

# **BOMBAY HIGH COURT**

The Talukdari Settlement Officer

Vs

Chhaganlal Dwarkadas

(B Scott, Kt., C.J. Batchelor ,J.)

28.07.1910

## **JUDGMENT**

### **Basil Scott, C.J.**

1. On the 8th of August 1899 a decree was passed at a suit of the opponent Chhaganlal against the Thakore of Kerda, in Suit No. 60 of 1899, in the Court of the First Class Subordinate Judge of Ahmedabad.
2. The defendant had died the day previous to the decree, At the time of his death he was entitled to revenues from three sources: Toda Giras allowance of Rs. 1,400, per annum; the income of two Talukdari villages; and the income of certain Wanta lands in seven different Government villages.
3. On the 20th of August 1899 the whole of the estate of the deceased defendant was taken under attachment by Government Officers purporting to act under Section 144 of the Land Revenue Code (Bombay Act V of 1879), and the Talukdari Settlement Officer, who is the appelland in this case, claims to have been in possession of the estate from that date.
4. On the 19th of June 1905 a sum of Rs. 8,516, standing in the books of the Government Kacheri of Anand to the credit of the estate of the Thakore, was attached by the judgment creditor, and on the 13th November 1907 another sum, of Rs. 5,200, standing to the credit of the estate of the Thakore, was similarly attached.
5. The Talukdari Settlement Officer instituted these proceedings in 1908 applying that the attached sums should be released from attachment.
6. In the lower Court a question arose as to the origin of the two sums attached and, upon issues being raised, it was held that the sum of Rs. 8,236-9-0, and Rs. 1,895-9 6 forming part of the L sum of Rs. 5,200, were the produce of property not liable to attachment, but that Rs. 3,304-6-6 was income derived from lands other than property consisting of Toda Giras Hak and Talukdari

villages and was therefore liable to attachment

7. An appeal has been preferred by the Talukdari Settlement Officer and a preliminary point was taken on behalf of the opponent that no appeal would lie as the Talukdari Settlement Officer was not the representative of the judgment-debtor within the meaning of the Civil Procedure Code.

8. We thought it advisable however not to decide the preliminary point but to hear arguments upon the appeal on its merits.

9. We have now heard Mr. Ramdatt Desai, who has argued the case very fully on behalf of the Talukdari Settlement Officer, and we are of opinion that the decision of the lower Court was right.

10. It has been proved that the lands from which the sum of Rs. 3,304-6-6 was derived were Wanta lands.

11. There is no question as to the nature of Wanta lands. That is made clear by Robertson's and Wilson's Glossaries, by the Ras Mala, and by the judgment of Sir Michael Westropp in *Dolsang Bhavsang v. The Collector of Kaira (1)*. They are lands held by Rajputs or the representatives of Rajputs who after the Mahomedan conquest of Gujarat received one-fourth of the land of certain villages on condition of keeping order in those villages. The lands are held either rent-free or at a small quit-rent.

12. The first point taken in appeal is that these Wanta lands are part of the ' Talukdari Estate ' in the strict sense of that expression and that consequently the attachment of the income derived from these lands cannot continue in face of the provisions of the Section 31 of the Gujarat Talukdars Act as amended by Bombay Act II of 1905.

13. The Head Clerk to the Talukdari Settlement Officer gave evidence in the case and was cross-examined as to the nature of Talukdari tenure and as to whether the Wanta lands in question were held on Talukdari tenure. His evidence is as follows :-To my knowledge summary settlement is paid for the Sarsa Wanta land. There is some difference between the Talukdari estate and the Talukdar's estate. Talukdar's estate means estate of whatever tenure, that is, if a Talukdar holds some Government lands they are also called Talukdar's estate. The Talukdari estate means estate with full proprietary right held by Talukdar under what is called Talukdari tenure. There is no definition given of the Talukdari tenure in any enactment. I cannot give a definition of the Talukdari tenure but I can give illustration of it. The Land Revenue Code recognizes two kinds of land, alienated and unalienated. The Talukdari does not come under either of these categories because it is of full proprietary right and its origin antedated the British rule. The said two are the chief distinguishing characteristics of the Talukdari tenure.

14. It is proved in this case that the Sarsa Wanta land, from which the attached sum is derived, is entered as alienated land under the Land Revenue Code. We may, therefore, assume that it is not land held upon Talukdari tenure in the strict sense of the word. That is sufficient, we think, to dispose of the first part of Mr. Ramdatt Desai's argument.

15. Mr. Ramdatt Desai's second point was that 'Talukdari Estate', in the section to which we have referred and generally throughout the Gujarat Talukdars Act, is not to be interpreted as limited to estate held on Talukdari tenure but means the whole of the property of a person who answers to the description of a Talukdar whether held by him by reason of his status as Talukdar or otherwise.

16. In dealing with this argument we will assume (without deciding) that income derived from an estate is portion of the estate within the meaning of Section 31.

17. We have the authority of two judgments of this Court to the effect that the words 'Talukdar's estate' in Section 31 are used in a technical sense limited to the Talukdar's interest in the estate held by him by reason of his status as a Talukdar, see *Khodabhai v. Chaganlal*<sup>1</sup> and *Bichubha v. Vela Dhanji*<sup>2</sup> We are bound by the decision in each of these cases.

18. We have, however, permitted full argument from Mr. Ramdatt Desai, based upon the various enactments relating to Talukdars and the different sections of the Gujarat Talukdars Act, and we entirely agree with the conclusion arrived at in those cases.

19. For these reasons we affirm the decision of the lower Court and dismiss the appeal with costs.

Cases Referred.

1(1907) 9 Bom. L.R. 1122

2(1909) 11 Bom. L.R. 736