

of the Criminal Procedure Code must, in this matter, yield, according to the well-known rule, to the special provisions of the Indian Extradition Act.

Answers accordingly.

R. R.

1918.

MURLIDHAR
BHAGWAN-
DAS, *In re.*

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Shah.

DWARKADAS MOTILAL AND OTHERS (ORIGINAL DEFENDANTS NOS. 7, 12, 33, 37 AND 38), APPELLANTS *v.* BAI JAKORE, WIFE OF MAGANLAL BHAGUBHAI (ORIGINAL PLAINTIFF), RESPONDENT.*

1918.

August 7.

Hereditary Offices Act (Bom. Act III of 1874 as amended by Bom. Act V of 1886), section 2—Vatan—Inam—Jat or Personal Inam—Grant for maintenance—Government Resolution declaring the Inam held on service tenure—Subsequent settlement with the Government whereby the property permanently enfranchised as private property—Sanad—Construction.

The property in suit was known as Vania Desai Vatan property. It consisted of four villages Sureli, Vinzol, Padardi and Kasanpur in the Panch Mahals. In 1860, the Panch Mahals passed by a treaty from the Maharaja Scindhia of Gwalior to the British Government, which as a result of the investigation into the nature of the various holdings in the territory ceded by Scindhia found that the four villages were held on service tenure. The Desais presented petitions to Government in 1879 and 1882 and contended that their Inam was Jat or personal Inam, granted for maintenance (Jivak Badal) and not held for service. As a result of these petitions, the Government in a Resolution, dated the 8th May 1884 observed that the title asserted to the villages hardly brought them under the class of Hereditary Inam and arranged with the Desais for a two anna settlement to be calculated on a full assessment of these villages. In 1888, Sanads were issued by Government to Vania Desais in respect of the villages Sureli and Vinzol, reciting that the villages had been found to be held as personal Inam without the condition of service. In respect of the other two villages Padardi and Kasanpur, the Sanads were not forthcoming but it appeared from the alienation register that the Sanads were issued in respect of these villages also and the register showed that the Inam lands in all these villages were "permanently enfranchised as private property." In 1913, the plaintiff as the daughter and reversionary heir of the last male holder of the Inam, sued to

* First Appeal No. 174 of 1916.

1918.

DWARKADAS
MOTILAL
v.

BAI JAKORE.

recover a fourth share in the Inam lands and cash allowances. The defendants contended that the plaintiff being a female was excluded by the provisions of Act V of 1886 from participating in inheritance as the property in suit was all Vatan property.

Held, that the plaintiff was entitled to succeed as the quality of the Inam was *Jat Inam*. The settlement of 1884 was a settlement in perpetuity giving to the holders full and complete rights of ownership free from service and subject only to the reserved quit-rent.

Bai Jadav v. Narsilal⁽¹⁾, distinguished.

FIRST appeal against the decision of M. N. Choksi, Additional First Class Subordinate Judge of Ahmedabad in Suit No. 1024 of 1913.

This action was instituted by the plaintiff, a daughter of the last male holder of the Inam—to recover a fourth share of the Inam property in suit and cash allowances and certain other lands. The Subordinate Judge decreed the suit holding that the Inam property was a personal Inam of the branch of the family to which the plaintiff's father belonged and that the plaintiff was not, therefore, debarred from claiming the same under section 2 of the Bombay Act V of 1886.

The defendants appealed to the High Court.

The facts of the case are sufficiently stated in their Lordships' judgment.

Coyajee, with *Gokuldas K. Parekh* and *G. N. Thakor* for the appellants.

Jayakar, with *M. H. Mehta* for the respondent.

SCOTT, C. J.:—This is a suit by the plaintiff to obtain a declaration of her right to one-fourth share in the property mentioned in the plaint which she alleges to be known as Vania Desai Vatan Property. It consists of two villages and part of two others, also *pasayata* lands and cash allowances. The plaintiff is the daughter

⁽¹⁾ (1900) 25 Bom. 470.

of one Lallu Naranji who died in 1870 leaving a widow named Jadav who died on the 8th January 1912. The plaintiff claims as a reversioner of Lallu Naranji. The family to which she belongs was entitled to Inam lands and other property in the Panch Mahals. One branch of the family was entitled to property with which we are not concerned. The other branch descended from one Valji Raghavji who is represented by Sunderji Valji and Kuvarji Valji each of whom had an eight annas share in the Inam property of that branch. With Kuvarji's share we are not concerned. Sunderji's eight annas share descended in equal moieties to Kasanji and Mulji. We are not concerned with Kasanji's four annas share. Mulji had four sons Raiji, Jagubhai, Naranji and Bapuji. Bapuji married Deokuvar who represented the collateral branch of the Inamdar family, and Bapuji and his children have since then enjoyed the income of the Inams appertaining to that branch, and for the purpose of this suit it may be taken that Bapuji did not participate with his brothers in the enjoyment of the four annas share descended from Mulji Sunderji. Mulji's grandson Jadhav Raiji having committed murder, his one anna share was assigned by the Government of the time to his cousins Lalji Jagubhai and Naranji Mulji. Thus Jagubhai's and Naranji's families became entitled to Mulji's four annas share in equal shares. The plaintiff claims not only a share of her father Lallu Naranji, but also a share of her father's cousin Nandlal Lalji, and thus makes up her claim to one-fourth of the Inam property held by Valji's branch of the family. The chief defence is that the plaintiff being a female is excluded by the provisions of Act V of 1886 from participating in the inheritance, for the defendants contend that the property in suit is all Vatan property. The first important question, therefore, is as to the quality of the Inam, is it Jat Inam or Service Inam? and, secondly, if it be held not to be Service Inam, so that the plaintiff is not barred by the

1918

DWARKADAS
MOTILAL
v.
BAI JAKORE.

1918.

DWARKADAS
MOTILAL

v.
BAI JAKORE.

provisions of the Act of 1886, is she entitled to anything more than the two annas share of her father Lallu Naranji?

Although the Inams are said to be 700 years old no Sanad or original grant is forthcoming. It is said that there were original Sanads but that they were destroyed in a fire in Godhra. Whether that allegation is true or false, there are no copies of any alleged Sanads forthcoming until the year 1888. In the year 1860 the Panch Mahals passed by treaty from the Maharaja Scindhia of Gwalior to the British Government, and Major Buckle representing the British Government was charged with the duty of investigating the nature of the various holdings in the territory so ceded. The result of his investigation was embodied in a report to Government in which he reported that the four villages in which the plaintiff claims to be entitled to share were held on service tenure. Government acted upon this report for a considerable time.

In 1872 they made rules for the settlement of alienated lands and cash allowances in the Panch Mahals; the following portions of the rules are relevant:—

“2. All lands held by individuals as personal Inams, without the condition of service, the estimated value of which has been allowed for in the exchange of territory with His Highness Scindhia shall be continued hereditarily to lineal male heirs in male descent of persons who were in possession at the time of the cession of the Panch Mahals or of those whose names are found entered in the accounts or in any authentic documents of His Highness Scindhia or in perpetuity as heritable and transferable property on the payment of two annas quit rent levied in Gujrat under Act VII of 1863.

“5. All lands not fulfilling the conditions laid down in Rules 1 to 4 but claims to which may have been registered under the Notification of the 22nd December

1865 may, unless the claim appear to the Settling Officer to be so entirely unfounded as to warrant resumption (in which case an appeal will lie as hereinafter provided), be continued subject to the payment of a quit-rent of from one-fourth to one-half of the survey assessment in perpetuity as endowment property in the case of those held in trust for religious or charitable institutions and as heritable and transferable property in the case of those held as personal Inams. Provided that lands claimed by Hereditary District and Village Officers on any other than service tenure shall be considered as held on that tenure unless they are proved to be held on some other tenure to the satisfaction of the Settling Officer.

1918.

DWARKADAS
MOTILAL
v.
BAI JAKORE.

* * * * *

N.B.—The case of lands held by hereditary district officers shall be disposed of separately.

* * * * *

N.B.—Allowances to hereditary district officers will be disposed of separately.”

The family to which the parties to this suit belong were known as Vaniā Desais, the term Desai implying a hereditary servant of the Pargana or District. The family were offered in settlement under the rules the option of paying four annas in the Rupee of assessment in lieu of service, that is, Government offered “to relieve them of all liability to perform service and to resume $\frac{1}{4}$ of their service allowances, land and cash, leaving them the remaining $\frac{3}{4}$ as private property.” The Desais declined this offer, and on the 9th May 1879 Government by a Resolution declared that service had been exacted from the Desais in the past, and that Government required them to perform in the future all the work of the Katcheri. This Resolution evoked a petition from the Nagar and Bania Desais of Godhra on the 21st July 1879 in which they complained that the four anna settlement which had been offered to them

1918.

DWARKADAS
MOTILAL
v.
BAI JAKORE.

was too heavy, that their Inams were not held for service and the only work that their ancestors had done in the past was occasionally to advise the Scindhia's Government on which advice they received presents. In reply to this petition Government by a Resolution of the 14th November 1881 called upon the Desais either to accept or definitely to decline the four anna settlement. On the 23rd January 1882, the Nagar and Bania Desais again presented a petition to Government and contended that their Inam was Jat or personal Inam, granted for maintenance (Jivak Badal) and not held for service.

As a result of this petition Government entirely altered its attitude towards the Desais. In a Resolution, dated the 8th May 1884, it was announced that the Government having reviewed the whole of the correspondence on the subject of the Vatan emoluments of the Desais of Godhra was inclined to reconsider the offer of a non-service settlement previously made to them. Government understood that what the Desais asked for was a two anna settlement of the nine villages (five being Nagar and four Bania Desai villages) which were granted to them Jivak Badal to be calculated and paid at once on the full assessment of these villages and that they assented to a four anna settlement of their miscellaneous lands and cash allowances. Government observed that the title asserted to the nine villages hardly brought them under the class of Hereditary Inam, but on the other hand doubts entertained as to the nature of the title might perhaps be admitted to be such as the summary settlement was intended to remove. The Commissioner was directed to report after consultation with the Collector the detailed arrangements of settlement on the terms which Government was willing to entertain.

On the 18th January 1888, a Sanad was issued by Government to the Bania Desais in respect of the village

of Sureli which recited that the village had been found to be held as personal Inam without the condition of service, and that the holder of the village had with a view to its being continued as private property agreed to pay to Government a fixed quit-rent at two annas in the Rupee, and it was thereby declared that the village should be continued for ever by the British Government as the private property of the person who should from time to time be its lawful holder on the conditions specified therein. On the 17th March 1888 a Sanad was issued to the Bania Desais in respect of the village of Vinzol purporting to be in accordance with the rules of 1872, reciting that the village had been found to be held as personal Inam without the condition of service. It was in other respects identical *mutatis mutandis* in terms with the Sureli Sanad. Sanads are not forthcoming for the lands held by the Bania Desais in Padardi and Kasanpur. Why such Sanads have not been produced has not been explained but that there was a Sanad for Padardi granted a little before the Sureli Sanad appears from the Alienation Register for 1887-88 kept under the provisions of the rules under section 214 of the Land Revenue Code. From that Register (column 11) it appears that the Inam lands in the villages of Padardi Sureli and Vinzol were "permanently enfranchised as private property". Under this comprehensive description the period of enjoyment which has to be entered in column 11 is stated. It is true, as pointed out by the appellants' counsel, that column 4 which is reserved for a description of the alienation has an entry of "Watan Inams" against Padardi, but whatever may be the ground upon which this entry was made it cannot affect the question now under consideration, for the fourth column seems to us to be concerned with the origin of the cession and not with the term and nature of the present enjoyment for the statement of which the eleventh

1918.

DWARKADAS
MOTILAL
v.
BAI JAKORE.

1918.

DWARKADAS
MOTILAL
v.
BAI JAKORE.

column is provided. In the catalogue of Inams for 1884-85, Sureli was entered in the category of the servants of the Pargana. In the same catalogue Vinzol in 1886-87 was entered under servants of the Pargana and in the following year as Vatan Inam. Padardi for the years 1884-85, 1885-86, 1886-87 was entered under servants of the Pargana and in 1888-89 as permanent Vatan Inam. These entries may have been in supposed compliance with the proviso to rule 5 of 1872. The *pasaita* lands are also specified in the Alienation Register under the villages to which they appertain and in each case the eleventh column describes them as "permanently enfranchised as private property."

The village of Kasanpur is not mentioned in the petition of the Desais to Government, but forms part of the plaintiff's claim in this suit. On the other hand, the villages of Narsana and Dhandalpur are mentioned in the petition as belonging to the Bania Desais, but they are not included in this suit. Those villages belonged to Kalianji's branch of the family, and therefore, Nandlal Lalji was not interested in them. That is the explanation of their not being included in the suit. Kasanpur was a village in which a four annas share belonged to the family for many years, and in 1885-86 a further three annas were purchased by the Bania Desais. The village appears to stand on the same footing as regards the quality of its tenure as the other villages in question in the suit. For it is mentioned in the Alienation Register as "permanently enfranchised as private property" in the same way as the villages of Padardi, Sureli and Vinzol are mentioned, and the same Register mentions in the column relating to Sanads the date of the Sanad issued in respect of Kasanpur which indicates that the settlement of the tenure must have been come to at the same time as the settlement relating to the other villages.

The cash allowances undoubtedly fall under the category of Desaigiri Haks or cash allowances granted to persons holding the title of Desai. It is not surprising that whatever the settlement arrived at in 1888, they should be described as "emoluments of a Watan" in the Sanad of the 6th of April 1888 (Exhibit 245) which recites that the holders of the Watan thereafter set forth and held on service tenure had agreed to the annual deduction of four annas in the Rupee on the cash emoluments on condition of enjoying the remainder free from the obligation of service and the enjoyment of the such remainder being guaranteed to them by Sanad. The Sanad then declares "the emoluments of this Watan shall, as now confirmed, be continued by the British Government in perpetuity without demand of service or any further deduction therefrom on that account and without any objection or question on the part of Government as to title whether it shall have accrued in virtue of inheritance, adoption, transfer or otherwise."

In the Register of Nemnuks or allowances, the holders of the allowances in question are described as Watandars of the province and the nature of their property "private property forever subject to four annas in the Rupee."

The manner in which the settlement recorded in the Government Resolution of 1884 was worked out has now been stated. It was a settlement in perpetuity giving to the holders full and complete rights of ownership free from service and subject only to the reserved quit-rent or deduction.

In terms and in substance it conferred upon the Desais the whole of the Inam property subject as aforesaid as their private property for ever with all incidents of inheritance and alienation attaching to other private property.

1918.

DWARKADAS
MOTILAL
v.
BAI JAKORE.

1918⁷⁷

DWARKADAS
MOTILAL
v.
BAI JAKORE.

The Government Resolution of 1884 was before but the Sanads were granted after the passing of the Panch Mahals Laws Act (Act VII of 1885) and the Watan Act, Amendment Act V of 1886.

There can be no doubt that whatever construction may be placed upon certain provisions of the Watan Act relied upon by the defendants, the Crown Lands Act, 1895, compels us to construe the Sanads of the Sureli and Vinzol lands according to their tenure as confirming the villages as the private property of the holders subject to payment of quit-rent and where this is the conclusion forced upon us by the only Sanads of the lands in suit which have been produced it is difficult to come to a different conclusion as to the nature of the settlement in so far as it relates to the other villages referred to in Government Resolution of 1884 which records the fact of the settlement. We have in this case to decide a dispute between the plaintiff and the defendants claiming as reversioners of Nandlal and Lallu a beneficial interest in the Inams and Haks. Government is not a party, and nothing we now say will affect any contentions which may hereafter be raised on behalf of Government. Without prejudice to any contention on the part of Government we are unable to come to any other conclusion with regard to Kasanpur and the *pasaita* lands and the cash allowances which were confirmed in perpetuity subject to quit-rent or deduction of four annas in the Rupee according to the same settlement of 1884. At that settlement the Government contention was abandoned that the Desais held their villages otherwise than for their maintenance without obligation of service and having regard to the Desais' contention in their petitions of 1879 and 1882 the same result must have been arrived at with regard to the *pasaita* lands and cash allowances

regarding which the quantum of quit-rent or deduction was not in controversy.

The defendants take up an attitude directly opposed to that of their predecessors, the petitioning Desais, at a time when they successfully contended that their Inam lands and Haks were not held for service but were their private property. In order to defeat the plaintiff the defendants rely upon the terms of the Watan Act as interpreted in *Bai Jaidav v. Narsilal*⁽¹⁾ contending that that decision shows that the property in suit is and always has been held for service and must be so held for the future and that for that reason the plaintiff as a female is debarred from inheritance by Act V of 1886.

That decision however must not be applied to a state of facts different from those which were before the Court. The actual point decided is correctly stated in the first clause of the head-note. "A Watan in Gujarat does not cease to be Watan property as defined by section 4 of Bombay Act III of 1874, merely because a service commutation settlement has been effected. Such a settlement does not change the nature of the property simply because service is not demanded."

In 1868 the services attached to a Watan were dispensed with and a Sanad was issued in the following terms: "The Watan as now confirmed shall be continued without demand of service or any objection or question on the part of Government as to title to whomsoever shall from time to time be the lawful holder thereof, but without affecting the rights and interests of other parties." There was no dispute as to existence of an hereditary office for which services had been exacted and the Watan was confirmed and continued.

(1) (1900) 25 Bom. 470 at p. 474.

1918.

DWARKADAS
MOTILAL
v.
BAI JAKORE.

1918.

DWARKADAS
MOTILAL
v.
BAI JAKORE.

The facts here are entirely different. The existence at any time of an hereditary office held on service tenure was disputed and Government by the Resolution announcing the settlement admitted that the grants of the villages had been made Jivak Badal which was the contention of the Desais as to all the lands, and the cash allowances. The settlement was in fact arrived at before the extension to the Panch Mahals of the provisions of the Watan Act but such settlements were confirmed by clause 2 of section 15 of that Act assuming that the Watan Act would apply.

We hold, therefore, on the first question that the property in suit was not Service Inam to which the Watan Act applies.

[The judgment proceeded further with the determination of plaintiff's share and concluded.]

The plaintiff, therefore, has not fully proved her case and her claim as to $1\frac{1}{4}$ annas fails.

Decree modified.

J. G. R.

APPELLATE CIVIL.

FULL BENCH.

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

1918.

August 28.

RAMJI VALAD BAPUJI PATIL (ORIGINAL PLAINTIFF), APPELLANT v.
PANDHARINATH VALAD RAVJI AND OTHERS (ORIGINAL DEFENDANTS),
RESPONDENTS.*

Mortgage—Suit for redemption—Decree nisi—Failure to apply to make the decree absolute—Execution time-barred—Second suit for redemption, maintainability of—Civil Procedure Code (Act V of 1908), sections 11, 47 and Order XXXIV, Rules 7 and 8—Transfer of Property Act (IV of 1882), section 60.

* Second Appeal No. 15 of 1917.