

# BOMBAY HIGH COURT

Khodabhai Sartansing

Vs

Chaganlal Kishordas

(Louis.P Russell, C.J. Heaton ,J.)

07.08.1907

## JUDGMENT

**Louis P. Russell, Acting C.J.**

1. In our opinion the decree of the lower appellate Court is correct.
2. It appears that the father of these minors, one Sartansing, was the assignee of a certain mortgage debt from one Talakshi Chika and the former subsequently by Exhibit 2(i) mortgaged that debt to the plaintiff in this suit.
3. The point raised is that, having regard to Section 31 of the Talukdari Settlement Act, VI of 1888, which says, " No encumbrance on a Thalukdar's estate or on any portion thereof made by the Talukdar after this Act comes into force shall be valid beyond the Talukdar's natural life unless as therein provided" the incumbrance created by the Talukdar without the sanction of Government is not good beyond the lifetime of the Talukdar.
4. We are of course bound by the decision in *Parshotam v. Bai Punji*<sup>1</sup> that the words "Talukdar's estate" are different from and imply more than 'Talukdari estate' But that case is only an authority to that extent; what we have to decide in this case is the meaning of the word "estate."
5. Looking at the preamble of Bombay Act VI of 1888. it is I clear that what the<sup>3</sup> Act purports to deal with is "all estates held by certain superior land-holders in the District of Ahmedabad, &c," and certainly that would seem to show that the 'estate' there means "'held by them as Talukdars. "
6. A similar argument, we think, may be derived from Clause (b) of Section 2 of the Act where it says "a registered Talukdar means a sole Talukdar or the oldest of members of several co-sharers of a Talukdari estate," and there are numbers of other sections in the Act which refer to a limited use of the word 'estate' in this Act and it appears to us, as pointed out by Mr. Knight, that it is impossible to b<sup>3</sup>lieve that the Legislature contemplated the interference by the Talukdari Settlement Officer with any private investment that the Talukdar might choose to make. The

assignment of this mortgage deed to Sartansing was simply a private investment of his money by him. The Act, as Mr. Mehta conceded, was evidently aimed at preserving the estates of gentlemen in high position in this particular District, and, we think, it would be straining the operation of that Act too widely to hold that it is applicable to a case such as the present.

7. We, therefore, must confirm the decree of the lower appellate Court in the main, but as the respondent has filed cross-objections, we must vary that decree to the extent of holding that the plaintiff is entitled to the usual mortgage decree in respect of this security and in the event of any deficiency he will be entitled to put into operation Section 90 of the Transfer of Property Act. We, therefore, vary the decree in this way.

8. The appellant must pay the costs throughout and the costs of the cross-objections, if any.

Heaton, J.

9. All I wish to add is a word with reference to the case in *Parshotam v. Bai Punji*<sup>2</sup>, to which we have been referred. In that case the difference between the expressions "Talukdari estate " and "Talukdar's estate" is commented on. Now one possible difference is, it seems to me, that the expression " falukdari estate" covers the case of an estate which is the joint property of several Talukdars; and the expression "Talukdar's estate" indicates the property of a Talukdar, or of a Talukdar together with his sons.

10. But whatever may be the difference in the meaning of the two expressions, neither the one nor the other covers the case of an estate different in its nature from those estates which the Act was especially designed to operate on.

Cases Referred.

1(1902) 4 Bom. L.R. 817

2(1902) 4 Bom. L.R. 817