

Malikarjunappa Basavalingappa Mamle Desai

Vs

Siddalingappa and Others

And

Smt. Gangabai

Vs

B. Siddalingappa and Others

Civil Appeals Nos. 682 and 683 of 1967

(A. N. Grover, A. K. Mukherjea JJ)

21.09.1972

JUDGMENT

GROVER, J. -

1. These appeals have been brought by special leave from a judgment of the Mysore High Court. The parties to the proceedings out of which the appeals have arisen belong to Handiagnur Desai Family which was a Watandar Family. The Family had different types of Watans and was governed by the Bombay Hereditary Offices Act, 1864, popularly known as the Watan Act. The items of Watan included the offices of Kulkarni and Patil and other rights in respect of some village in the district of Dharwar. The family owned Watan as well as non-Watan lands apart from movable property.

2. About the year 1910 certain disputes arose among the junior and the senior branches of the family regarding the partition and other arrangements relating to the property. The eldest branch of the family represented now by the respondents claimed rights on the basis of primogeniture, the junior members being entitled only to maintenance. Suit No. 166 of 1910 was filed in the court of the District Judge, Dharwar, by the predecessors-in-interest of the present appellants in which one of the reliefs claimed was for partition of the one half share of the plaintiffs in the immovable and movable properties described in schedule A annexed to the petition. In that suit a compromise was effected between the parties on the basis of which a decree was passed, on January 11, 1913. It was declared that the suit property was impartible. It was further declared that as the suit property was impartible defendant No. 1 (in that suit) was the only owner of the said property in accordance with the customs of the family. The plaintiffs and defendants 2, 3 and 4 now represented by the appellants were declared as having no right of ownership but they had a right to maintenance. They were allotted certain lands by way of maintenance but the liability of payment of the Government dues like Judi assessment, local funds etc., was to be that of the eldest branch. In other words the eldest branch (represented by the present respondents) was to hold the property in question but the junior branch represented by the present appellants was to get possession of certain lands for maintenance. However the eldest branch being the owner was liable for the payment of the

Government dues. It appears that prior to 1950 the State of Bombay decided to bring all the Watan property on the same line as Ryotwari property and subject to payment of land revenue. Legislation was enacted abolishing various types of inams. One of such enactments was the Bombay Pargana and Kulkarni Watan (Abolition) Act, 1950, hereinafter called the 'Act' which came into force in May 1, 1951. The scheme of the Act broadly was to abolish the incidents of Watan and make Watan property liable to payment of land revenue. There were provisions with regard to regrant of the property to the holder of the Watan. By virtue of the coming into operation of the Act the properties in dispute stood resumed to the Government. The appellants as holders took steps for regrant in accordance with the provisions of the Act and after paying the necessary occupancy price got the property regranted but those proceedings were not completed before July 27, 1956. In March, 1955 the appellant M. B. Mamle Desai filed a suit against Sardar Bullappa who represented the senior branch of the family for recovery of Rs. 1,530-12-0 together with interest on account of the amount paid by way of Government dues for the years 1951-52, 1952-53 and 1953-54 by reason of the terms contained in the compromise decree. Bullappa died during the pendency of the litigation and is now represented by the present respondents. A similar suit was filed by the other appellant Gangabai for recovery of Rs. 1,437 with interest. According to the case of the plaintiffs in both the suits it was the defendant who was liable for payment of the Government due although the predecessor-in-interest of the plaintiffs were put in possession of the suit properties in lieu of maintenance payable to them. The position taken up by the defendant was that although under the terms of the compromise decree he was liable to pay the Government Judi and local funds which he continued to do up to the year 1950-51 but after the Act came into force his liability came to an end and it was the plaintiff alone in each suit who was bound to pay the full assessment relating to the lands. The Trial Court decreed both the suits and those decrees were confirmed by the first appellate court. The High Court, however, in the second appeals which were brought it followed its decision in another similar case and held that the agreement embodied in the compromise decree could no more be binding on the parties in view of the resumption of the Pargana Watan and regrant of the same to the plaintiffs under the Act.

3. In order to determine the controversy between the parties it is necessary to refer to the relevant provisions of the Watan Act and the Act itself. According to Section 4 Watan property meant movable and immovable property held, acquired or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office. Hereditary office was an office which was held hereditarily for the performance of a duty connected with the administration or collection of the public revenue or with the village police or with the settlement of boundaries or other matters of civil administration. The Watan property, if any, and the hereditary office and the rights and privileges attached to them together constituted the Watan. A Watandar was a person having an hereditary interest in a Watan (see Section 4 of the Watan Act). If any alienation of Watan property was made the Collector was bound to declare it null and void and resume possession of that property : (Sections 11 and 11-A). Section 15 of the Watan Act provided for commutation of service. The Collector could, with the consent of a holder of a Watan, given in writing relieve him and his heirs and successors of their liability to perform service upon such conditions as might be agreed upon. After referring to the relevant provisions of the Watan Act it was observed in *The Collector of South Satara v. Laxman Mahadev Deshpande & Others*, ([1964] 2 SCR 48 : AIR 1964 SC 326) that the Watan property, if any, the hereditary office, and the rights and privileges attached thereto together constituted a Watan and a hereditary office did not lose its character merely because the service originally appertaining to the office had ceased to be demanded. The State having created the Watan was entitled to put an end to the Watan i.e, to cancel the Watan and to resume the grant. The State Government could abolish the office and release the property from its character as

Watan property. Keeping in view the above provisions of the Watan Act we may refer to the material provisions of the Act itself.

4. Section 3 is in the following terms :

"With effect from and on the appointed day, notwithstanding anything contained in any law, usage, settlement, grant, and or order -

(1) all Paragana and Kulkarni Watans shall be deemed to have been abolished;

(2) all rights to hold office and any liability to render service appertaining to the said Watans are here by extinguished;

(3) subject to the provisions of Section 4, all Watan land is hereby resumed and shall be deemed to be subject to the payment of land revenue under the provisions of the Code and he rules made thereunder as if it were an unalienated land :

#Provided that.....##

(4) all incidents appertaining to the said watans are hereby extinguished."

5. Section 4(1) to the extent it is material is set out below :

"A Watan land resumed under the provisions of this Act shall subject to the provisions of Section 4-A be regranted to the holder of the Watan to which it appertained on payment of the occupancy price equal to twelve times of the amount of the full assessment of such land within five years from the date of the coming into force of this Act and the holder shall be deemed to be an occupant within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the rules made thereunder; all the provisions of the Code and the rules relating to unalienated land shall, subject to the provisions of this Act, apply to the said land :

#Provided that.....##

Provided further that if the holder fails to pay the occupancy price within the period of five years as provided in this section, he shall be deemed to be unauthorisedly occupying the land and shall be liable to be summarily ejected in accordance with the provisions of the Code."

The only question which has been debated before us relates to the effect of the two sections, namely, 3 and 4 of the Act on the liability of the respondents to pay the assessment and Government dues in accordance with the terms of the compromise decree. It is not disputed that the appellants obtained a regrant of the properties in dispute under Section 4(1) by paying the occupancy price in accordance with its provisions. The regrant was not made until July 27, 1956 and on behalf of the appellants it has been maintained that up to the date of the regrant the liability to pay the Government dues under the terms of the compromise decree was that of the respondents. It is contended that until the regrant was made in favour of the appellants the respondents continued to have all the rights which vested in them prior to the coming into force of the Act. In other words the respondents continued to have ownership or proprietary rights and the appellants were merely in possession in lieu of maintenance allowance to which they were entitled. It was accepted in the compromise decree that the liability to

pay the Government dues was that of the owners or the proprietors and not the persons in possession, namely, the appellants.

6. Now it is quite clear that by virtue of the provisions of Section 3 of the Act the character of the suit lands changed. All Pargana and Kulkarni Watan property was resumed and made subject to the payment of land revenue under the provisions of the Bombay Land Revenue Code. The land thus acquired the character of Ryotwari lands. The very fact that under Section 4 they could be regranted showed that all the incidents which previously attached to the aforesaid Watan lands under the Watan Act ceased to exist. Under the rule laid down by the Full Bench decision in *Vijaysingrao Balasaheb Shinde Desai v. Janardanrao Narayanrao Shinde Desai & Others*, (AIR 1949 Bom 314 : ILR 1949 Bom. 565 : 4 DLR Bom 115) the appellants were the holders of the Watan in respect of the suit lands and they were thus entitled to regrant in terms of Section 4. They actually got the lands regranted to them. It seems they took a long time in completing the proceedings relating to the regrant and that is the reason why it was only in July, 1956 that the actual regrant was made. On behalf of the respondents it is argued that by virtue of the resumption and regrant under the terms of the Act the suit lands ceased to be family properties of both the branches. In this situation the agreement embodied in the compromise decree of 1913 ceased to subsist and be of binding effect. It would also appear from the provisions of Section 4 of the Act that once a regrant is made the title of the grantee relates back to the date of the commencement of the Act. There is a good deal of substance in the contentions of the respondent. It must be remembered that their liability under the compromise decree was limited to the payment of Government Judi and local fund cess which was payable when the lands were Watan property. These lands at the time when the compromise was effected were not subject to the payment of assessment on the basis of Ryotwari tenure. Any such assessment which might become leviable as a result of legislation similar to the Act could not be within the contemplation of the parties when the compromise was effected. It is not possible to comprehend how the term relating to the payment of Government dues and local fund cess in the compromise decree could be extended to payment of full assessment of revenue after the coming into force of the Act which abolished the watans and whereby all Watan land was resumed to the Government.

7. The High Court appears to have kept in view of the provisions of Section 56 of the Indian Contract Act. The material part of that Section reads :

"A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promiser could not prevent, unlawful, becomes void when the act becomes impossible or unlawful."

As soon as the Act came into force the lands in dispute ceased to be Watan property and came to be resumed to the Government. One resumption took place the only right given under the Act to the holder was to get them regranted in terms of Section 4. The lands also became subject to payment of Government dues but those were not the same as were payable before the Act came into force. The payment had to be made according to the assessment on the basis of Ryotwari tenure. Such payment was neither contemplated nor covered by the terms of the compromise decree. The fact that actual regrant to the appellants was made some years later could not keep alive the liability of the respondents which could only arise if agreement embodied in the compromise decree was still binding and it was possible to enforce it in view of the subsequent events. That in our judgment could no longer be done. The High Court was, therefore, right in holding that the original arrangement embodied in the compromise decree came to an end. If the appellants are still entitled to maintenance under the law it is open to them to claim the same from the respondents but they

have no longer any right under the compromise decree to claim the amount of the assessment or other dues paid by them in respect of the suit lands after the coming into force of the Act.

8. The appeals fail and are dismissed but there will be no order as to costs.

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