

Kallappa Sultana Patil By L. R. S. Dandu Kallappa Patil and Others

Vs

Balgonda Sultangouda Patil

Civil Appeal No. 1560 of 1966

(C.A. Vaidialingam, I.D. Dua JJ)

11.09.1969

JUDGMENT

VAIDIALINGAM, J. –

1. This appeal, by special leave, by defendants 1 to 4, is directed against the judgment and decree, dated September 11, 1961, of the Mysore High Court in S.A. (B) No. 43 of 1956, confirming the decrees of the two subordinate courts granting a decree for possession in favour of the plaintiff-respondent.
2. The respondent instituted suit No. 1 of 1945, before the Second Class Sub-Judge at Chinchali, for recovery of possession of the suit lands. According to the plaintiff, the lands are Patilkiwatan Inam lands and he has been registered as 'Nawa Wala' by Order No. 68, dated March 30, 1927, of the Revenue Authorities of the then Kolhapur State. The suit properties had gone in partition to one Maya Gouda, a member of the Patil family. Maya Gouda died about 35 or 40 years ago and his widow Jakkawwa was in possession of the lands till the date of her death on August 16, 1943. The plaintiff's further case was that though Maya Gouda and Jakkawwa had a daughter Bayabai, the 7th defendant in the suit, the latter could not inherit the Inam properties under the law obtaining in Kolhapur State. Therefore the line of Maya Gouda has become extinct and the plaintiff, as Nawa Wala is entitled to get possession of the properties as per the Wat Hukum No. 26 of Fasli, 1323.
3. Defendants 1 to 4, the appellants herein, contested the claim of the plaintiff on various grounds. They pleaded that the plaintiff was not the senior-most member of the senior branch of the family to which Maya Gouda belonged and that they were the nearest reversioners, under Hindu law, to the properties of Maya Gouda. They further pleaded that there was no extinction of the line of Maya Gouda as he had left a daughter, the 7th defendant, behind him. They also claimed title by adverse possession.
4. The trial Court, by its judgment and decree, dated February 10, 1949, negated the plea of adverse possession raised by the appellants. It further held that the expression 'Nashtamsha' in the relevant Wat Hukum means that there is no direct male descendant to inherit the properties of the deceased. For this proposition, the trial Court relied upon a judgment of the Kolhapur High Court in S.A. No. 210 of 1947. On this interpretation it held that the line of Maya Gouda had become extinct with regard to the Inam lands according to law, as the 7th defendant, the daughter, could not inherit the properties. The Trial Court further held that the plaintiff, defendants 1 to 4 and the deceased Maya Gouda, were members of one and the same family and that this fact had been admitted by both the parties. In the end the Trial Court decreed the claim of the plaintiff to get possession of the suit properties and passed a decree to that effect against the defendants.

5. Defendants 1 to 4 filed an appeal before the District Judge, Kolhapur, which appeal was later transferred to the District Judge, Belgaum, in view of the merger of Kolhapur State with Bombay. The said appeal, No. 403 of 1949, was disposed of by the Second Extra Assistant Judge, Belgaum, by his decree and judgment, dated March 24, 1952. The Assistant Judge was of the view that the suit will have to be remanded for fresh consideration and for this purpose certain issues were framed and parties given opportunity to adduce further evidence. The plaintiff challenged this order of remand, passed by the Assistant Judge, before the High Court of Bombay. The Bombay High Court, by its judgment, dated July 21, 1953 set aside the remand order passed by the Assistant Judge of Belgaum and directed the District Court to dispose of the appeal according to law. The Assistant Judge of Belgaum, by his judgment, dated January 29, 1954, disposed of C.A. 403 of 1949, confirming the decree and judgment of the Trial Court. The learned Judge held that the plaintiff had been registered as the Nawa Wala of the branch of the family consisting of himself, the defendants and the deceased Maya Gouda and Jakkawwa with respect to the 8 annas' share of the Maratha Patils. He further held that the Civil Courts had no jurisdiction to go behind the order of the Revenue Authorities recognizing the plaintiff as Nawa Wala, in view of Section 3 of the Kolhapur Revenue Jurisdiction Act. On the question whether Maya Gouda's branch has become Nashtamsha, as mentioned in the Wat Hukum, the learned Judge held that the Kolhapur Courts had consistently interpreted the said expression to mean that a branch became Nashtamsha with respect to Watan properties when the deceased person left behind him no sons. As authority for this proposition, the Court relied upon the decision of the Kolhapur Supreme Court in Dada Babaji Patil v. Kalgonda Babgonda Patil. ((1945) Kol LR 541). The Court also referred to the later decision in S.A. 210 of 1947, relied on by the trial Court. On this interpretation, the Court held that in spite of Maya Gouda having left behind him his daughter, the 7th defendant, his line should be considered as Nashtamsha, so far as the Watan properties were concerned and in consequence, the plaintiff, as Nawa Wala was entitled to get possession of the properties. The finding that the defendants had not completed title by adverse possession was accepted by the Court. In this view, the appeal filed by defendants 1 to 4 was dismissed.

6. Defendants 1 to 4 filed a second appeal before the Bombay High Court, which appeal, on reorganisation of the States, was transferred to the Mysore High Court and registered as Second Appeal No. 43(B) of 1956. The Mysore High Court, by its judgment, dated September 11, 1961, had confirmed the decisions of the Subordinate Courts accepting the claim of the plaintiff and dismissed the second appeal.

7. Mr. R. B. Datar, learned counsel for the appellants, urged two contentions : (1) The view of the High Court that the right to Watan properties goes along with the service to be performed by the person registered as Nawa Wala, is erroneous and is contrary to the Wat Hukum No. 26 of Fasli 1323. (2) The view of the High Court and the two Subordinate Courts that there is Nashtamsha in the line of Maya Gouda, is erroneous, as apart from there being the daughter, the 7th defendant, the appellants are also heirs, being the nearest reversioners and, as such, entitled to succeed.

8. We may deal with both the contentions together. It is no doubt seen that the High Court has proceeded on the basis that the right to Watan properties goes along with the duty to perform the services, and therefore, prima facie, the person who is required to do the services, must be entitled to the property. But a reference to the Wat Hukum No. 26 indicates that all the properties need not necessarily be with the person doing the service, and that the service is to be taken from persons in the eldest branch regarding Patils and that it is not to be taken by other sharers. It further provides that as service is not to be taken from Bhauband, local fund and judi of their share should be recovered by the village officers along with Government land revenues to be credited to the

Government for payment to the person registered as Nawa Wala. In this case, though the plaintiff as the registered Nawa Wala was doing service, it is seen that the suit properties were in possession of Jakkawwa, the widow of Maya Gouda, who died about 35 or 40 years ago. That the property must go with the service, is only one of the reasons given by the High Court for holding against the appellants. But this reasoning does not vitiate the conclusions arrived at by the learned Judges that the plaintiff was entitled to get possession of the properties as Nawa Wala under the Wat Hukum, as Maya Gouda's branch had become Nashtamsha.

9. Mr. Datar further contended that the expression 'Nashtamsha' occurring in the Wat Hukum means a total absence of heirs in the sense that there is nobody to succeed, under Hindu Law, to the estate of Maya Gouda. As Maya Gouda had left a daughter, the 7th defendant and as, in any event the appellants are the nearest reversioners entitled to the succeed to the estate of Maya Gouda under Hindu Law, it cannot be stated that the line of Maya Gouda has become extinct so as to enable the plaintiff to recover possession of the properties. It is common ground that the Wat Hukum provides for the Nawa Wala taking possession of the properties if the family of a particular holder of Watan lands becomes Nashtamsha. The expression 'Nashtamsha' has come up for consideration before the Courts in Kolhapur. The Supreme Court of Kolhapur, in Dada Babaji Patil's case (supra) had to consider the question whether the expression 'Nashtamsha' means complete and total absence of direct lineal heirs. In that decision, after the death of the holder, his widow inherited the lands and remained in possession till her death. On the death of the widow, the reversionary heirs of the deceased holder under Hindu law entered into possession of the properties. The plaintiff in that case, who had been registered as the Nawa Wala by the revenue authorities, sued to obtain possession of the lands and the claim of the plaintiff was allowed by the Court, holding that the existence of the reversionary heirs did not take the case out of 'Nashtamsha' as provided in the Wat Hukum. The above decision was also followed in the same Court by Lokur, J., in S.A. 210 of 1947, who held that if there is no direct male descendant, then that case should be considered as 'Nashtamsha'. We have already referred to the fact that these two decisions have been followed by the Trial Court as well as by the Assistant Judge on appeal.

10. From these decisions it follows that in Kolhapur State, the succession to Watan properties was not governed by the ordinary Hindu law, but by Wat Hukum No. 26 and on the interpretation placed by the Courts in that State, there will be 'Nashtamsha' when a person dies without leaving behind him any sons. That is the position in the case before us. As pointed out earlier, Maya Gouda died leaving his daughter, the 7th defendant, but no sons. The 7th defendant possibly could not inherit the Watan properties, according to the decision of the Courts in Kolhapur State. The plaintiff's specific claim was that under the law obtaining in Kolhapur State, the 7th defendant was only the daughter of Maya Gouda and could and not inherit the properties and that he, as the Nawa Wala, was entitled to recover possession of the properties. On the other hand, defendants 1 to 4 specifically pleaded the 7th defendant, the daughter of Maya Gouda was entitled to inherit the properties. All the Courts have accepted the plaintiff's plea and decreed his claim.

11. Mr. Datar, learned counsel, referred us to the decision of the Division Bench of the Bombay High Court in Shivgonda Annasaheb Virgonda Patil v. Champebai Bharatar Sidgonda Deosaheb Shivgonda Patil. (Appeal No. 297 of 1957, from original decree, decided on 7-12-1962). That judgment was delivered on December 7, 1962 and a certified copy of the same has been placed before us. The learned Judges have observed :

"Whatever may have been the interpretation of the Vathukuma in Kolhapur State, so far as this Court is concerned it is well settled that 'Nashtamsha' does not mean a man

dying without male issue but it means a man dying without leaving any heir. Accordingly, therefore unlike the authorities in Kolhapur State, this Court held that as long as there was a single heir, whether male or female, to the deceased, it does not result in 'Nashtamsha' of the line."

12. According to this decision, Maya Gouda's branch cannot be considered to be 'Nashtamsha' as he has left his daughter, the 7th defendant, as his heir and she will be entitled to inherit the Watan properties.

13. We may also refer to a Division Bench decision of the Mysore High Court in Sabmshail Ramachandra Kulkarni v. Gopal Govind Dattawad, ((1960) Mys LJ 441) wherein the Mysore High Court has not agreed with the view of the Bombay High Court, expressed in an earlier decision, similar to the view taken by the Bombay High Court in Shivgonda's case, (Appeal No. 297 of 1957, from original decree, decided on 7-12-1962) that the expression 'Nashtamsha' has to be interpreted as meaning that a holder has left no heirs at all who can inherit his estate under the Hindu Law.

14. It is not necessary for us in this case to resolve the conflicting views noted above. Whatever may be the interpretation, the appellants will not be entitled to inherit the properties of Maya Gouda. Because, if the view of the Kolhapur Courts is accepted, the plaintiff, as the Nawa Wala, is entitled to get possession and if the Bombay view is accepted, it is the 7th defendant, who will be entitled to inherit the Watan properties of her father Maya Gouda. In either case, the appellants cannot inherit the Watan properties of Maya Gouda and thus they are out of the picture. The 7th defendant, against whom also a decree for possession has been passed, did not contest the claim of the plaintiff. Nor did she file any appeal against the decree of the Trial Court. It has to be further noted that even the appellants have not made her a party, either before the first Appellate Court, or in the High Court, or even before this Court.

15. In the result, the appeal fails and is dismissed with costs.

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