

## **Kalgonda Babgonda Patil vs Balgonda Kalgonda Patil And Ors. on 15 February, 1989**

**Equivalent citations: AIR1989SC1042A, JT1989(1)SC292, 1989(1)SCALE376, 1989SUPP(1)SCC246, 1989(1)UJ697(SC), AIR 1989 SUPREME COURT 1042, (1989) 1 JT 292 (SC), 1989 (1) JT 292, 1989 SCC (SUPP) 1 246**

**Bench: G.L. Oza, K.N. Saikia**

### **JUDGMENT**

Oza, J.

1. This appeal is filed by the original plaintiff whose suit for partition and possession was decreed by the trial Court but on appeal before the Bombay High Court, the judgment was reversed and the suit was dismissed. After grant of leave by this Court the present appeal is filed.
2. The property in suit was Inam land held by the ancestors of the appellant under Vat Hukums of Kolhapur State. The ancestors of the appellants respondents have been holding this Watan (Inam) land in lieu of service and as they were holding in the capacity of Watan or Inam they were impartible. After contesting on various grounds the suit was decreed so far as the Watan lands were concerned. As regards Survey No. 397/1-2 the trial Judge found that they were converted into Rayatwari lands in 1904 and allotted in an earlier partition to defendant No. 3 and therefore in the present suit they could not be claimed as properties liable to partition. About the lands held as Watan lands the suit was decreed.
3. The present appellants filed a first appeal before the High Court of Bombay in respect of Survey No. 397/1-2 suit regarding which was dismissed by the trial Court whereas the respondent No. 3 who was original defendant No. 3 also preferred a first appeal before the High Court in respect of the decree for partition granted against him and in favour of appellants. A Division Bench of the Bombay High Court heard both these matters and allowing the defendant-respondent's appeal dismissed the suit of partition holding that when Watan (Inam) rights were abolished all rights including the right of partition also stand abolished. As the suit itself was dismissed appellant's appeal in respect of Survey No. 397/1-2 also was dismissed.
4. Before the High Court of Bombay when another appeal of the similar type came up the Bench hearing the appeal did not agree with the view taken in the judgment of this case and therefore made a reference to the full Bench so far as the judgment in the appellant's case. The appellant filed the SLP before this Court which was granted.

5. The Full Bench of the Bombay High Court in the case of Laxmibai v. Ganesh overruled the impugned judgment by taking the view that on the abolition of Inam the property enures for the benefit of the joint family and the other members of the family are entitled to claim partition and possession.

6. It was contended by learned counsel for the appellant that in Nagesh Bisto Desai and Ors. v. Khando Tirmal Desai and Ors. this Court approved the Full Bench view and disapproved the view taken by the High Court of Bombay in the appeal of the appellant i.e. the impugned judgment and consequently the view taken by the High Court in the impugned judgment could not be sustained.

7. In Nagesh Bisto Desai's case a Bench of three Judges of this Court considered the effect of the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950 and while considering the effect of abolition considered the view taken in the impugned judgment by the Bombay High Court and it observed :

In Kalgonda Babgonda Patil v. Balgonda Kalgonda Patil a Division Bench of the High Court took a view to the contrary and observed :

...The words "all incidents appertaining to the said Watans shall be and are hereby extinguished", must include every kind of incident, including the so-called incident of a right to partition as claimed by the plaintiff in this case, even if such right existed. Further, the lands were resumed by the Government on that date in law and vested in the Government till the lands were re-granted under Section 5 or 6 or 9 of that Act....It is not possible for us to consider it reasonable to hold that although the lands were resumed by the Government and the holder himself had lost all his rights till the lands were, re-granted to him except the right of asking for re-grant the incidents of the property under personal law appertaining to impartible property would survive the extinguishment of the tenure and resumption of the land by the State.

It was obviously wrong in reaching the conclusion that it did.

8. It is therefore clear that this Court in the judgment referred to above positively disapproved the view taken in the impugned judgment and on the contrary this Court approved the view taken by the Full Bench of the Bombay High Court which overruled the view taken in the impugned judgment of the High Court. Under these circumstances therefore learned counsel for the appellant very rightly made a brief submission and contended that the judgment of the High Court could not be sustained in respect of the properties for which the suit of the appellant plaintiff was decreed by the trial Court.

9. So far as the properties which were converted into Rayatwari lands in 1904 and about which the suit of the appellant plaintiff was dismissed by the trial Court, learned counsel frankly conceded that he has no reasons to challenge the conclusion and therefore did not press this appeal in respect of those properties.

10. Learned counsel for the respondent in spite of the fact that the judgment of the High Court was held to be wrong by a Bench of three Judges in Nagesh Bisto Desai's case still at length attempted to justify the view taken by the High Court in the impugned judgment on the basis of the distinction that he attempted to draw between the provisions of the Act which was considered by this Court in the case referred to above and the Watan in the erstwhile Kolhapur State and the Act abolishing these Watans which is the Act with which we are concerned although looking to the provisions of the Act and the scheme there appears to be no distinction which could be drawn but learned counsel at length made futile attempt to say so.

11. It was also contended that certain aspects of the matter have not been noticed in the judgment in Naresh Bisto Desai's case. Even that contention is without any substance as nothing significant could be shown which was not considered. The view taken by this Court is also the view of the Full Bench of the Bombay High Court and followed by this Court in subsequent decisions also.

12. Under these circumstances therefore there appears to be no substance in the contentions advanced by the learned counsel for the respondents.

13. It was also contended by learned counsel that there was also a partition in the family in 1874 and the properties which could be partitioned were partitioned between the two branches of the family and thereafter according to the learned counsel the families had separated and in view of that it could not be said that there was any joint family subsisting. However learned counsel admitted that although when other properties which could be partitioned were partitioned in 1874 and also some properties in 1904 but still the Watan (Inam) land which were held by the senior member of the family according to the custom and which were heritable continued generation after generation until by the present Act i.e. Bombay Inferior Village Watans Abolition Act, 1958 (Bom. Act 1 of 1959) these were abolished. It therefore could not be doubted that these Watan lands continued to be the hereditary property of the family although according to the custom the Watan was only in the name of the Senior member of the family and the succession according to the custom was in accordance with rule of primogeniture. This is not disputed that for the first time under this Act these Watans were abolished and the lands were converted into Rayatwari lands and therefore it became partible.

14. Learned counsel although attempted to contend that acquisition of the rights by the Watandar in the lands held as Watans before abolition and Rayatwari lands after abolition allotted to him was altogether a new allotment as the effect of the Act was that the land vested in the State but all these questions are concluded in view of the decisions referred to above.

15. In view of the fact that these properties which were Watans lands were not partitioned at an earlier stage continued to be the joint family property it could not be contended that as the property which could be partitioned was partitioned in 1876 and 1904 this property became the exclusive property of the respondent.

16. As regards the property which became Rayatwari in 1904 learned counsel for the respondents also raised the question of limitation but in view of concessions made by the learned counsel for the appellant in our opinion it is not necessary to go into that question.

17. In view of what has been held by this Court and in the light of the discussions above the appeal is allowed with costs. The judgment of the High Court is set aside and the decree passed by the trial court is restored. The appellant shall be entitled to the costs of this appeal. Counsel fee quantified at Rs. 2000/-.