

1865.  
Sep. 20.

*Special Appeal No. 325 of 1865.*

BHA'I TRIMBAKJI.....*Appellant.*  
TOMU valad KUTUR .....*Respondent.*

*Jurisdiction—Civil Court — Revenue Court — Special Appeal—Reg. XVII. of 1827, Sec. xxxi., Cl. 4—Act XVI. of 1838, Sec. 1., Cl. 3.*

A sued B in a court which had no jurisdiction to entertain the claim. The suit was heard and determined in favour of B by the Munsif, whose decree was affirmed, on appeal, by the District Court :—

*Held* that A had a right, in special appeal, to take the objection that the courts below had proceeded without jurisdiction.

**B**HAI TRIMBAKJI brought the suit in the Court of the Munsif of Bassein, to establish his exclusive right to the use of a well in his own field in the village of Mulgám.

The defendant answered that the claim was barred by the law of limitation ; that he had as of right used the well in question for twenty-two years ; that it was usual in Bassein for several gardens to be supplied with water from a common well ; and that he had repaired the water-wheel.

The Munsif threw out the claim, on the ground that the defendant had proved his use of the well for more than twelve years ; and his decision was confirmed, on appeal, by the Acting Assistant Judge of the Konkan.

*Shántarám Nárúyan*, for the appellant, amongst other grounds of objection, relied upon the want of jurisdiction in the courts below : as the Collector had the civil cognisance in the first instance (a) “ of all questions regarding the use of wells, tanks, and watercourses, and roads to fields,” under Reg. XVII. of 1827, Sec. xxxi., Cl. 4, and Act XVI. of 1838, Sec. 1., Cl. 3.

*Pándurang Balibhadra*, for the respondent, contended that as the appellant had himself selected his forum, it was not now competent for him to take the objection of want of jurisdiction.

(a) See note at p. 190, *antè*.

*Shántarám*, in reply:—If express consent cannot give jurisdiction, much less can a mistake in the selection of a court to bring the suit in.

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PER CURIAM (NEWTON AND JANA'RDAN VA'SUDEV, JJ.) :—  
The Court is of opinion that neither the Munsif nor the Assistant Judge had jurisdiction in the matter of the suit. It, accordingly, annuls the decrees of both the courts below ; and refers the suit to the revenue court, under Sec. 5 (b) of Act XVI. of 1838.

The Court, however, orders that the appellant do pay all the costs of the suit: as it was he who originally selected the wrong court.

(b) Quoted at p. 188, *supra*.

NOTE.—By Act No. II. of 1866 (Bombay), the Civil Courts, according to their respective jurisdiction, are invested with the cognisance (1) of all disputes regarding rent of the current or former year, which the ryot on the one hand, or the farmer or superior holder on the other, may desire to submit to adjudication, and (2) of all questions regarding the use of wells, tanks, and watercourses, and roads to fields ; and the provisions of Reg. XVII. of 1827 ; Cl. 5, Sec. II. of Regulation V. of 1830 ; Reg. VI. of 1830 ; and Cl. 3, Sec. I. of Act XVI. of 1838 : giving or continuing jurisdiction to the Revenue Courts in suits relating to the objects enumerated, are repealed.—ED.