes of the Vatan Act, and as soon as that is done, it necessarily follows that there is no one in the plaintiffs' branch at all who can claim to be descended either from the original Vatandar, that is, Gopinath, or those who followed him by grant or acquisition of their own, that is to say, Dinanath Gir-dharlal and his descendants or Venilal Maneklal and his descendants. Upon these considerations I hold that for the purposes of this suit, the plaintiffs are out of Court, and cannot claim in virtue of section 2 of Act V of 1886 to exclude the females who are claiming in direct descent from the last male holder Pransukhram.

*Decree reversed.*

J. G. R.

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