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SooperKanoon Citation : sooperkanoon.com/352629

Court : Mumbai

Decided On : Jun-28-1926

Reported in : AIR1926Bom590

Appellant : Sursingji Dajiraj Thakorsaheb

Respondent : Secretary of State

Judgement :

Fawcett, J.

1. In this appeal the plaintiff-appellant seeks a reversal of the decree of the Joint Judge, Ahmedabad, dismissing his suit on the ground that it is barred by limitation. The respondent has, however, filed cross-objection in regard to the finding of the Joint Judge in favour of the plaintiff on the merits. Therefore, the whole case is now before us for decision.

2. The first question is the point of limitation. The plaintiff is the Thakor of Utelia and owns certain villages as Talukdar, including the village of Hariala in the Matar Taluka of the Kaira District. In that village there is a group of lands, which has for a long time been known as 'Bhavsingji's Wanta,' The main facts about it are not disputed. These lands have, for a very large number of years, been shown in the village accounts as Wanta rent-free lands. On the other hand, in 1872-73, on a reference about them by the Revenue Authorities, Government held that these lands were improperly shown as alienated lands, not liable to assessment for the purpose of fixing the total Jama leviable for the village. The wrong description of these lands in the village accounts was not corrected until about 1918 when a revision survey was being introduced, and the plaintiff brought his suit against the Secretary of State in 1920 on the ground that Government were not justified in treating these lands as liable to Jama or assessment, and classing them as Darbari along with other Talukdari lands. He sought a declaration that these lands were not so liable, and he also asked for a permanent injunction restraining the defendant by himself, or any of his subordinate officers, from recovering such Jama or assessment.

3. The Joint Judge has held that, in view of the Government Order of 1872-7-3, the plaintiff had notice that no exemption from Jama was allowed in respect of these particular Wanta lands, also that Meghabhai Ratansing, as representing the Talukdar of Utelia, submitted a petition to the Talukdari Settlement Officer, on June 13, 1892, asking that Wanta land should be exempted from Jama, and that this also showed that the Talukdar had notice about the treatment of these lands by Government. Further correspondence carried on by the plaintiff since 1918 would not, in the Joint Judge's opinion, give him a fresh cause of action. Consequently, he held that the claim was barred by limitation.

4. The first objection taken by Mr. Ramdut Desai for the appellant before us is that Government are estopped from raising this plea of limitation by the terms of a compromise in a previous suit between the parties (No. 12 of 1896) in that Court of the District Judge of Ahmedabad. That was a somewhat similar suit in regard to Wanta lands in other villages of the plaintiff in the Dholka Taluk of the Ahmedabad District. The compromise

(Exhibit 60) provided in effect that such lands were to be excluded from liability to payment of Jama, except any that were in the possession of the plaintiff, or that subsequently 'came into his possession. In para. 5 of the terms of compromise it is said:

As regards those villages of the plaintiff which are in the District of Kaira, a revised settlement in respect of the same will be made according to the circumstances connected with the villages. And the 'Tharav' (decision), under which the 'wanta' lands in the possession of the plaintiff and situate in the villages under Dholka are held to be liable for Jamabandi, will not be considered as a basis in the matter of the villages in Kaira.

5. It is contended that this means that the dispute in regard to the Kaira villages was one which could be litigated between the parties, irrespective of anything that had happened in the past. In my opinion, such a wide interpretation cannot be given to this clause. It seems so me merely to provide that the decision in the case of the Dholka lands should he without prejudice to the settlement of the Jama with regard to Wanta lands in Kaira Villages. The sentence about the decision in Dholka villages not being considered as a basis etc., would prima facie mean that the mere agreement that certain Dholka Wanta lands in. the possession of the plaintiff should be liable to payment of Jama, should not be made the basis of a similar decision that Wanta lands in the possession of the plaintiff in Kaira villages should be liable to Jama. The question of such liability was to be decided on its own merits, apart from the decision in this particular compromise; and, in my jpinion, there is nothing in those terms which can be held to debar the Secretary of State in Council from raising the point of limitation, which hag been taken, in this suit.

6. A minor point in connection with this contention is, that the Secretary of State for India in Council in this Court was summoned to produce through the Government Pleader a Government Resolution, which is the one sanctioning the compromise. The Government Pleader has objected that that Resolution recites various opinions of Government officers, 'including their legal adviser namely, the Remembrancer of Legal Affairs, and claims privilege under Section 124 of the Indian Evidence Act. Certainly, that is a claim which can properly be made in regard to such a Resolutiod, and in any case, it does not seem to me that this document would help us in deciding what is the meaning of para. 5 in the terms of the compromise.

7. Coming to the question of limitation on its own merits, there is certainly a good deal that helps the appellant. The fixing of the Jama, in a Talukdari village like Hariala, was made not on any precise method of assessing particular lands, and then adding up the total, but from a variety of considerationsch total lump sum was fixed as that whi a the Talukdar should pay in respect of his village. In arriving at the decision as to what that lump sum should be, it was customary to take into consideration what lands had been alienated, and so could do treated as, not liable to assessment.

8. But, that was not the sole factor or even a very important factor, in determining the actual amount that was to be levied, This will be quite clear from a perusal of the correspondence which has been produced regarding the fixing of the total Jama in the case of this village; and the settlement of that total lump sum was made simply in the course of correspondence between Government and its officers. The Talukdari Settlement Officer, and the Collector and other officials, such as the Commissioner, made reports, and Government then decided what should be the total lump sum due. It is not shown that this fixing of the total amount was made in consultation with the then Talukdar and it is also not shown that the Talukdar was given notice that in fixing the Jama these lands, known as 'Bhavsingh's Wanta ' had been treated as liable to Jama. It is not in fact even shown that the village papers would give the Talukdar, or his representatives clear notice to that effect. The Government Pleader has admitted that he cannot put his finger on any particular document which would afford express notice of that particular fact. Of course it may be that the Talukdar might surreptitiously know that Mr. Richey had reported that these Wanta lands should not be treated as alienated, and there fore, free from assessment. But a Court cannot go merely on a surmise of that kind. I think the principle applicable is the one that was followed by the Court in Mahipat v. Lachman [1900] 24 Bom. 126. This was a case where a Settlement Officer in Ratnagiri had made a certain decision, and it was contended that the suit was barred as not being brought within six years from the date of his decision. But, on the other hand, it was not shown that

that decision had been communicated to the plaintiff, and Parson J. in his judgment points out (p. 400) that

No provision is made [in the Act] for the communication of his decision to any of the parties affected thereby. It may lie buried in his desk for three years as in the present case and no one may know of its existence till it is made use of for the purpose of framing the register. It is not necessary to discuss what effect the proved communication of the decision might have; it is sufficient to say that the decision can have no force until it is pronounced or in some way brought to the notice of the parties and that as this is not shown to have been done in the present case till the botkhat was framed and signed, the date when this was done should be taken as the starting point of limitation.

9. In the present case, I think, it would not be fair to treat the action of the authorities in 1872-73 as giving notice to the then Talukdar that these lands were treated as liable to pay Jama, when, in fact, in the village accounts they were not so shown, so as to constitute a cause of action for bringing a suit like the present. There is no dispute that the Article of the Indian Limitation Act applicable is Article 120. Therefore, the Court has to see when the cause of action accrued, and in my opinion, these proceedings of 1872-73 cannot properly, in the absence of proof that notice was given to the Talukdar to the effect I have mentioned, be treated as giving rise to a cause of action.

10. The Joint Judge has, however, further relied upon the representation by the Karbhari Meghabhai that I have already mentioned. This is Exhibit 101. No doubt, it is a document which protested against Wanta lands being treated as liable to Jama. But the Talukdari Settlement Officer, Mr. Quin, remarks in his letter to the Collector upon this representation, Exhibit 130:

He (i.e., the Karbhari) does not specify the lands to which he refers but takes objection to the general principles which have been followed by Government in dealing with the question.

11. It does not refer to the Wanta lands in suit, but is a general representation as mentioned by Mr. Quin. In these circumstances I cannot follow the Joint Judge's remark that this petition had the effect of giving one more notice that no exemption on these Wanta lands was allowed. It could only be effective, if it indicated that the Talukdar and his representative', the Karbhari, knew that these particular Wanta lands were being treated as liable to assessment. I do not think that the document can be carried so far, Therefore, in my opinion there is a reasonable doubt as to the suit being barred by limitation, and I would hold that it is not so barred.

12. The next question, in view of the cross-objections, is whether the Joint Judge erred in holding that on the merits the plaintiff has a right to the declaration sought. He has held that he has no right to an injunction in view of Section 45, Clause (2), of the Bombay Land Revenue Code. But that is a minor point. The main question is whether he is entitled to the 'declaration. The Government Pleader urges that these particular lands are shown by certain evidence not to be really Wanta lands at all. He has referred us, first of all, to the report made in 1918 by Mr. Mohanlal, who took part in conducting the revision survey, and who has been examined as a witness in this case. In paras 2 and 3 of this report, Exhibit 93. he says:

A perusal of the Waghela History (page 166) published by Mr. Krishnaram Ganpatram in 1914 A.D. shows that Bhavsinghji was a younger sen of Jetsinghji and his elder brother Aliaji hari succeeded to the Gadi, Bhavsinghji died in 1840 (A.D. 1784) and left no son behind him.

I am unable to trace the origin of this Wanta as well as the circumstances under which it was obtained by him. However I gather from the petition (it has come to me from Mansinghji in connexion with other matter) of Mansinghji Nathuji, which is dated November 29, 1917, that the lands in dispute originally belonged to his own Wanta that they were given to the Talukdar of Kaira Wanta in dowry: and that by the latter they were also given in dowry to the Thakore Saheb of Sanad. The year or years in which the above happened cannot be ascertained.

13. No evidence has been given in this suit in regard to the suggestions there put forward as the lands having been given in dowry.

14. The second document that the Government Pleader strongly relies upon is Exhibit 67. This is an abstract of the Talati's account of lands in this village of Hariala for the Samvat year 1810 (i.e. 1823-24 A.D.) which under various headings shows different classes of lands the amount of the income therefor from for two successive years, and the decrease or increase. Various Wanta lands are mentioned in this document. At the foot of the abstract there is a note which appears to have been part of the form in which it was prepared. Clause 9 contains the following provisions:

All this villages have 'Wanta' (lands). A statement should be prepared in writing showing what claim the people entitled to Wanta (lands have over the lands, and what claim the cultivators who cultivate their 'Wanta' (lands) put forth over the Wanta lands.... In connection with the Sheja villages there was the enjoyment of Vighotee and, there are 'udhed' etc. What right the cultivators of those villages have over the lands. In that manner registers showing the arrangements with respect to the claims of the agricultural population of every village should be kept according to (their) holdings.

15. Then under this we have entries, the first column being Number, the second column being for the name of the village and the 3rd column being headed 'Claim' The third Column of the entry in regard to this village of Hariala says.

This village is 'Sheji' Particulars in connexion with right thereof are as follows : There is a Wanta in our village. Facts relating thereto are that when the brother of Waghela Jijibhai Aliaji became 'Phatawa' (i.e., a petty chief separated from his brother with his share of the inheritance) the 'Gharda' (? father of Jijibhai separated and gave a 'Wanta' of about 1100 bighas. (? The same) was given to Thako Bhavasingji. That party died so at present the said 'Wanta' is being enjoyed by Jijibhai Aliaji 'Nakro' (alone or rent-free).

16. Upon this it is contended that the origin of the Wanta really was as there stated, that Jijibhai Aliaji, a former Talukdar, who has already been referred to in the extract from Mr. Mohanlal's report, gave this parcel of land to his brother Bhavasingji as his share of the inheritance. Bhavsingji had died and so the land was resumed by Jijibhai Aliaji. The document is certainly one which is entitled to considerable claims of reliability. In the first place, it is produced by the plaintiff himself from the village records and it has every appearance of genuineness. It is an old document, namely, of about 1823, and the statements in this document are relevant evidence under Section 35 of the Indian Evidence Act. The document was made at a time when the history of this 'Bhavsingji's Wanta' might well be in the memory of man, especially in the memory of the officers preparing this statement, for (accepting the dates that are given in Mr. Mohanlal's report, which are taken from a published history not likely to be inaccurate) Bhavsingji died in A.D. 1784, that is to say, about forty years before the preparation of this document. It is supported by the fact that it fits in with the historical details that are mentioned in Mr. Mohanlal's report, namely, that there was a Talukdar of the name of Jijibhai Aliaji, that he had a brother Bhavsingji as already mentioned, and that he died without issue; and there has been no dispute raised before us as to the correctness of those particular facts.

17. Again, from Mr. Mohanlal's report it appears that in the earliest document that was relied upon by the Karbhari, namely, the Kharda of 1877 (A.D. 1821), the lands in dispute were shown in the name of Waghela Bhavsingji. From para. 8 of the same report, it appears that that Kharda had been prepared on the basis of the previous Kharda of Sam-vat 1876. The fact that these lands were then entered in the 'name of Waghela. Bhavsingji certainly points to their being, connected with one of the Talukdar's family, because 'Waghela' is a term which is constantly applied to Talukdars like the plaintiff (see, for instance, para. 14 of Mr. Peile's report at p. 97 in 'Selections from the Eecords of the Bombay Government, No. CYI, New Series,' where he says:

In later days, when the Moghul Empire fell to pieces, the Tulput part of the villages was seized by the holders of the adjoining wanta or by new cians. In Dholka the Waghelas took their own estates.

18. Mr. Richey, the then Talukdari Settlement Officer, in his report, which led to the Government orders about treating those lands as liable to Jama, also says (see para. 9 of Mr. Ashburner's report, Exhibit 99):

This Wanta is so entered in the village accounts in the name of Bhavsingji, an early Thakur of Utelia.

19. And, in fact, there is no dispute that, this Bhavsingji was a brother of the then. Talukdar.

20. Another thirag that may be mentioned is that the description of these lands as. 'Wanta''. after they were resumed by the Thakur, would not be any deviation from what is the original meaning of the word, namely, 'share or portion.' as; mentioned in Dolsang Bhavsang v. Collector of Kaira [1879] 4 Bom. 637. It would be the share of the estate that had been given to the younger brother, and that might explain how this land came to be treated as Wanta rent-free land.

21. On the other hand, the Joint Judge, though in para. 15 of his judgment he remarks that 'Wanta' is no doubt a misnomer in this case, has held that, in view of the manner in which these lands were shown in the village accounts, including a period when the villages had been under Government management, the classification of these lands as 'Wanta rent free' lands was binding upon Government. Apparently his attention was not particularly drawn to Exhibit 57; at any rate he has made no reference to it in his judgment. No doubt, such entries can be of considerable force, and strong reliance was naturally placed by Mr. Desai upon the decision in Shaik Gulam Mohidin v. Collector of Ahmedabad [1875] 12 B.H. Cr. App. 276. But that was a very much stronger case than the present. In that case there had been no decision of Government that the lands were to be treated as liable to jama, such as we have in the present case. On the contrary, in. Mr. Peile's report, which has already been referred to, and which has been frequently cited before us, he himself quoted this particular case as an instance of Wanta land being sold by a Talukdar to a stranger, who had built upon it. Then the Government had themselves continuously shown 500 bighas of the lands in that suit as Wanta lands, and there were also what are referred to as 'the proved acts of Mr. Fawcett, Mr. Blane and Mr. Rogers,' which were incompatible with the contention that the land was assessable like other land.

22. No doubt, on the other hand, there was the misdescription of the lands in the village records, but that mistake cannot fairly be treated as an admission by Government in the face of the orders of Government that these lands were not proper Wanta lands and should be treated as liable to Jama. This is a suit against the Secretary of State and not against the Collector, and the admission in the accounts, far from being authorized or ratified by Government, was against their direct orders.

23. Mr. Desai relied on the fact that this Court in the case last cited said:

We find ourselves unable to act upon the general theory adopted by Mr. Richey that Wanta land is assessable like other land.

24. That is a remark which is natural in view of the evidence in that case that the lands had been treated by responsible Government officers as Wanta lands not liable to assessment like other land, and on the principle that an ounce of fact is worth more than a pound of theory,' the High Court preferred to act upon that evidence rather than upon the theory of Mr. Richey that is mentioned. But, in this case also, there is no need to resort to any such theory. We have what I consider strong and reliable evidence as to the real origin of these Wanta lands. And, in my opinion, the mere fact that there was this mistake in the village accounts of showing the lands as Wanta lands free from tax, does not operate as an estoppel or suffice to outweigh the evidence that I have mentioned.

25. One of the officers in charge of this village, while it was under attachment by Government, has given evidence in this case, namely, the witness Chunilal Bhogilal, Exhibit 117, and he deposes that 'The Khata of Waghela Bhavsingji was entered in conformity with the practice.' That is an obvious explanation as to how this treatment of the lands as 'Wanta rent-free' came to continue so long. And whatever effect might otherwise be given to that treatment, if the Government had not passed the orders they did in 1873 it seems to me clear

that, in the face of those orders, a Court cannot properly say that these entries are binding upon Government, as the Joint Judge has held.

26. We have also been referred by Mr. Desai to the decision in Talukdari Settlement Officer v. Chhaganlal [1910] 35 Bom. 97. But that case is, in my opinion, clearly distinguishable from the present, as was pointed out by the Assistant Judge in the suit which led to S.A. No. 712 of 1922 in this Court Sursangji Dajiraj v. The Settlement Officer, Gujarat S.A. No. 712 of 1922 decided on 11th November 1924. In that appeal the present appellant was a party, and I refer to the remarks of the Assistant Judge in para. 29 of his judgment at page 24 of the printed book in that case. This High Court has c decided that ordinarily lands given as Jivai or maintenance to a cadet in the family are part of the Talukdari estate and liable to payment of Jama : cf. Bhaiji Ishwardas v. Talukdari Settlement Officer [1920] 44 Bom. 832. The case of Sursangji Dajiraj v. Settlement Officer, Gujrat S.A. No. 712 of 1922 decided on 11th November 1924 covered the case of Wanta lands, and these were held to be on the same footing as Talukdari estate liable, to Jama. I do not for one moment mean to say that, supposing it is proved that a Talukdar originally had certain Wanta lands, and that he gave a portion of those Wanta lands to a younger brother and subsequently resumed them, that would affect their original character as Wanta lands and make them liable to Jama. But the present is not a case of that kind. We have this particular group of lands known as 'Bhavsingji's Wanta.' In the absence of evidence to the contrary, the presumption, in my opinion, is that the Talukdar of that time took part of the Darbari Talukdari estate and assigned it to Bhavsingji. Exhibit 57, no doubt, states that he gave a 'Wanta' of about 1,100 bighas, but that does not necessarily mean anything more than that he gave a 'share ' or portion, of the estate lands, and the mere fact that they came to be entered subsequently as 'Wanta rent-free' does not have the effect of making them Wanta lands as if they had originally been such lands. They are not, therefore, lands wholly or partially exempt from payment of land revenue within the meaning of Section 22 of the Gujarat Talukdars Act VI of 1888.

27. Accordingly, I think the respondent is entitled to succeed on the cross-objections, and that on its' merits the plaintiff's suit must be held to have failed. The cross-objections are allowed with costs, and the appeal is dismissed with costs. As he has failed on the merits, the plaintiff must also bear defendant's costs in the Court below.

28. There is one further point that I should refer to. In this appeal the appellant has asked us to admit additional evidence as to applications made by the Talukdar in the years 1873-75 to be informed about certain matters. This request is one to admit evidence that might help the appellant upon the point of limitation. No sufficient grounds, however, have been shown why that evidence could not have been adduced in the lower Court, for, although it is said that these papers had got mixed up with papers of their Talukdari villages, yet there had been litigation between the Talukdar and Government, namely, the suit of 1896, and these papers had actually been produced in that suit, so that there was no sufficient cause for the plaintiff not being aware of, them. Also, in any case, it does not appear to me that these papers would materially assist us. Accordingly, I would, in any case, refuse this application. But, as we have on other grounds decided the point of limitation in favour of the plaintiff, this really does not matter.

Madgavkar, J.

29. I agree.