**BOMBAY HIGH COURT**

Ramappa Vanappa Akale

Vs.

Laxman Malyappa Akale

Second Appeal No. 576 of 1949

(Chagla, C.J., Gajendragadkar and Shah, JJ.)

17.08.1950

**JUDGMENT**

**Gajendragadkar, J.**

1. This is a second appeal which has come to this Court from Kolhapur and it has been placed before a Full Bench because the learned Chief Justice of the Kolhapur High Court had directed that it should be heard by a Full Bench on the ground that the question of limitation which it raised was of some importance. The question of limitation arises in this way:

2. The property in suit is a piece of land attached to the office of the village sanadi and it originally belonged to the family of the plaintiff and the defendants. The sanadi holding this land was liable to render service as such sanadi in the village chavdi of Mardi. It would appear that some time in 1904 there was a partition in the family of the sanadis and the land now in suit fell to the share of the branch of defendant 1. Since then defendant 1 has been in possession of it. The plaintiff's father died on 9-11-1926. Thereafter a revenue inquiry was held as a result of which the name of the present plaintiff was entered as a Navavala on 1-6-1935. On 1-12-1941, the present suit was filed by the plaintiff claiming possession of the property in suit. His case was that after his name was entered as a Navavala he obtained possession of the property and let it out to the defendants on oral tenancy in 1936-37. That is how he made his claim for the possession of the land. The defense was that the property had been assigned to the branch of the defendants in 1904 and as such they were lawfully in possession. Both the Courts held that this property could not have been validly partitioned in 1904 because a vat-hukum had been passed prohibiting the partition of such lands. On this view of the matter, the plaintiff's claim had been decreed in both the Courts below. When the defendants took their second appeal before the Kolhapur High Court, they were allowed to urge a point of limitation, and by an interim judgment delivered on 7-4-1948 the Kolhapur High Court sent back the case for the determination of the question of limitation. In this interlocutory judgment it was observed that

the plea which was allowed to be raised had not been taken in the Courts below ; but the defendants were entitled to this indulgence in view of the fact that until 1944 the Kolhapur High Court had consistently held that limitation was inapplicable to inam lands and it was only in 1944 that the Supreme Court of Kolhapur by its judgment overruled this longstanding view and held that the plea of limitation was applicable even to inam lands. The learned Judges of the Kolhapur High Court were disposed to accede to the request of the defendants to permit the plea of limitation to be raised in second appeal because they thought that the defendants had been misled by the view which the High Court had been taking till then on this question. The issue sent down by this interlocutory judgment was:

> "Whether the defendants prove that they were in possession of the property adversely to the plaintiff for more than twelve years before the institution of the suit."

After remand parties have led evidence and both the Courts have found in favor of the defendants on this issue. When this finding was returned to the High Court and the matter was argued before Chavan J., that learned Judge took the view that there were some decisions of the Kolhapur High Court which supported the plaintiff's plea that there can be no question of adverse possession against the plaintiff in this case because the cause of action accrued to him only when he was recognized as a Navavala ; that his right to claim possession of the property in fact arose on such recognition and therefore there can be no adverse possession against him for more thin twelve years under Article 144, since his suit was filed within twelve years from the date when his name was ordered to be entered as Navavala. Chavan J. thereupon directed that the papers should be placed before the learned Chief Justice of Kolhapur High Court in order that this appeal may be placed for disposal before a Full Bench. The learned Chief Justice agreed with Chavan J. that this was a matter of some importance and so the appeal was ordered to be placed before a Full Bench.

3. Now, it is clear that Article 144 would bar the present suit if it is held that the plaintiff claims the present property through his father. Column 3 of Article 144 refers to the adverse possession of the defendant against the plaintiff, and the word 'plaintiff' would obviously include his predecessor-in-title. On the facts, which are admitted it is quite clear that the defendants have been in possession of this property since 1904 and they are in a position to claim adverse possession not only against the present plaintiff but even as against his deceased father. It is true that the period of limitation for adverse possession was thirty years in the State of Kolhapur until 1922. It was in 1922 that the Indian Limitation Act in this behalf was made expressly applicable to Kolhapur. Three years of grace were, however, allowed to parties affected by the change of the period of limitation from thirty to twelve-years, and since the plaintiff's father took no steps to assert his title within three years after 1922, it may be that even the title of the plaintiff's father was barred by adverse possession before he died in 1926 But whether that is so or not, there is no doubt whatever that the title of the plaintiff would be barred by adverse possession because the defendants have been in uninterrupted possession since 1926 when the plaintiff's father died until

1941 when the present suit was filed. Mr. Adake who appears for the plaintiff does not dispute this position. His argument, however, is that there can be no question of adverse possession against the plaintiff because after the death of his father the property in suit reverted to the Kolhapur Government and his rights in reference to this property arose only after he was recognized as a Navavala. In other words, the contention is that sanadi property like the present is held by the holder only as a life estate; as soon as the holder dies the estate automatically reverts to the State and it remains with the State until the State decides who should be the next Navavala. If that is so, there can be no doubt that the possession of the defendants from 1926 to 1935 would be adverse not against the plaintiff but against the State of Kolhapur, and if the State recognised the plaintiff as the Navavala entitled to this property, his rights would arise as a result of the State's order and a plea of adverse possession against him cannot be sustained. This in turn is not disputed by Mr. Abhyankar who appears for the defendants. Thus the only point which we have to consider in this appeal is as to the nature of the sanadi property in suit.

4. The decision of this question has beers made somewhat difficult by reason of the fact that in the State of Kolhapur the Watan Act has been made applicable 'in spirit" and there are a large number of vat hukums issued in respect of questions relating to inami lands from time to time. These vat-hukums are published in two volumes, but unfortunately they are not arranged either chronologically or according to the subjects they deal with. We are told that a large number of vat-hukums are not included in these two volumes. It would appear that all the vat-hukums are not issued by the Ruler of Kolhapur and may not therefore claim the same authority or binding character. Some of them are purely executive orders and can have no force at all in Courts of law. Others deal with the facts of individual cases and incidentally lay down some general rules. While there are yet some others which lay down rules of general applicability. In dealing with the questions pertaining to the watans, the Courts in Kolhapur have therefore to consider this mass of vat-hukums and apply them to the facts before them. In doing so they have also to bear in mind the fact that the spirit of the Watan Act had also been made applicable to the State. Madgavkar J. who presided over the Supreme Court at Kolhapur for several years strongly criticised the application of the Watan Act in spirit only on the ground that he was unable to understand what such an application of the sprit of the Act really meant. "Either an Act, in any or all of its sections, applies, or it does not" observed Madgavkar J. "To apply it in the spirit but not in the letter is beyond the power of the Courts." (*Gundo Tatyaji v. Nagesh Gopul*[1], With respect we agree with this criticism made by Madgavkar J. The uncertainty created by a large number of vat-hukums was also criticised on several occasions by Madgavkar J. and in fact a committee had been appointed some time in 1948 to draft a bill in supersession of the vat-hukums. Meanwhile, Kolhapur merged in the State of Bombay and the vat-hukums have remained as they were. While dealing with this appeal we have ourselves realised the difficulty created by these vat-hukums and we have that proper steps would be taken at an early date to remove the perplexity and the confusion which are create by this large mass of vat-hukums scattered over the two volumes in question. The vat-hukums are not artistically worded and as such they often present difficulties of construction. Besides, in many cases they are not easily reconcilable with

each other. We would like to point out to the Government that we strongly feel that the best way to remove this confusion and ambiguity would be to make the Watan Act applicable to Kolhapur straightway. Incidentally we may add that what applies to these vat-hukums applies with equal force to the rules and vat-hukums issued by the Kolhapur Government in the matter of Hindu law. The main body of the rules of Hindu law which are enacted in Kolhapur is based principally on the translation of an old edition of Sir DinShah Mulla's Hindu Law published in 1919; and so the several important decisions which have since then substantially altered the earlier views in several branches of Hindu law cannot be applied by Courts administering Hindu law in Kolhapur. Government should consider whether it would not be expedient in the interests

[1]1944 Kol. l. R. 79, 88

of justice to apply to Kolhapur the principles of Hindu law as they are administered in the rest of the State of Bombay. This is a matter of considerable importance to the litigants and we have no doubt that Government will consider this question at an early date. If they are not disposed to accept our suggestion, it is obviously necessary that immediate steps should be taken to publish all the necessary vat-hukums both chronologically and according to subject. Meanwhile, it is necessary to consider the point raised before us in this appeal in the light of the vat-hukums to which we have been referred by the learned advocates on both the sides.

5. Mr. Adake has relied principally upon vat-hukum No. 76 of 1873 (p. 925). In fact that is the earliest vat-hukum to which we have been referred during the course of the hearing of this appeal. The effect of this vat-hukum is to prohibit partitions or alienations of the inami lands to which the vat-hukum applies and in terms this vat-hukum says that all previous orders issued in respect of these lands to the contrary must be deemed to have been cancelled by this vat-hukum. It is on Clause 7 of this vat-hukum that reliance is placed by the plaintiff. This clause says that the lands to which the vat-hukum applies are not the private property of the holder and the holder has no right to mortgage, sell, gift them away or transfer them in any manner whatever. If he purports to transfer them, such a transfer would not be recognised either in civil or revenue Courts even though such transfers may have been executed by a document duly registered under the law of registration. Mr. Adake says that the prohibition against alienation is absolute and goes much beyond the provisions contained in Section 5, Watan Act. Whereas under the Watan Act alienation of watan property made by a watandar may be good during his lifetime, it would not be good under this vat-hukum even during the lifetime of the holder. That no doubt is true. Mr. Adake further contends that Clause (7) expressly states that the inam land is not the private property of the holder, and relying on this clause the case for the plainliff is that the property is held by the holder merely as a life estate with the necessary consequence that as soon as the holder dies the property must revert to the State. If this clause had stood by itself the argument for the plaintiff could not be rejected as being without any substance. But this clause does not stand alone or by itself and so it has to be read along with the other vat-hukums which we will presently mention.

6. The next vat-hukum to which reference is made by Mr. Adake is No. 19 of 1887 (p. 902). By

this vat-hukum the prohibition against the alienation of sanadi and other lands is made so peremptory that the patils and kulkarnis of villages are enjoined to make a report about such alienations in their respective villages within 24 hours after they are effected. Vat-hukum No. 17 of 1893 (p. 910) was issued to remove all doubts as to the properties which were governed by the earlier vat-hukum, No. 76 of 1873. This vat-hukum makes it clear that gavsanadi lands with which we are concerned fall within the mischief of the said earlier vat-hukum.

7. The next vat-hukum is No. 10 of 1898 (p. 894). It says that the inamdar who has been recognized as a Navavala is entitled to the income of the property only during his lifetime, and so he may lease out the property in his possession for the whole of his lifetime. Such a lease is not open to objection; but it should be clearly understood that such a lease does not bind the heir or successor of the inamdar after his death. The word used for the successor or heir is waras (Varnacular matter omitted), and it denotes a continuity of estate between him and the deceased inamdar. The next Navavala is mentioned as the heir or successor of the deceased Navavala and in that sense it would not be unreasonable to hold that the use of this expression suggests that the heir claims through his predecessor. It is hardly necessary to point out that these vat-hukums are not happily worded at all and the several terms used in these vat-hukums in a loose manner add to the difficulties of the Court. However, Courts must take the words as they stand and attempt to construe them so as to reconcile them as far as it may be possible.

8. Then we have vat-hukum No. 16 of 1904 (p. 789), and this is clearly against the contention of the plaintiff. This vat-hukum says that the incomes from lands held by village sanadis are attached after their death as a matter of course and directs that this practice should be stopped in the future. If the deceased sanadi has left as his heir his son, brother, grandson or his widow, and there is no dispute in the matter, the service should be taken from such an heir and the property should continue with him. There can be no doubt that this vat-hukum in terms provides for the continuity of the estate and prohibits the indiscriminate attachment of sanadi property on the death of the holder. In 1905 another vat-hukum was issued which is also to the same effect. This is vat-hukum No. 44 of 1905 (p. 787). This vat-hukum says that a prior order had been issued to continue the income of the gav-sanadi lands only during the lifetime of the holders, but that should not be so done in the future and the incomes should be continued to the heirs without forfeiting them after the death of the holder. This again is quite inconsistent with the plaintiff's case.

9. Vat-hukum No. 52 of 1906 (p. 793) deals with inam properties which are attached on the ground that they had been encumbered and it directs that the income coming from such properties should be credited to the State. The plaintiff argues that this vat-hukum shows that the income received from sanadi lands pending the revenue inquiry as to heirship is forfeited to the State. We are unable to accept this contention. It must be borne in mind that this vat-hukum applies only to inam lands which are encumbered and it provides that such lands should be attached and the income credited to the State pending the inquiry as to heirship. It is by no means

clear that such income was not intended to be paid over to the heir at the end of the heirship inquiry.

10. Vat-hukum No. 6 of 1911 (p. 960) is very important. It says that the decision of the heirship inquiry must be given retrospective effect as from the date of the death of the last holder and it directs that if the heir has not rendered service after the death of the last holder penalty should be recovered from him for such absence at the rate prescribed. In other words, this vat-hukum makes it clear that the pendency of the heirship inquiry does not absolve the heir from rendering service, and if that is so, it is difficult to resist the conclusion that just as the heir is subject to the liability of rendering service from the date of the death of his predecessor, he would also be entitled to the rights of such a holder as from the same date. It is inconceivable that the liabilities can be enforced against him when he cannot assert his rights. The rights and liabilities are correlated, and since under this vat-hukum the liabilities arise retrospectively, the rights must by necessary implication arise in a similar way. On this view it seems to us clear that even as regards inami lands which are attached on the ground that they had been encumbered by the deceased holder the income received during the period of attachment would have to be paid to the heir after his title is recognised and an order passed to show him as a Navavala.

11. Vat-hukum No. 44 of 1913 (p. 893) is very important because it lays down a general rule as to the inami lands with which it deals. It says that inami of all kinds are impartible and it should be recognised that in the mattes of succession as regards them the rule of primogeniture applies. The vat-hukum then goes on to add that any partition made in respect of such inami lands would not be recognised: but it makes an exception in favour of partitions which had been made before the date of this vat-hukum. We should like to add that it has not been suggested before us by the defendants that as a result of this vat-hukum the partition when took place in the family of the parties in 1904 was valid and that the defendants are entitled to remain in possession of the property by virtue of the said partition, In fact both the Courts have found that the partition was invalid which it was made and the said finding was not challenged before the Kolhapur High Court and has not been questioned before us. We need not therefore consider the effect of the exception contained in this vat-hukum as to partitions made prior to this vat-hukum.

12. Vat-hukum No. 26 of 1914 (p. 898) provides for a special line of succession and is not of much assistance in dealing with the question with which we are concerned.

13. Vat-hukum No. 0 of 1924 (p. 905) mentions that the income received by the holder of the inam is paid to him in lieu of remuneration and it says that the earlier vat-hukum No. 11 of 1914 should be construed in the light of this principle. Mr. Adake has emphasised that this vat-hukum says that the holder of the inam land is not entitled to the income of the inam property as a matter of right since it is paid to him by way of remuneration. That, however, does not assist his contention, because so long as the holder renders service, he is entitled to remuneration, and the income of the property is assigned to him in that behalf. It is nobody's case that he would be

entitled to receive the income even if he refused to render service required of him as a sanadi of the village.

14. The last vat-hukum is No. 3 of 1931 (p. 898), and it provides that where service inam lands are continued with the heir on payment of the prescribed najarana, it is not continued to him as a matter of right and so from the date of the death of the last holder until the date of the decision of the heirship inquiry the interim income should be credited to the State. This vat-hukum makes it clear that the interim income has to be credited to the State because during the pendency of the heirship inquiry the heir may not render service. We must confess that we are unable to reconcile this vat-hukum with the earlier vat-hukum No. 6 of 1911 which in terms directs that the order passed in the heirship inquiry is retrospective in effect and makes the heir liable to pay penalty if he has not rendered service during the pendency of such inquiry.

15. These then are all the vat-hukums which have been cited before us in the present appeal. Reading all these vat-hukums together, we do not think that we would be justified in holding that the sanadi inam land with which we are concerned in this appeal automatically reverted to the State on the death of the plaintiff's father. We are inclined to take the view that clause (7) of vat-hukum No. 76 of 1873 means that the sanadi property is not the absolute private property of the sanadi because his title to it is subject to several restrictions of a severe type. Undoubtedly these restrictions are much more severe than those contained in Section 5. Watan Act. But that, in our opinion, does not necessarily mean that the limited rights which he has in his property are not heritable. In fact vat-hukum No. 44 of 1913 in terms provides that succession to such properties is to be governed by the rule of primogeniture and this can only mean that there is a heritable interest in the property but the inheritance goes by the rule of primogeniture. It is hardly necessary to emphasise that the application of the rule of primogeniture emphasises the fact that the property in question is undoubtedly heritable. This property is no doubt impartible, and as we have already mentioned, while the holder holds the property he does so subject to several restrictions. But these restrictions, however severe they may be, do not lead to the inference that the holder has no title to the property at all. He has a title, and in our opinion his title passes by the rule of primogeniture to his heir. It is quite true that on the death of the holder a revenue inquiry is contemplated and that is not surprising because there may be cases in which the claims of rival claimants may have to be considered before recognising the next Navavala. But the mere fact that an heirship inquiry is prescribed and may be held in many cases does not show that the title has meanwhile reverted to the State. The title all the time continues with the heir and must be deemed to have so vested as from the date of the death of the last holder. That in fact is expressly provided by vat-hukum No. 6 of 1911, which says that the order passed in the heirship inquiry should have a retrospective effect. We must, therefore, hold that the possession of the defendants was adverse against the plaintiff in any case from 1926 and in that view there can be no doubt that the defendants have acquired title to the property by their adverse possession.

16. Mr. Adake for the plaintiffs has relied upon some of the decisions of the Kolhapur High

Court and we may therefore briefly refer to them. The first judgment to which Mr. Adake has invited our attention is a judgment delivered by the Supreme Court in Appeal No. 3 of 1935. It has been observed in this judgment that:

> "It is a well-known principle laid down In the rules of succession governing watans in the State that each successive watandar is granted the watan as a fresh grant after it has been forfeited to the State on the death of the previous watandar and the grantee does not take exclusively as heir to his predecessor,"

Unfortunately for Mr. Adake he has not been able to point out to us any vat-hukum which justifies this statement of the law. After all we have got to decide the matter in the light of the vat-hukums and we do not think that the statement of the law in this judgment could be allowed to override the effect of the material vat-hukums which we have already considered.

17. Then we have two judgments delivered by Lokur J., in S. A. Nos. 214 of 1946 and 443 of 1946. In both these judgments, Lokur J., has no doubt referred to the estate of the sanadi holder as a life estate and has made observations which support the plaintiff's contention that the right of the Navavala arises only after the decision of the heirship inquiry and there can be no adverse possession during the period that the inquiry is pending. It is, however, apparent that on the facts in both these cases the claim of the plaintiff was in time since the suits had been filed within twelve years after the death of the last holder. That being so, it is quite clear that the observations on which Mr. Adake relies are purely obiter and, with respect, they do not appear to us to be justified having regard to the vat-hukums which have been cited before us.

18. The last judgment to which Mr. Adake has referred was delivered by a Full Bench of the Kolhapur High Court in S. A. No. 215 of 1947. This appeal, however, was concerned with naiki inam to which vat-hukum No. 76 of 1873 did not apply, and the observations made about the character of the inams to which the said vat-hukum applied must therefore be deemed to be obiter. The Full Bench was not called upon to consider the nature of these inams and it is not surprising that the several vat-hukums which have been cited before us were not mentioned before the Full Bench and have not been considered by them.

19. On the other hand, Mr. Abhyankar has referred us to the judgment of Madgavkar J., in *Dada Babaji Patil v. Kalgonda Babgonda Patil*, Kol. L. R. Part III, p. 541, in which Madgavkar J., observed that the cause of action to the reversioner who claimed possession of the inam property accrued on the date of the widow's death, because it was then that reversion fell open, and it did not make any material difference that the heirship inquiry continued for some years after the said date. This statement of the law no doubt supports the defendants' contention; but this again is clearly obiter, because the suit with which Madgavkar J., was dealing was clearly in time both from the date of the death of the widow and the date when the plaintiff's name was ordered to be

entered as Navavala.

20. Thus the position is that the judicial decisions to which reference has been made by both the learned advocates in this appeal do not afford us much assistance and we have to decide the matter on the vat-hukums themselves. As I have already mentioned, we have come to the conclusion that these vat-hukums do not support the plaintiff's contention that the property in suit reverted to the State after his father's death. In that view of the matter, we must hold that the plaintiff's suit is beyond time.

21. The result is the appeal succeeds and the plaintiff's suit is dismissed. Appellants are entitled to their costs of this appeal. Parties to bear their own costs in the Courts below.

22. Rule in C. a. 727 of 1949 discharged. No order as to costs.
Appeal allowed.