BOMBAY HIGH COURT

Ramabai Shriniwas Nadgir

Vs

The Government of Bombay

(John Beaumont, Kt., C.J. Sen, J.)

08.11.1940

JUDGMENT

John Beaumont, C.J.

1. These are two cross appeals against an order made by the First Class Subordinate Judge of Dharwar. An order was made by the Privy Council in certain litigation that costs should be paid by the defendants, who were the Secretary of State for India, and defendants NOB. 1 to 3 in this suit, or their predecessors. The Secretary of State for India ultimately paid those costs in full, and then he filed this suit to recover contribution from his co-defendants, and a decree was passed on November 26, 1934, directing contribution. In the case of defendant No. 3, it had been stated by an amendment of the plaint that the original defendant had died, and his son defendant No. 3 was held to be liable to the extent of the property he got inherited from his father. The Secretary of State for India then took out the present darkhast in order to execute the decree against the three defendants. The contention of all the defendants was that the lands sought to be attached were watan lands, and that they could not be attached by virtue of the protection afforded under Section 13 of the Watan Act. As against defendant No. 1, the learned Judge held, in view of certain admissions made by that defendant in the witness-box, that the lands which were sought to be attached were not watan lands. In the case of the other two defendants, he held, basing his decision on the Record of Rights, that the lands were nadgirki watan lands. I am not quite sure whether he merely meant to hold that the lands of defendant No. 1 were not shown on the Record of Rights as nadgirki watan lands, or whether he meant to hold that the admission of defendant No. 1 would rebut the presumption arising from the entry in the Record of Rights that they were nadgirki watan, lands. I am rather disposed to think that there is no distinction between the lands held, by defendant No. 1 and the lands held by defendants NOS 2 and 3. However, having held that the lands of defendants Nos. 2 and 3 were watan lands, it was then necessary to establish that they had been assigned as remuneration for services under Section 23 of the Watan Act, because, unless they had been so assigned, the protection afforded by Section 13 does not arise.

2. There is really no evidence on the record to show that any of these lands had been assigned under Section 23 as reward for services] The learned Judge, in the case of defendants Nos. 2 and 3, held that Government were bound by an admission; in their written statement filed in the original suit of 1913 in which the costs were incurred, and that by that admission Government had acknowledged that the lands had been assigned as reward for services; but the learned Judge's view on that point is dearly wrong. A party is not bound by an admission in his pleading except for the purposes of the suit in which the pleading is delivered. It frequently happens that a party is prepared in a particular suit to deal with the case on a particular ground and to make an admission, but that admission is not binding in any other-suit, and certainly not for all time. Government may have known much less about the position in 1913 than they know now. If they had pleaded erroneously in the suit of 1913 and had discovered the error in time, they could have amended the pleading, and it would be a strange thing to hold that, after the suit had been disposed of, and the chance to amend the pleading had gone, Government were bound for all time by their admission. In my opinion there is no evidence on record that the lands of any of the defendants had been assigned by the Collector under Section 23 of the Watan Act and that, therefore, the protection afforded by Section 13 came into operation.

3. But in the case of defendant No. 3, there is a separate defence. As I have pointed out, the decree sought, to be executed provides that he is liable to the extent of the property he got inherited from his father, and, of course, the executing Court is bound by the decree. Therefore, if he inherited this watan property from his father, that property is liable. But on the authority of the cases, to which the learned trial Judge referred*: [viz. Vithaldas v. Shrinivasrao*[1] *Vishvanath v. Keshavbhat*[2] *and Jagjivandas Javerdas v. Imdad Ali*[3] it is, I think, established that a son does not inherit watan property from, his father at any rate to the extent of making that property liable for the father's debts. As was pointed out by this Court in Vithaldas v. Shrinivasrao, to hold that watan property was liable for the father's debts, like other property of a Hindu father, would really be to go behind the prohibition contained in Section 5 of the Watan Act, which prevents a watandar from alienating or mortgaging watan property beyond the term of his own life. The learned Government Pleader seeks to distinguish the cases of Vithaldas v. Shrinivasrao and Vishvanath v. Keshavbhat on the ground that the decrees in these cases were ordinary money decrees against the father, whereas here there is an express provision that the decree may be executed against the property of the father inherited by the son; but that does not really carry the matter any further, because in my view the effect of the decisions of this Court is to show that watan property is not to be regarded as property inherited by the son, so as to expose it to liability to execution under Section 53 of the Civil Procedure Code. Whether it can be regarded as inherited for other purposes, it is not necessary for us to consider. I think, therefore, that the learned Judge's decision was right as to defendant No. 3.

4. In the case of defendant No. 1, I think that his decision was also right, although I base my opinion on different grounds from those which appealed to the learned Judge. We are told that defendant No. 1 has died since the date of the decree appealed from and that his widow has been brought on record. Of course, a question may arise in execution how far the property can be attached as against the widow of defendant No. 1, but we are not concerned with that. The appeal of defendant No. 1 must be dismissed, because the decree only dealt with his liability during his lifetime.

5. The result will, therefore, be that the appeal of defendant No. 1 will be dismissed with costs, and the appeal of Government, First Appeal No. 275, will be allowed with costs as against defendant No. 2 but, dismissed with costs as against defendant No. 3 in proportion to the claims of defendants Nos. 2 and 3.

Sen, J.

6. I agree.

Cases Referred.

1(1933) 36 Bom. L.R. 169
2(1933) 36 Bom. L.R. 181
3(1882) I.L.R. 6 Bom. 211