A ABUBAKAR ABDUL INAMDAR (DEAD) BY LRS. AND ORS.

v.

HARUN ABDUL INAMDAR AND ORS.

AUGUST 30, 1995

B [MADAN MOHAN PUNCHHI AND FAIZAN UDDIN, JJ.]

Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 :

C *Muslim Law—Succession—Inamdar—Death—Impartible Inam lands devolving on eldest son by Rule of primogeniture—Abolition of Inams—Eldest son regarded as a Watandar on re-grant—Claim by other brothers and sisters as co-sharer—Held permissible.*

Adverse possession—Pleadings—Held no amount of proof can sub-
D *stitute pleadings.*

The dispute in this appeal relates to two properties which belonged to one S. On his death agricultural lands which were Inams and impartible in nature devolved upon his eldest son A by the Rule of primogeniture. The
E **other property was a dwelling unit which remained in possession of A. Subsequent to the abolition of Inams under the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955, A was regarded as a Watandar on re-grant of the properties. The brothers and sisters of A filed a suit claiming share in agricultural land as co-heirs and sought partition of house property as heirs. The Trial Court decreed their suit in**
F **respect of Inam lands, but dismissed the same in respect of the house property. The Appellant Court affirmed the decision of the Trial Court. The High Court decreed the entire suit. It rejected the claim of A that Inam lands became'personal' in his hands or regrant as well as the plea of adverse possession taken by him with regard to the house property.**
G **Against the decision of the High Court an appeal was preferred before this Court.**

Dismissing the appeal, this Court

HELD : 1. Estate of S should normally have devolved upon his
H **children in accordance with the shares as defined by the Shariat Law. But**

since the properties were Inams and impartible and the services to the Ruler due from the members of the family were expected to be taken from the eldest son by the rule of primogeniture, then the heirs of S, even though not forming a joint Hindu Family as is known to Hindu Law, would still be a group of people, the representative of which was A in order to hold the Inam. Once that Inam was abolished and re-grant given to A, impartibility of the estate vanished and thus this group of people were definitely entitled to claim their respective shares in accordance with the law of Shariat. There is no impelling reason to draw a line of distinction qua the two cases in *Nagesh Bisto Desai and *Annasaheb Bapusaheb*** so as to carve out an exception to the principle for Mohammedans. The prime reason for such interpretation is that the Ruler while drawing up the Inam initially and conferring it again on A did not intend to create any distinction between his subjects, be it Muslims or Hindus. Uniformity of tradition in that regard would be a good rule of reason so as to set the matter at rest here. [175-B-E]**

****Nagesh Bisto Desai Etc. Etc.* v. *Khando Timal Desai Etc.* [1982] 3 SCR 341; ** *Annasaheb Bapusaheb Patil and Ors.* v. *Balwant (dead) by Lrs. and heirs and Ors.* [1995] 2 SCC 543, relied on.**

2. It is true that some evidence, basically of Municipal register entries, were inducted to prove the point of adverse possession but no amount of proof can substitute pleadings which are the foundation of the claim of a litigating party. The finding relating to the plea of adverse possession was rightly reversed by the High Court. [175-G-H; 176-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2750 of 1977.

From the Judgment and Order dated 11th August, 1976 of the Bombay High Court in Appeal No. 298 of 1970.

V.N. Ganpule and A.M. Khanwilkar for the Appellants.

B.N. Naik, Arun Mohan, S.V. Tambwekar, Krishan Mahajan, M. P.H. Parekh and Ms. Shefali Z. Fazal for the Respondents.

The following Order of the Court was delivered :

This appeal having arisen from the judgment and order of the

A Bombay High Court relates to two properties which belonged to one Syed Abdul Inamdar. On his death, he was succeeded by six children; four of whom are sons and two daughters. The eldest son is Abubakar.

On the death of Syed Abdulla, agricultural lands which were assigned to Abubakar, the eldest son, by certain orders passed by the Ruler of B Kolhapur as Inams of two kinds. It is the admitted case of the parties that these Inams were impartible and had to devolve upon the eldest son by the rule of primogeniture. The other property was a dwelling unit which was owned by Sayed Abdulla and remained in possession of Abubakar.

C On the abolition of the 'Inams' under the provisions of the Bombay Merged Territories Miscelaneous Alienations abolition Act, 1955, Abubakar was regarded as a *Watandar* on re-grant of the properties. His brothers and sisters, on the one side, laid claims to those lands as co-heirs of Abubakar, taking the plea that by virtue of inheritance, they had a share D in that property; the bar of impartiability and the rule of primogeniture having gone. Regarding the house property, they laid claims to partition it as heirs. Abubakar resisted the suit by laying claim that the landed properties which were erstwhile 'Inams' became on re-grant 'personal' in his hands and therefore, the other heirs of Syed Abdulla had no share in those. Regarding the house he put up the plea of adverse possession, even though, E avowedly, he had a will in his favour from his father. The trial court partly decreed the suit against him insofar as the Inam lands were concerned but dismissed the suit insofar as the house was concerned; and the lower appellate court affirmed that decision. Before the High Court the appeal of Abubakar as also the cross-objections of his opponents were taken up F together. The appeal of Abubakar was dismissed and the cross-objections on the contrary were allowed with the result that the entire suit stood decreed, rejecting the claim of Abubakar of the Inam lands being personal to him and the house being in his adverse possession, maturing in his ownerships.

G We have heard Mr. Ganpule, learned senior counsel for the appellant-Abubakar, at great length and pointedly with regard to the nature of re-grant after the abolition of the Inam. It stands conceded by him that the terms of the grant are not in any manner peculiar to the facts emerging in this case but rather are the usual ones which find mention in such grants. H He was frank enough to conced before us that had the parties been Hindus

then the two decisions of this Court, namely, (i) Nagesh Bisto Desai Etc. Etc. v. *Khando Timal Desai Etc.*, [1982] 3 SCR 341 and (ii) *Annasaheb Bapusaheb Patil and Others* v. *Balwant (dead) by Lrs. and heirs and Others*, [1995] 2 SCC 543 would have taken over the field to hold that the properties in the hands of the Watandar were joint family properties and partible after the re-grant. He tried in to convince us that principally it would make a difference if the parties were Mohammedans, as presently they are. If we come to analyse the proposition canvassed, Syed Abdulla's estate should normally have devolved upon his six children in accordance with the shares as defined by the Shariat Law. But, since the properties were Inams and impartible and the service to the Ruler due from the members of the family were expected to be taken from the eldest son by the rule of primogeniture, then the heirs of Syed Abdulla, even though not forming a joint Hindu Family as is known to Hindu Law, would still be a group of people, the representative of which was Abubakar in order to hold the Inam. Once that Inam was abolished and re-grant given to Abubakar, impartibility of the estate vanished and thus this ground of people were definitely entitled to claim their respective shares in accordance with the law of Shariat. All the three courts below have taken such a view and we see no impelling reason to draw a line of distinction qua the aforesaid two cases in Nagesh Bisto Desai and Annasaheb Bapusaheb (supra) so as to carve out an exception to the principle for Mohammedans. The prime reason from such interpretation is that the Ruler while drawing up the Inam initially and conferring it again on Abubakar did not intend to create any distinction between his subjects, be it Muslims or Hindus. Uniformity of tradition in that regard would be a good rule of reason so as to set the matter at rest here.

With regard to the plea of adverse possession, the appellant having been successful in the two courts below and not in the High Court, one has to turn to the pleadings of the appellant in his written statement. There he has pleaded a duration of his having remained in exclusive possession of the house, but nowhere has he pleaded a single overt act on the basis of which it could be inferred or ascertained that from a particular point of time his possession became hostile and notorious to the complete exclusion of other heirs, and his being in possession openly and hostilely. It is true that some evidence, basically of Municipal register entries, were inducted to prove the point but no amount of proof can substitute pleadings which are the foundation of the claim of a litigating party. The High Court caught the appellant right at that point and drawing inference from the evidence

A produced on record, concluded that correct principles relating to the plea of adverse possession were not applied by the courts below. The findings, as it appears, to us, was rightly reversed by the High Court requiring no interference at our end.

For the foregoing reasons, there is no merit in this appeal which is
B hereby dismissed. No Costs.

T.N.A. Appeal dismissed.