Shivagonda Subraigonda Patil And Ors vs Rudragonda Bhimagonda Patil And Anr on 14 October, 1969

Equivalent citations: 1970 AIR 453, 1970 SCR (2) 787, AIR 1970 SUPREME COURT 453

Author: P. Jaganmohan Reddy

Bench: P. Jaganmohan Reddy, S.M. Sikri, G.K. Mitter

PETITIONER:
SHIVAGONDA SUBRAIGONDA PATIL AND ORS.

Vs.

RESPONDENT:
RUDRAGONDA BHIMAGONDA PATIL AND ANR.

DATE OF JUDGMENT:
14/10/1969

BENCH:
REDDY, P. JAGANMOHAN
BENCH:
REDDY, P. JAGANMOHAN
SIKRI, S.M.
MITTER, G.K.

CITATION:
1970 AIR 453 1970 SCR (2) 787
1969 SCC (3) 211

ACT:
Wat Hukums-Kolhanur State-Patel-ki-Watan inam-If could be alienated contrary to Specific Wat Hukums-Bombay Hereditary Offices Act (III of 1874)-Applicability-Limitation Act, art. 142.

HEADNOTE:
The respondent filed a suit against the appellant alleging that the latter had sold the suit property to the respondent's father undertaking to redeem the mortgages and hand over possession of the property. It was averred that the appellant, after redeeming the mortgages wrongfully re-tained possession of the properties contrary to the stipulation and the sale effected in favour of the

respondent's father. The appellant contested the suit on the ground that the sale in favour of the respondent's father was void under the then prevailing law in Kolhapur State and that the suit was barred by limitation. The District Court decreed the suit and the High Court confirmed. On the questions (i) whether according to the law in force as could be ascertained from the relevant Wat Hukums and the provisions of the Bombay Hereditary Offices Act (111 of 1874) in so far as it was applicable to the State of Kolhapur, the alienation of Patel-ki-Watan Inam land was void and (ii) whether the suit was barred by limitation,

HELD : (i) On the construction of the various Wat Hukums the alienation in favour of the respondent's father was invalid. The Bombay Hereditary Offices Act did not apply to the Kolhapur State so as to override the specific directions of the Wat Hukums which had legal and binding force in the State. In this case there was a specific prohibition from alienating Patel-ki-Watan and other similar inams. [794 F, G]

Rangappa Venappa Akole v. Laxman Malyappa, 62 Bom. L.R. 639, referred to.

(ii) The suit was not barred by limitation. The suit was against a person who was not entitled to possession. The appellant did not dispossess the respondent and as such Art. 142 of the Limitation Act was not applicable. [795 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 734 of 1966. Appeal by special leave from the judgment and order dated April 20, 1964 of the Bombay High Court in Second Appeal No. 1188 of 1958.

N. D. Karkhanis and A. G. Ratnaparkhi, for the appellant. D. D. Verma, R. Mahalingier and Ganpat Rai, for the respondents.

up CI/70-5 The Judgment of the Court was delivered by Reddy, J. This is an appeal by special leave against the judgment of the Bombay High Court confirming the judgment of the Assistant Sessions Judge, Kolhapur who reversed the judgment and decree of the civil judge of Junior Division at Gadhinglaj whereby the suit of the plaintiff-respondent was dismissed. The respondent had filed a suit against the appellant Shivagonda Subraigonda Patil and his son Nijappa Shivagounda Patil, Virgonda Shivagounda Patil, Bhimapa Shivagounda Patil and Rayappa Shivagonda Patil with the allegation that on 27-5-1921 the first defendant, Shivagounda who was the karta of the joint family consisting of himself and his four sons, sold by a registered sale deed for a sum of Rs. 2,400 the suit properties admeasuring 6 acres and 37 guntas out of R.S. No. 62/2 and 62/3 to the plaintiff's father Bhimgonda. The properties sold to the plaintiff's father were previously mortgaged and it was averred that the first defendant had undertaken to pay the mortgage debt and hand over the suit

property to the plaintiff's father. It appears that part of the property out of R.8. 62/2 to the extent of four acres, 36 guntas was mortgaged to Hanmgond Balgonda Patil for Rs. 1,000 and two acres and one gunta out of S. No. 62/3 was mortgaged to Virgonda and four other persons. It was the case of the plaintiff that after the death of Hanmgond Balgonda the first defendant repaid the debt to his widow Gangabai and obtained possession of the hypotheca but instead of handing over possession to the plaintiff's father as stipulated in the sale deed he retained the possession. In respect of the other two acres and one gunta which was mortgaged to Vironda and others he alleged that the first defendant redeemed the mortgage and handed over the possession to the plaintiff's mother as the guardian of the plaintiff who was then a minor and that after the plaintiff's mother got into possession of the property the Kolhapur government attached the property and took possession of it in 1928 on the ground that the mortgage in favour of Virgonda and others was contrary to Wat Hukums. However, it appears that on or about 3-3-51 attachment was vacated but the possession of this land was handed over by the collector to the first defendant instead of the plaintiff from whose possession it was taken. It was the plaintiff's case that both in respect of the property that was mortgaged to Hanmgond Balgonda and that which was mortgaged to Virgonda and others it was the first defendant that retained possession of the said lands contrary to the stipulation and the sale effected in favour of the plaintiff's father. It was also the plaintiff's case that Bhimgonda who was a hissadar bhauband of the suit land which was a part of Patilki watan inam land on the date of the sale deed dated 27-5-21 was entitled to claim possession of the property on the strength of his title deed, as such the revenue court erred in handing over possession of the portion of the suit property to the first defendant on 3351. The first defendant respondent No. 1 contended in his written statement that the suit being patilki watani service inam property, its transfer was declared by watahukums of the Kolhapur State to be illegal and void because neither the plaintiff nor his father' was either the nawawala of the patilki watani service inam lands or the male members of the senior branch of the senior family. It was also contended that the mortgage in 1915 by the first defendant in favour of Hanamgonda was also contrary to wat hukums and therefore void. Even apart from this defect the suit property was never in the possession of the deceased Hanamgonda in his capacity as the mortgagee but that it has always been in his possession as the owner thereof. Accordingly the suit was barred by limitation. On these pleadings several issues were framed but for the purposes of this appeal,having regard to the arguments addressed before us only two issues are relevant, namely whether the sale under exhibit 37 in favour of the father was void under the then prevailing law in Kolhapur State and whether the suit was in time. It may be mentioned that the trial court had dismissed the suit of the plaintiff but the district judge in appeal allowed it, set aside the decree and remanded the suit to the trial court for fresh disposal according to law with the direction that the parties should be allowed to amend their pleadings. After remand the trial court reframed the issues having regard to the amendment of the pleadings but in so far as thing issues with which we are concerned it held against the plaintiff and again dismissed the suit. The plaintiff appealed to the district court which allowed the appeal holding that the impugned alienation was legal and did not offend any of the provisions of the hukums that were in force and that the suit was within time. The, appeal to the High Court of Bombay was unsuccessful. The High Court held that under the law in force alienation of service inams were alone declared to be invalid but since the subject matter under appeal did not pertain to the service inam land, the alienation was not void, nor was the suit barred by reason of the defendant's adverse possession. The question we are called upon to determine in this appeal is whether according to the law in force as can be ascertained from the relevant wat

hukums and the provisions of the Bombay Hereditary Offices Act III of 1874, as subsequently amended in so far as it is applicable to the State of Kolhapur, the alienation of the patel-ki-watan inam land, is void and whether the suit of the plaintiff- respondent is barred by limitation. Before we embark upon an enquiry in respect of these two questions, it would be necessary to understand the nature and significance of the wat hukum and the terms used therein, appertaining to watans and inams. In the princely State of Kolhapur, the word wat hukum has been used not only for the firmans or decrees of the ruler but also for the orders issued by several authorities. This indiscriminate use of the words has caused a great deal of confusion, and no wonder the Supreme Court of that State had occasion to observe that they constituted a "wilderness". This term, it was noticed, was not confined to orders passed by the ruler but also referred to those orders which were issued by the Chief Justice, by Sarsubha (the commissioner of revenue division) and also even by sub-divisional officers like the prant officer who corresponded to the deputy collector. But it was not every wat hukum that had the force of law. Only those wat hukums which were purported to have been expressly issued by the authority of the ruler whether they emanated from the Prime Minister, the Political Agent, sarsubha or the grant officer, had the force of law. All the other wat hukums which were issued by the several officers as executive orders, did not have any legal force. We shall refer to those relevant wat hukums which pertain to the inams in order to determine whether those inam grants were inalienable and subject to the rule of primogeniture. A watan or inam which in its primary sense means a gift was a grant made by a ruler who had the power or authority to make these inams. These inams were of several kinds, namely, religious. endowments, saranjams, service inams, etc., but we are here concerned only with service inams. These service inams have an origin of antiquity and go back to a feudal era where the ruler administered the government through village administration by compensating various services required to be performed by it generally by the grant of lands. The servants or officers of the village who rendered these services were known as salute and the number of them generally were twelve known collectively as bara balute of which in Maratha villages and others where it was adopted the village headman was one of such balute known as patel. There were others like kulkarni (accountant), deshpandya (district accountant), washerman, barbar, etc., with which we are not here concerned (vide Wilson's Glossary of Judicial and Revenue terms). The land which was granted for the performance of each of these services was hereditary and held subject to the terms of the grant in the sanad which governed inheritance, inalienability, etc. The subject matter of the suit as already noticed formed part of the patel-ki-watan land and was situated in the Kolhapur State, where it is contended that according to the wat hukums then in force a sale in favour of a bhauband of the vendor, but not a nawawala was valid. The bhauband we are informed by the learned advocate for the appellant, Shri Karkhanis, and it is not denied by the respondents' learned advocate, literally means kinsman or relative, has been translated as watandar of the same watan in the Supreme Court, and kinsman by the translator in the High Court. A reference to Wilson's Glossary shows that the word Bhau means a brother, a cousin. There is no doubt that it refers to relatives of the vendor. The word nawawala means the registered holder of the watan. An excerpt from page 12 of V. S. Desai's book-The Kolhapur Inam Law-has been cited before us namely that whenever the holder of an inam died, it became necessary to undertake a succession inquiry "in order to ascertain the person "upon whom the inam should descend and the person so designated "was called the nawawala. He was the holder of the inam and had the right to render service, if service had to be rendered." It was therefore urged by the plaintiff that as both the vendor and the vendee belonged to the watandar's family the transaction was valid

under the wat hukums of the Kolhapur Darbar, as such we will have to examine these wat hukums.

The first of the documents upon which reliance is placed is wat hukum No. 76 of 1282 fasli issued on 13-4-1873. This prohibits by cancelling all prior orders pertaining to service inams, the partition and mortgage of watan lands, Para 7 of this wat hukum states that the owner of the lands above-mentioned not being private property has no right to alienate by way of mortgage, sale, gift, etc., and such transfer will not be recognized by civil or revenue courts in the Kolhapur State. Only the right of the person taking such land will be recognized. If deeds alienating by way of mortgage, etc., as mentioned above are not executed from the owner and registered in the government offices, such registration should not be construed as approval of the government to such transfers. On 13-9-1876, the Political Agent issued circular No. 28 of 1286fasli with reference to the wat hukum No. 12 of 1283 fasli issued on July 12,1871. It said even though the wat hukum issued in the year 1871 had declared that a person in whose name the watan was continued should not give or take by way of mortgage, gift, etc., that provision is not complied with and it was, accordingly, made known by that circular that those who had mortgaged, etc., their lands should redeem within three months failing which the lands will be forfeited. It added that even if the lands were mortgaged hereafter they would be forfeited. Again on 4-8-1887, sarsubha issued wat hukum No. 19 of 1297 fasli, after referring to the orders issued from time to time that the watan lands of patel kulkarni, mahdra, etc., should not be mortgaged or sold, it proceeded to make an exception in these words : "It should not be understood that this order puts any restrictions on village officers, patel kulkarni, etc., mortga-

ging, etc., their lands with bhaubands". While all the previous wat hukums appear to have prohibited alienations whether by way of sale or mortgage absolutely on pain of their being forfeited if the provisions were not complied with, this wat hukum seems to make an exception in favour of mortgages between bhaubands. Thereafter in 1896, wat No. 9 of 1306 issued by Sir Nayadhish (Chief Justice) cancelled all wat hukum pertaining to service wat hukums issued prior to 1876. A subsequent wat hukum 39 of 1305 issued- on 26-2- 1896 states that as some doubts had been raised because of the use of vernacular words in wat hukum No. 19 of 4-8-1887 pertaining to watans of the watandars performing service, it was decided to prohibit the watandars or his pot bhaubands from alienating watan in any form. It was directed that an endorsement to this effect should be made on wat No. 19 dated 4-8-1897 and that the same. be brought into force. This sarsubha wat was a huzur resolution having the force of law. There are several other wat hukums namely sarsubha wat hukum 35 of 1335 fasli dated March 12, 1904, sarsubha wat hukum 28 of 1318 fasli, but it is not necessary to deal with them as they do not 'refer to this aspect of the matter. By sarsubha wat hukum No. 44 of 1322 fasli, dated 23-5-1913, it was mad-, known that "every inam of whatever type was impartable and was to be continued with eldest son only. If any partition takes place hereafter, government will not approve of it. Every partition effected prior to this order will not be affected as this order will not have retrospective effect." It is, therefore, seen that by this date not only the alienation of service inams was prohibited but it was made impartible, succession to which was to be governed by the law of primogeniture. Then we get sarsubha wat No. 4 of 1323 fasli issued on 11-6-1913 approved by huzur resolution No. 5 of 1913. This wat is translated thus :

> "Prohibiting, morgaging or alienating in any other form the impartible inams. Be it known that there is a ban on mortoaging or disposing of in any manner like other

> service watans the inams which have been declared impartible by the foregoing wat hukum and that all the wat hukums prohibiting such alienation issued so far are applicable to the inams declared impartible by the wat No. 44. This will come into force from the date of the Gazette."

The trial court points out that there were certain decisions of the Kolhapur High Court which lay down that alienation of whatever type of inam was prohibited except a sale to the nawawala but they were based on the presumption that these two wat hukums 44 of 1322 and 4 of 1323 are in existence. It was further stated that these wat hukums were omitted by wat hukum 40 of 1917, as can be seen from the list of the non-existing wat hukums given at p. 10 of appendix to vol. II of the collection of wat hukums. Though it is stated that the wat hukum 40 of 1917 was not available but from the first column it appears that it was not in force in respect of two categories of inams mentioned in it which categories do not include the service inams. There is another sarsubha wat 4 of 1533 fasli issued on 28-3-24 for granting permission only to Nawawala wajirdars watandars to purchase lands from pot bhaubands. These two wats Nos. 4 of 1323 and 4 of 1333, it is said, vary the absolute prohibition against alienation by permitting patel-ki-watan service inam to be mortgaged like other service inams, though alienation would be void if it is made in favour of any one other than bhauband and without permission even to bhaubands. It was sought to be contended before the High Court and also before us that though initially under the Bombay Hereditary Offices Act III of 1874, which was made applicable to the State of Kolhapur by notification of 1297 fasli published in the Karvir State Gazette (Kolhapur) on 3-3-1888, sec. 5 which prohibited the alienation if not made with the sanction of the government, was substituted by a subsequent amendment by Bombay Act V of 1886. This amended section, however, only prohibited alienations in any form in favour of any person who was not a bhauband beyond the natural life-time of the watan holder. This amended provision also was applied to the Kolhapur State in the same way as the main Act was applied. It is, however urged that the Bombay watan Act and the amendment were only applied in spirit that is according to the obvious meaning or import unlike other acts which were applied to the Kolhapur State in their entirety without any limitation. But the High Court of Bombay did not find it necessary to go into the question as to whether the Bombay Act or its amendment applied in letter or spirit, because according to it, the Kolhapur law was also precisely the same as the law prevailing in the Bombay State. We have already set out the various wat hukums and are of the view that the alienations by way of sale at any rate were prohibited in so far as application of the Bombay Act and its amendment is concerned, we are one with Gajendragadkar, J. as he then was when delivering the judgment of the full bench consisting of himself, Chagla, C.J. and Shah J. as he then was, in Ramappa Vanappa Akale v. Laxman Malyappa Akale(1), observed:

> "The decision of this question has been 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 (1) 62 B.L.R. 839,841.

issued in respect of questions relating to inami lands from time to time. 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. Mr. Justice

Madgavkar 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 spirit 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..... With respect we agree with this criticism made by Mr. Justice Madgavkar." What the full bench was dealing with the question whether under the wat hukums of the Kolhapur State, the sanadi inam land which was impartible reverts to the State on the death of the holder, and after an examination of all the wat hukums it expressed the view that whatever the restrictions may be upon that land which does not make the property the absolute property of the watandar, that property does not revert to the State but descends to the next heir by the rule of primogeniture. We are not concerned with that aspect of the matter but only with ,lie question whether the alienation in favour of the plaintiff's father was valid, and we think on the construction of the various wat hukums that it was not. We agree with the full bench that the Bombay Hereditary Offices Act (watan Act) did not apply to the Kolhapur State so as to override the specific directions of the wat hukums which had legal and binding force in that State. It may be observed that notification of 3-3-1888 whereby certain laws in force in what was then British India were applied in toto with modifications but the Watan Act is applied only "to go according to the obvious meaning or import". What was perhaps intended was that where there were no specific hukums the general principles of the Watan Act may be applicable. At any rate in this case as there is a specific prohibition from alienating patel-ki-watan and other similar inams we need not rely on the provisions of the Bombay Act.

On the other question namely whether the suit is barred by limitation, we are of the view that it is not. The facts as narrated will show that in one case possession was given to the plaintiff's widow after the mortgage was redeemed. But the collector under a misapprehension effected a forfeiture and took possession but subsequently perhaps realising the mistake, released the property but handed over possession to the wrong person namely the defendant. It is only after that a right would accrue to the plaintiff to file a suit for ejectment and for recovery of possession on the ground of his title. There is no validity in the submission made on behalf of the defendant that the plaintiff was out of possession from 1928 till the date of suit-April 17, 1953. Article 142 has no application because the suit is not against the defendant on the ground that he has been dispossessed by him but against a person who is not entitled to possession. The defendant did not dispossess the plaintiff, and as such art. 142 is not applicable at all. In any case, it is not necessary to co into this question in any great detail, because in the view we have taken upholding the defendant's plea that the said alienation is void the plaintiff's suit must fail. The appeal is accordingly allowed, the judgment and decree of the High Court, set aside and that of the trial court, restored with costs here and below.

Y.P. Appeal allowed.