

# BOMBAY HIGH COURT

Bichubha Mansangji

Vs

Vela Dhanji Patel

(Chandavarkar and Heaton, JJ.)

07.07.1909

## JUDGMENT

### **Chandavarkar, A.C.J.**

1. The question of law in this case is whether the expressions ' talukdar's estate" and 'talukdari estate" occurring in Section 31 of the Talukdars (Gujrat) Act VI of 1888" include the estate held by a taluhdar on any other tenure than talukdari.

2. The question is really beset with difficulties of construction because the language of the section itself and in fact of the Act are rather obscure upon the point. Very careful arguments have been addressed to us on either side; and if the question were res Integra, I should have taken time to consider it more carefully. But I think that in principle the point arising in the present case is the same as that decided in Khodabhai Sartansing v. Chaganlal Kishordas 9 Bom. L.R. 1122. There it was held that the expression talukdar's estate' meant only the estate held by a talukdar on talukdari tenure and not property held on any ordinary tenure which was distinguishable from the former.

3. That is a decision of a Division Bench of this Court. It was passed two years ago and unless I find that it is clearly erroneous, we must follow it. If I could not agree with that decision, the case would have to be referred to a Full Bench. I see no reason to disagree and I do not think that the circumstances of this case call for any such reference The Act is obscurely worded and if the decision in Khodabhai Sartansing v. Chaganlal Kishordas 9 Bom. L.R. 1122 is wrong, the legislature is at hand to correct that decision and amend the law.

4. Accordingly the decree must be confirmed with costs.

Heaton, J.

5. As a party to the decision of Khodabhai v. Chaganlal 9 Bom. L.R. 1122 there are a few words I should like to say. I have heard a very elaborate argument and after hearing and considering it

there is not one word in my judgment in the previous case which I should wish to alter. There we came to a decision on the ground that the property under consideration was not property held by a talukdar as such and, therefore, was not property which was covered by the provisions of Section 31. And that is precisely the reasoning which seems to me right in determining the present case.

6. It is found as a fact by both the lower Courts that the lands which are now in dispute are not held under a talukdari tenure, that is to say, they are not held by a talukdar as such. That being so, it seems to me that they are not lands of a kind on which Section 31 is intended to operate.

7. It is perfectly true that Bombay Act VI. of 1888 is a very difficult Act to understand, indeed, speaking for myself I can say, in some particulars, it is an Act which it is impossible to understand. But giving it, the best attention I can, I see no reason whatever for doubting that the decision arrived at two years ago was a correct one.