**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOs.7184-7185 OF 2001**

Ramchandra Dagdu Sonavane (Dead) by L.Rs. & Ors. .....Appellants

Versus

Vithu Hira Mahar (Dead) by LRs. & Ors. .....Respondents

**JUDGMENT**

**H.L. Dattu,J.**

These appeals are directed against a common judgment and order passed by the High Court of Judicature at Bombay in Writ Petition No.3667 of 1985 and Second Appeal No.87 of 1986 dated 01.7.1999, whereby and whereunder the writ petition and the second appeal filed by the respondents herein are allowed and the order passed by Additional Commissioner in Appeal No. A/WIN/SR/9/80

dated 6.4.1985 and the judgment and decree passed by the trial court in Civil Suit No. 2353 of 1979 dated 10.2.1984 and confirmed in Appeal No. 535 of 1984 dated 18.6.1985 are set aside.

2) To appreciate the contentions of the parties, the facts in extenso requires to be noticed and they are:- The suit land was of the category of Mahar Watanlands situated in village Pimpre Khurd, Purandhar Taluk, District Pune. The suit lands originally belonged to Ramabai, wife of Pandu Sonawane and Radhabai wife of Sawale Sonavane. Both of them did not have any issues. The appellants had claimed that their forefathers were the nearest relatives of both the ladies and the property being watanlands, the same vested in them. The appellants had further claimed that Vithu Hira Mahar (for short `Vithu') had no right, title or interest in the watanlands, however, was cultivating the suit lands after getting the entries made in the records of rights. It was the case of the plaintiffs/appellants before the trial court, that, when it came to the notice of respective fathers of the plaintiffs, as well as plaintiff No.2, an application dated 14.08.1940, was filed before the District Deputy Collector for resumption of watanlands which were in possession of Vithu. In the application filed, it was the stand of the applicants that they were the nearest relatives of Ramabai and that Vithu got his name entered

in the record of rights fraudulently after the death of Ramabai. They had further contended that Vithu is an outsider and belongs to different family and as such his name could not have been entered in the Peta Account Book. After recording the statement of both the parties, the Deputy District Collector had passed an order dated 18.06.1941, directing the suit lands be returned to the applicants on the ground that the entries in the Peta Account Book made in Vithu's name pursuant to an order said to have been passed in the year 1931 was not traceable and therefore, it is not clear how the name of a person not connected with the family of Watandar was entered in the cash allowance register and, therefore, the watanland requires to be resumed and handed over to the applicants who are the nearest family members of the deceased Watandar and further had directed that the circumstances under which Vithu's name came to be entered in the revenue records was suspicious and the same should be investigated.

3) Vithu (respondent no.1) was the grandson of Ramabai. It is his assertion that he had filed an application on 16.07.1931 before the Mamlatdar under Section 15 and 18 of the Bombay Hereditary Office Act, 1874, to recognize him as the Watandar with respect to the suit lands. The Mamlatdar said to have passed an order dated 22.10.1931

in favour of Vithu under Section 15 and 18 of the said Bombay Hereditary Office Act, to enter his name in the Peta Account Book, in the place of Ramabai after declaring that Vithu was the adopted son of Ramabai.

4) Sometime in the year 1953, the appellants had filed a suit, O.S. No.104 of 1953, against Vithu and others for an order of permanent injunction before the Court of Civil Judge, Junior Division, Saswad, to restrain Vithu and the other respondents from interfering with their peaceful possession of the suit land, on the ground that the Deputy District Collector had passed an order in their favour and that Vithu and others were obstructing their peaceful possession of the suit land. The appellants had also based their claim on the finding arrived at by the Collector of Pune in his order dated 18.6.1941, that they were the representative of Watandars with respect to the suit land. Vithu and the other respondents had resisted the relief sought in the suit, inter-alia contending that there was an earlier suit filed by the appellants against their tenant to whom the suit land had been leased and they have not obtained valid permission to withdraw the said suit and therefore the present suit is barred by res judicata. The Trial Court in its judgment and decree after considering the rival contentions of the

parties to the lis, had concluded, apart from others, that the Prant Officer had issued a notice in 1951 to the respondents restraining them from obstructing the vahiwat of the appellants; that the doctrine of res judicata did not apply as the previous suit filed by the appellants was different from the present suit. The trial court while considering the other rival contentions of the parties had specifically framed the following two important issues for its consideration and decision. They were:

(i) Do the plaintiffs prove that they were in possession of the suit property as Watandars as alleged?

(ii) Do defendants prove that defendant no.1 (Vithu) was he adopted son of his grandmother and as such was in possession of the suit property?

5) The trial court after considering the pleadings and the oral and documentary evidence on record had answered the first issue in the affirmative and the second issue in the negative. In so far as the first issue, the trial Court had concluded that the plaintiffs are in possession of the suit lands as Watandars. While answering the second issue of adoption, the trial court had observed, that, even though Vithu had stated in the cross examination that he had the necessary documents to prove the adoption, the same was never produced, and the testimony

of the Vithu and his witnesses with regard to the year of adoption was inconsistent. Therefore the trial court held that the adoption of Vithu had not been proved. Accordingly, the trial court had decreed the suit and thereby had permanently restrained the respondents from obstructing the Vahiwat of the plaintiffs/appellants in the suit lands.

6) Vithu, being aggrieved by the judgment and decree passed by the trial court in O.S. No.104 of 1953 dated 24.10.1955, had preferred first appeal before the District Court, Pune in Civil Appeal No.578 of 1955. The said appeal was dismissed by the District Court by its order dated 22.02.1958, by confirming the findings of the trial court.

7) Being aggrieved by the said order, Vithu had approached the High Court in Second Appeal No.962 of 1958. In the appeal, it was contended that, in the year 1931, Mamlatdar of Purandar had held an inquiry under the Watan Abolition Act in which Vithu was recognized as a representative Watandar and that order had attained finality, since neither the appellant nor any other person had questioned the said order before any forum within the period of limitation. The court declined to answer this contention mainly on two grounds. Firstly, this issue was never raised in the trial court nor before the appellate

court and the same cannot be permitted to be raised and argued for the first time in second appeal, since the issue is purely a question of fact, though it is sought to be raised as a question of law. The court had also taken note of the fact, that, the order said to have been passed by Mamlatadar in the year 1931 was not produced, for the reason that the record for the relevant year had been destroyed. The second issue that was also not entertained by the court was the reference made to 1931 order in the order made by the Deputy District Collector dated 21st August, 1941, by which the appellants/plaintiffs were recognized as the representative of Watandar in an enquiry held under Watan Abolition Act, on the premise that, the same is raised for the first time in second appeal and it cannot be permitted, since answer to that issue requires the factual foundation before the trial court. Ultimately, the court had observed that the only issue that was agitated before the trial court was, whether Vithu was the adopted son of Pandu Mahar or not and since there was concurrent finding by the trial court and first appellate court and since that finding does not appear to be perverse finding, it is not possible to interfere with the findings of fact and, accordingly, had dismissed the second appeal by its order dated 20.10.1964.

8) The appellants during the pendency of the proceedings before the High Court had filed application for regrant of watanlands under the provisions of the Bombay Inferior Village Watans Abolition Act, 1958, before the Collector who is the competent authority under the Act, to decide the question whether any land is watan land and whether any person is Watandar. The Collector after holding an inquiry had passed an order dated 03.6.1963, regranting the suit lands in favour of the appellants.

9) It is pertinent to note at this stage itself, that, Vithu had made an application dated 24.5.1941 to the Mamlatdar, requesting for a supply of the certified copy of the order passed in his favour, recognizing him as the Watandar with respect to the suit land in the year 1931. By a reply dated 15.6.1941, the Mamlatdar had informed him that the concerned papers had been destroyed previously and therefore certified copy of the same cannot be supplied.

10) Vithu had filed another application in the year 1976, requesting for supply of certified copies of the order passed in the year 1931 before Mamaltadar. After obtaining the xerox copy of the said order, had filed application before the State Government, inter-alia stating that he

had been dispossessed on the basis of not being in possession of the relevant documents relating to the 1931 order passed in his favour by the Mamlatdar after holding an inquiry under Section 15 and 18 of the Bombay Hereditary Offices Act, 1874, and, therefore, had requested the State Government to direct the Collector to initiate proceedings to regrant and restore possession of suit land.

11) Pursuant to the direction issued by the State Government, the Sub Divisional Officer, Baramati Division, (hereinafter referred to as `SDO'), had made an inquiry under Section 3(1)(b) of the Bombay Inferior Village Watan Abolition Act, 1958 (hereinafter referred to as the Watan Act) to decide as to who was the rightful Watandar with respect to the suit land. The SDO relying on the xerox copy of the order passed in the year 1931 by the Mamlatdar, which according to him conclusively proves, that, Vithu was the adopted son of Ramabai, in spite of the contention of the appellants that the civil court in O.S. No. 104 of 1953 has concluded that he was not the adopted son of the deceased Watandar. The SDO had also observed in his order, that the finding of the trial court which was affirmed by the High Court, was for the reason that Vithu was unable to produce the order passed by Mamlatdar dated 22.10.1931, and the findings and the conclusions

reached by the civil court will not have any bearing in a proceeding under the provisions of Bombay Inferior Village Watan Abolition Act, 1958. Accordingly, had allowed the claim of Vithu and had declared that Vithu was the watandar of the suit lands.

12) The appellants being aggrieved by the order passed by the SDO dated 22.11.1979, had preferred an appeal before the Additional Commissioner and also had filed a civil suit, O.S. No.2353 of 1979 before the Civil Judge, Junior Division, Pune, for a declaration that the said order of the SDO was illegal and void ab initio. The appellants had also prayed for permanent injunction against the respondents from taking possession of the suit lands.

13) The trial court while passing the judgment and decree in the suit filed by the appellants has noticed that, once the issue of adoption was conclusively decided by the civil court in the suit filed in the year 1953 by the appellants against Vithu, the same would operate as res-judicata and thereby preclude Vithu from raising the issue of adoption again before the Sub Divisional Officer. Secondly, ignoring the judgment and decree passed by the civil court, the SDO could not

have allowed the claim of Vithu and recognized him as watandar, since he was not the adopted son of deceased watandar.

14) The Additional Commissioner, Pune Division, by his order dated 06.04.1985, had allowed the appeal and had set aside the order passed by Additional Commissioner in view of the judgment and decree passed by the civil court in O.S. No. 2353 of 1979.

15) Being aggrieved, the respondents had filed first appeal before District Court, Pune, in Civil Appeal No.535 of 1984. The primary contention of the respondents was that, the order passed by the SDO under the Act was binding on the civil courts and therefore, civil court has no jurisdiction to decide the matter of Watandari rights. Further the findings of the civil court in the earlier round of litigation with respect to adoption of Vithu is not conclusive and in fact it was left open to be investigated. Since the SDO has decided the matter in the light of the documents which Vithu managed to obtain in the year 1976, the finding is conclusive and binding on the parties. The first appellate court after a detailed consideration of the issues raised had dismissed the appeal by its order dated 18.06.1985.

16) Being aggrieved by the findings of the lower appellate court, Vithu and others had filed a second appeal under Section 100 of Code of Civil Procedure, 1908, before the High Court. Simultaneously, they had also filed a writ petition against the order passed by the Additional Commissioner, Pune Division, dated 06.04.1985.

17) The primary contention of the respondents before the High Court was that, when Vithu initiated proceedings before the SDO for declaration of his Watandari rights, Vithu had in his possession the documents of the proceedings before the Mamlatdar in the year 1931, which included the order of Mamlatdar who had recognized Vithu as watandar of the suit lands, being the adopted son of Ramabai and since the Deputy District Collector had in his order dated 18-6-1941, had kept open the issue regarding status of Vithu, the SDO was justified in allowing the application of Vithu and conferring upon Vithu the rights of Watandar in respect of the suit lands. Secondly, the subject matter in both the suits are not identical. While the Suit filed in the year 1953, the only relief that was sought for was permanent injunction, restraining Vithu and others from obstructing peaceful possession of the appellants and the relief that was prayed in

the Suit filed in the year 1979 was to set aside the order passed by Sub-Divisional officer dated 22.11.1979.

18) To answer the aforesaid contentions, the High Court has observed, that, no relief of declaration that Vithu was not the adopted son of Ramabai was claimed by the respondents in the civil suit filed in the year 1953. Further, in a suit for injunction the only question that was relevant and important was about the possession and as such the other questions raised by Vithu in defence was only an incidental and ancillary question. The High Court has further relied on the law laid down by this court, that the issue of res judicata was to be decided on the basis of the pleadings produced by the parties in the earlier suit and not by mere recitals of the allegations in the judgment. Therefore in the absence of the pleadings of the previous suit, the lower appellate court had erred on deciding the issue of res judicata on the basis of recitals of allegations in the judgments of the 1953 suit. The High Court has also observed that the jurisdiction of deciding wantandari rights are vested in the revenue authorities, and therefore, finding of the civil court in the 1953 suit will not operate as res judicata in the 1979 suit.

19) Before the High Court, it was also contended that the civil court had no jurisdiction to decide the Watandari rights by virtue of the provisions of The Bombay Inferior Watans Abolition Act, 1958, The Bombay Hereditary Offices Act, 1874, and The Bombay Revenue Jurisdiction Act, 1876. Section 3 of the Bombay Watans Abolition Act, 1958, lays down that if a question arises, whether any land is watan land, whether any person is a Watandar or whether any person is an unauthorised holder, the Collector shall decide the question after holding an inquiry. As per sub-section (2) right of appeal is provided to the State Government and sub-section (3) lays down that the decision of the Collector, subject to an appeal shall be final. The contention by the counsel for the respondents was that even if a watanship is abolished by this Act, the Collector was still empowered to make an enquiry under section 3(1)(b) as to whether a person is a Watandar and to evict an unauthorised holder under section 9 of the Act. The contention raised by the appellants was that after abolition of Watandari rights, Collector had no power firstly to recognise Vithu as Watandar being adopted son of Ramabai and secondly the Collector had no power to evict the respondents who were authorized holders of

suit lands pursuant to the order passed by the Deputy District Collector dated 18.6.1941.

20) The High Court after referring to the relevant provisions has concluded, that the decision of the Collector regarding a person being Watandar or an adopted son of Watandar is made final and conclusive and therefore, it is the Revenue Court alone which was competent to decide the right of Vithu as a Watandar of the suit land being the adopted son of Ramabai. Accordingly, has allowed the second appeal and the writ petition, by setting aside the judgment and decree passed by the trial court in O.S. No.2353 of 1979 dated 10.02.1984 and the judgment of the lower appellate court in Appeal No.535 of 1984 dated 18.06.1995 and the order passed by Additional Commissioner dated 06.04.1985. The common judgment passed by the High Court is the subject matter of these appeals.

21) We have heard learned counsel Shri Vinay Navare for the appellants and Shri Shekhar Naphade, learned senior counsel for the respondents. The learned counsel for the appellants has submitted, that, the civil court in a properly constituted suit has decided that Vithu is not the adopted son of deceased Watandar and that finding

has become final in view of the order passed by the High Court in the regular second appeal filed by Vithu and, therefore, the revenue authorities could not have examined and decided the issue of adoption once over again. It is further submitted that the High Court was not justified in relying on the order passed by the Mamlatdar in the year 1931, which was discarded both by the trial and the first appellate court, on the ground that Vithu had failed to adduce oral and documentary evidence in support of his claim that he is the adopted son of the deceased Watandar. It is further contended that the Sub-Divisional Officer had no jurisdiction under the Act, to review and modify the regrant order passed by the Deputy District Collector under Section 5(1) of Watan Abolition Act, 1958. It is further submitted that the issue regarding adoption decided by the civil court and confirmed by the High Court in the regular second appeal between the same parties operates as res-judicata and, therefore, the High Court was not justified in re-examining the same issue and taking a different view in the matter. It is also submitted that the High Court erroneously has come to the conclusion that the subject matter of 1953 suit and 1979 was different and, therefore, Principles of re-judicata are not attracted.

22) Per contra, learned senior counsel Shri Shekhar Naphade for the respondents would submit, that, Vithu without proving the issue of adoption, can still be Watandar in view of the specific provision under the provisions of The Bombay Hereditary Offices Act, 1958. The learned counsel would further contend that, the Bombay Revenue Jurisdiction Act, 1876, the Bombay Hereditary Offices Act, 1958 and the Bombay Inferior Village Watans Abolition Act, 1958, constitute one code and therefore those Acts must be read together and not in isolation. The learned senior counsel would also submit that the order passed by the Mamlatdar dated 22.10.1931, on the application filed by Vithu cannot be faulted, even assuming there was some defects in the procedure adopted at the time of adoption of Vithu by his adopted parents. In support of this contention, the learned counsel has placed reliance on the observations made by this Court in the case of L. Devi Prasad (Dead) by L.Rs. Vs. Smt. Triveni Devi and Others (AIR 1970 SC 1286). The learned senior counsel would further contend, that, the order passed in the year 1931, is not annulled or modified by any forum and, therefore, the full effect must be given to that order. It is further contended that the order passed by the authorities under the Bombay Hereditary Offices Act, 1874 sometime in the year 1941,

recognizes the order passed in the year 1931 and therefore, there is no reason to disbelieve the existence of 1931 order passed by Mamaltadar. It is further submitted that all the authorities have decided against the respondent on the basis of the judgment and decree passed by the trial court in the original suit filed by the appellants in the year 1953, without realising the doctrine of principle of res judicata is not attracted both on the procedural stand point as well as substantive law point as the issue of recognition of Watandar was within the exclusive jurisdiction of the authorities under Watan Abolition Act, 1958, and other cognate Acts. Alternatively, it is contended that since civil court had no jurisdiction to decide Watandari rights, any decision rendered by the civil court on that issue would not operate as res judicata in any subsequent proceedings. While summing up his submissions, the learned senior counsel would contend, that, since the reasoning adopted by the High Court is a possible view, the same need not be interfered with by this Court in exercise of its power under Article 136 of the Constitution of India.

23) Mr. Sushil Karanjkar, learned counsel appearing for some of the legal representatives of deceased respondent would submit, that, the order passed by the competent authority in the year 1931 was after

following the procedure prescribed under Section 15 and 18 of the Bombay Hereditary Offices Act, 1874, and since that order has not been challenged by the appellants in any proceedings at any point of time, the same must be given effect to. It is further contended that SDO in the year 1979 while reviewing the order passed in the year 1941, had relied upon xerox copies of the order recognizing the respondent as Watandar in the year 1931 and since the appellants had not objected to the production of the xerox copies and based on those records and documents, the SDO has rightly passed an order in the year 1979, recognizing the respondent as Watandar of the suit lands and, therefore, the learned counsel submits that the High Court was justified in setting aside the order passed by the Appellate Court and also the Additional Commissioner.

24) Questions of Law :- The following questions of law would arise for our consideration and decision:

i) Whether the provisions of Bombay Hereditary Offices Act, 1874 and Bombay Inferior Village Vatan Abolition Act, 1858, exclude the jurisdiction of the Civil Court under Section 9 of the Code of Civil Procedure to decide the plea of

adoption and, consequently, Watandari rights under the Act?

ii) Whether the Judgment and Decree in O.S. No.104/1953 holding that the respondent – Vithu was not the adopted son of the deceased Watandar would be binding on the parties in the subsequent suit and other proceedings?

iii) Whether the Judgment and Decree passed in O.S. No.104 of 1953 would operate as res judicata in subsequent proceedings, including the proceedings before the High Court in the second appeal and writ petition filed by the respondents?

iv) Whether the order passed in the year 1941, holding that the plaintiffs are the representatives of Watandars, accepted by the High Court in Regular Second Appeal No.962 of 1958, would debar the right of the respondent-Vithu in approaching the State Government in re-agitating the matter?

v) Whether the State Government disregarding the decision of the Civil Courts in earlier Suits and the Judgment and Decree passed therein was justified in directing the Sub-Divisional Officer (SDO) to decide the matter afresh?

vi) Whether the Sub-Divisional Officer was justified in passing the order dated 22.11.1989, despite the Judgment and Decree of the Civil Court in the year 1953 and the order of regrant passed in favour of the appellants under Section 5(1) of Watan Abolition Act, 1958 dated 03.6.1963?

25) Law regarding Watanland and Scheme of Bombay Hereditary Offices Act, 1874 :- The Bombay Hereditary Offices Act, 1874 (the `Act' for short) is an act to amend the law relating to Hereditary Offices. It extends to the Regulation Districts and to all villages therein, whether alienated or otherwise. Section 4 of the Act is the interpretation clause. Under the Act, `Watandar' means a person having an hereditary interest in a watan. It includes a person holding watan property acquired by him before the introduction of the British Government into the locality of the watan, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance. It includes a person adopted by a owner of a watan, subject to the conditions specified in Section 33 to 35 of the Act. Section 64 of the Act empowers the Collector subject to general control of the State Government, to register the names of individual Watandars as holders of the office or to register it as held by the whole body of Watandars. The collector is also empowered to

amend the entry in the register, when he is satisfied that a person who produces a decree or order of the competent court is entitled to have his name entered in the register as nearest heir of a deceased Watandar in preference to the name of a person already entered in the said register as such heir, provided that the said order or decree is produced within six years of the date of the entry in the said register sought to be amended. Under sub-section (3) of Section 64, the Collector is empowered to delegate to the Mamlatdar or Mamlakari to register the names of individual Watandars as holders of the office. Apart from other functions, the Mamlatdars or Mamlakaris are empowered to pass orders in regard to the appointment, remuneration, period of office etc.

26) Scheme of the Bombay Inferior Village Watan Abolition Act, 1958: The object of the Watan Abolition Act is to provide for abolition of inferior village watans prevailing in certain parts of State of Bombay. Section 2(XI) of the Act, defines the meaning of the expression "Watandar" to mean a person having hereditary interest in an inferior village watan under the existing watan law. Section 3 of the Act empowers the Collector to decide whether any land is watan land, whether any person is Watandar, whether any person is an unauthorized holder after holding an inquiry and after affording an opportunity of hearing to the parties

who may be affected by the order. Any person aggrieved by an order passed under sub-section (1), may file an appeal to the State Government within the time limit prescribed. The decision of the Collector, if not appealed, and the decision of the State Government shall be final. Section 4 of the Act provides for abolition of inferior watans together with incidents thereof. Section 5 of the Act, provides for Regrant of watanlands to holders of watan on fulfilling certain conditions by Watandars.

27) Scheme of the Bombay Revenue Jurisdiction Act, 1876 : The object of the Bombay Revenue Jurisdiction Act, 1876, is to limit the jurisdiction of the civil courts throughout the Bombay Presidency in matters relating to land revenue and for other purposes. Section 4 of the Act, specifically puts an embargo on the civil courts in exercising its jurisdiction in matters where claims against the government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874. Section 5 of the Act, is an exception to Section 4 of the Act. Section 5(b) of the Act authorizes the civil courts from entertaining the suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of revenue survey or settlement or in any village

papers. However, the said suit can only be entertained in the districts mentioned in Second Schedule.

28) Our Analysis :- Under Section 3 of the 1958 Act, the power is conferred on the Collector to decide the rights regarding watanlands. Watandar means a person having hereditary interest in an inferior village watan under the existing watan law. The Collector can only decide whether a person has got a hereditary interest in an inferior village of watan under the existing watan law. The learned counsel for the appellant contends that after the Bombay Inferior Village Watans Abolition Act, 1958 was notified on 20.1.1959, the appellants had approached the Collector with a request to regrant the watanlands, since they are holders of watan and pursuant to the request made, the Collector had passed an order dated 03.6.1963 in exercise of his powers under Section 5(1) of the Act, and if any person was aggrieved by that order, could have filed an appeal as provided under the Act within the time limit prescribed. Since that was not done by any person including Vithu, that order has become final and, therefore, the Sub-Divisional Officer could not have entertained the application filed by Vithu in the year 1979 and further could not have passed any order under Section 5(1) of the Act.

29) We have seen the scheme of the Act. Section 3 of the Act authorizes the Collector to decide any question as to whether any land is watan land; whether any person is a Watandar; and whether any person is an unauthorized holder. The order passed by the Collector can be subject matter of appeal before the State Government. The order passed by the Collector, if in case no appeal is filed, and in case appeal is filed then the order passed by the State Government in the appeal, is final. Section 5 of the Act speaks of regrant of watanlands to the holders of watan subject to fulfillment of certain conditions provided in the Section itself. It has come on record, that the appellants after the Act was notified had filed an application for regrant of watanlands, since they were holders of watan pursuant to an order passed by Deputy District Collector dated 18.6.1941 and the District Collector after necessary inquiry had passed an order of regrant dated 03.6.1963 of the suit lands in favour of the appellants under Section 5(1) of the Watans Abolition Act, 1958, and that order has become final, since nobody had questioned the same before any forum. The Act does not provide for the review of the regrant order nor it provides denovo enquiry to decide whether any person is a Watandar. Therefore, we agree with the submission of the learned counsel for the appellants that the Sub-Divisional Officer could not have entertained the

application filed by the respondents in the year 1979 for regrant of watanlands, since the Act does not provide for review of any earlier order passed under Section 5(1) of the Act.

30)Question regarding adoption :- As regards whether there is valid adoption or not, that question pertains to the status and legal character of an individual, which falls within the purview of Section 34 of the Specific Relief Act, 1963, and a suit for declaration before a civil court is maintainable. Therefore, the question whether a particular person has been given in adoption or not is different from whether a person has hereditary interest or rights in respect of a watan property. If this distinction is drawn, there is no exclusion of civil courts jurisdiction under the Act. When a person claims on the basis of adoption, such an adoption cannot be decided by the Collector as the same involves legal status/character of a person which can only be decided by the civil court. Whether Vithu is an adopted son or not is concluded and decided in O.S. No.104 of 1953. A specific issue had been framed and a finding was recorded though it was a suit for injunction and the findings on this issue has been confirmed by the Appellate Court and by the High Court in Regular Second Appeal.

31)Res-judicata and Code of Civil Procedure :- It is well known that the doctrine of res- judicata is codified in Section 11 of the Code of Civil Procedure. Section 11 generally comes into play in relation to civil suits. But apart from the codified law, the doctrine of res-judicata or the principle of the res-judicata has been applied since long in various other kinds of proceedings and situations by courts in England, India and other countries. The rule of constructive res-judicata is engrafted in Explanation IV of Section 11 of the Code of Civil Procedure and in many other situations also Principles not only of direct res-judicata but of constructive res-judicata are also applied, if by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as res-judicata and bars the trial of an identical issue in a subsequent proceedings between the same parties. The Principle of res-judicata comes into play when by judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implications even then the Principle of res-judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it, is

deemed to have been constructively in issue and, therefore, is taken as decided [See AIR 1978 SC 1283].

32)In Swamy Atmandanda vs. Sri Ramakrishna, Tapovanam [(2005) 10 SCC 51], it was held by this court :

> "26. The object and purport of the principle of res judicata as contended in Section 11 of the Code of Civil Procedure is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute-book with a view to bring the litigation to an end so that the other side may not be put to harassment.
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> 27. The principle of res judicata envisages that a judgment of a court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment."

33)When the material issue has been tried and determined between the same parties in a proper suit by a competent court as to the status of one of them in relation to the other, it cannot be again tried in another suit between them as laid down in Krishna Behari Roy vs. Bunwari Lal Roy reported in [1875 ILR (IC-144)], which is followed by this Court in the

case of Ishwar Dutt Vs. Land Acquisition Collector & Anr. [(2005) 7 SCC 190], wherein the doctrine of `cause of action estoppel' and `issue estoppel' has been discussed. It is laid down by this Court, that if there is an issue between the parties that is decided, the same would operate as a res-judicata between the same parties in the subsequent proceedings. This court in the case of Isher Singh vs. Sarwan Singh, [AIR 1965 SC 948] has observed :

> "11. We thus reach the position that in the former suit the heirship of the respondents to Jati deceased (*a*) was in terms raised by the pleadings, (*b*) that an issue was framed in regard to it by the trial Judge, (*c*) that evidence was led by the parties on that point directed towards this issue, (*d*) a finding was recorded on it by the appellate court, and (*e*) that on the proper construction of the pleadings it would have been necessary to decide the issue in order to properly and completely decide all the points arising in the case to grant relief to the plaintiff. We thus find that every one of the conditions necessary to satisfy the test as to the applicability of Section 11 of the Civil Procedure Code is satisfied."

34)So far as the finding drawn in the suit for injunction in O.S. No.104 of 1953, regarding adoption would also operate as a res-judicata in view of the judgment of this Court in the case of Sulochana Amma Vs. Narayanan Nair [(1994) 2 SCC 14]. It is observed:

> "The decision in earlier case on the issue between the same parties or persons under whom they claim

> title or litigating under the same title, it operates as a res-judicata. A plea decided even in a suit for injunction touching title between the same parties, would operate as res-judicata.
>
> It is a settled law that in a Suit for injunction when title is in issue, for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties when the same is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit, the decree in injunction suit equally operates as a res-judicata."

35) The same view is reiterated in the case of Gram Panchayat of Village Naulakha Vs. Ujagar Singh & Ors. [AIR 2000 SC 3272]. This Court has stated, that, even in an earlier suit for injunction, there is an incidental finding on title, the same will not be binding in the later suit or proceedings, where title is directly in question, unless it is established, that it was "necessary" in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was found or based on the bindings of title. Even the mere framing of an issue may not be sufficient as pointed out in that case.

36) The appellants had filed O.S. No.104 of 1953 before the civil court inter-alia seeking an order of permanent injunction against respondent – Vithu and others, on the ground that they are Watandars of suit lands and they

are in peaceful possession and enjoyment of the suit lands. Respondent – Vithu had set up a defence that since he is the adopted son of the deceased Watandar, he has the right, title and interest in the watanlands. Therefore, the Trial Court had framed an issue, whether the defendants prove that defendant No.1 was the adopted son of his grandmother and as such was in possession of the suit property. The trial court after elaborate discussion has answered the issue against Vithu and had concluded that Vithu failed to prove that he was the adopted son of deceased Watandar and, therefore, he cannot have any right, title or interest in the suit lands as Watandar. In this case, though the suit was bare injunction, title to the properties was put on issue by the defendant-Vithu claiming that he is the adopted son of deceased Watandar and, therefore, he has Watandar rights in the suit lands. In order to decide the prayers made in the suit, the issue of adoption had to be decided. The issue falls within the exclusive jurisdiction of the civil court. In the subsequent proceedings before the Sub-Divisional Officer, the issue was whether Vithu was the adopted son of deceased Watandar and, therefore, having hereditary interest in any inferior village watan under Watan Abolition Act, 1958. To decide this issue, the Sub-Divisional Officer firstly has to decide the issue, whether Vithu is the adopted son of deceased Watandar. This issue is one which

does not fall within the jurisdiction of the revenue court but falls within the exclusive jurisdiction of the civil court. Since the issue of adoption was already decided between the same parties by a competent civil court, the Sub-Divisional Officer cannot decide that issue and without giving any decision on that issue could not have allowed the claim of the respondent Vithu. Therefore, in our opinion, the Principles of Res-judicata would apply to the proceedings before the Sub-Divisional Officer.

37) In a suit for injunction, the issues and the decision would be confined to possessory aspect. If the right to possession of property cannot be decided without deciding the title to the property and a person who approaches the Court, his status itself is to be adjudicated then without declaring his status, the relief could not be granted. In earlier suit Vithu claimed his right as an adopted son. Therefore, since he did not prove the adoption, there was no subsisting right or interest over the immovable property and as such the issue on adoption was a relevant issue in 1953 suit and, therefore, the said issue which has been decided in earlier suit and which has been confirmed in the regular second appeal and the issue decided therein was whether he was an adopted heir of Watandar was

binding on the parties. The similar question has to be decided by the S.D.O. to decide the claim, right or interest in respect of the hereditary office. Therefore, the issue was raised and it was decided and it is binding on the parties.

38)Reference may be made to the decision of this court in the case of Sulochana Amma vs. Narayanan Nair, [(1994) 2 SCC 14 Para 9] on the issue between the same parties or persons under whom they claim title or litigating under the same title, it operates as a res-judicata. A plea decided even in suit for injunction touching the title between the same parties, would operate as res judicata :

> "It is a settled law that in a suit for injunction when title is in issue, for the purpose of granting injunction the issue directly and substantially arises in that suit between the parties. When the same is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit, the decree in injunction suit equally operates as a res judicata."

39)To the same effect, the judgment of this court in the case of Sulochana Amma vs. Narayanan Nair, [(1994) 2 SCC 14 Para 9] in which it has been held that the issue between the same parties or persons under whom they claim title or litigating under the same title, it operates as a res-

judicata. A plea decided even in suit for injunction touching the title between the same parties, would operate as res judicata.

40) The learned senior counsel Sri Naphade by placing reliance on the observation made by this court in the case of Syed Mohd Salie Labbai (Dead) by LRS vs. Mohd. Hanifa (Dead) by LRS [(1976) 4 SCC 780], that the best method to decide the question of res-judicata is first to determine the case of parties as put forward in their respective pleadings of their previous suits and then to find out as to what had been decided by the judgments which operate as res-judicata. It is the contention of the learned senior counsel that the pleadings of the suit of 1953 was not available to the civil court while deciding the second suit of 1979 and, therefore, the High Court was justified in holding that the finding of the civil court in the second suit of 1979 and the appellate court against that order regarding res-judicata cannot be upheld.

41) In Syed Mohd's case, this court has stated that before a plea of res-judicata can be given effect the four conditions requires to be proved. They are, that the litigating parties must be the same; that the subject matter of the suit also must be identical; that the matter must be finally decided between the parties; and that the suit must be decided by a court

of competent jurisdiction. This court while analyzing those conditions as matter of fact found that the parties had not even filed the pleading of the suits instituted by them. In that factual scenario, this court has to observe that the pleadings cannot be proved merely by recitals of the allegations mentioned in the judgment.

42) It is true that if an earlier judgment has to operate as res-judicata in the subsequent proceedings, then all the necessary facts including pleadings of the earlier litigation must be placed on record in the subsequent proceedings. In the judgment and decree in O.S. No. 2353 of 1979, the trial Judge in extenso has referred to the pleadings of the parties in the earlier suit with reference to the copy of the judgment and decree passed in O.S. No.104 of 1953 which was produced by the appellants along with the other documents and it is only thereafter has observed that the issue regarding adoption of Vithu was one of the issues framed in the 1953 suit and the court after referring to the pleadings of both the parties and the evidence adduced has specifically answered the issue by holding that Vithu has failed to prove that he is adopted son of the deceased Watandar. Therefore, we cannot accept the contention of learned senior counsel Sri Shekhar Naphade. In fact, the High Court, while deciding on this issue had observed that the pleadings of the parties in O.S. No.104 of

1953 were not available before the civil court in the subsequent suit and, therefore, there is non-compliance of mandatory and basic requirements, as laid down by this Court in the case of Syed Mohd. In our view, this reasoning of the High Court is fallacious and we cannot agree. In our view, each one of the conditions necessary to satisfy the test as to the applicability of Section 11 of Civil Procedure Code is satisfied.

43) Validity of Direction for Enquiry:- Once 1941 proceedings is accepted by the civil court and a decree was passed, the said decree becomes final and binding on the parties. The respondent-Vithu was disentitled to approach the State Government nearly after 14 years. The period of limitation provided under Section 27 of the Limitation Act, if a right to property is not exercised within 12 years from the date on which the cause of action accrues to him, he would lose his right of remedy under the Limitation Act. But in the instant case, the right of Vithu was adjudicated and it was culminated in the decree in Second Appeal which was decided in RSA on 20.10.1964 and after he suffered an order, he remits three times assessment to the Government in the year 1966 and his intention was to keep the issue alive, despite he suffered an order of decree by the civil court which was also confirmed by the High Court and again moves an application before the Government in 1978, and

obtains a direction in 1979 for the Sub-Divisional Officer to hold an enquiry, whether he is Watandar or not. The Scheme of Watan Abolition Act, 1958, does not empower the State Government to issue such direction. What is not provided under the statute ought not to have been exercised by the State Government. Therefore, the State Government had no power to direct the Sub-Divisional Officer to hold an inquiry to decide question of Watandar, notwithstanding the decree passed by a competent civil court which has been affirmed by the High Court in Regular Second Appeal. The abolition of watan is by a legislative decree and not by executive action. Its consequences must be sought under the Statute which effectuates the abolition. It is, therefore, resumption and regrant must be within the statutory framework.

44) We, therefore, set aside the judgment of the High Court in all the appeals. The result is that the appeals are allowed, but in the peculiar circumstances of the case, there will be no order as to costs.

**…….J.**
**[ B.N. AGRAWAL ]**

**…….J.**

**[ G.S. SINGHVI ]**

**…….J.**
**[ H.L. DATTU ]**

New Delhi,
October 9, 2009.