

1865.

NARA'PPA'
BIN APPA'
HEGDI
v.
GAPA'YA' BIN
KAPA'YA'.

The Court, therefore, holds that the District Judge was in error in rejecting the present claim, on the ground that it appeared, from the papers in a previous suit, that all the ready money and ornaments of the plaintiff's family were the property of the coparceners of the plaintiff.

The Court considers that, although Sec. 138 of the Code of Civil Procedure gives a Civil Court power to inspect the record of papers in a previous suit, whenever such inspection "shall appear likely to elucidate the facts of the suit before the court, and to promote the ends of justice;" yet that, in the exercise of such power of inspection, a court can only use as evidence, for or against either party, such documents or papers as would be legally admissible.

The Court further holds that when any documents or papers are thus employed, the party for whose benefit they are used should be required to file copies on the record.

The Court, therefore, reverses the decree of the District Judge; and remands the suit, in order that the District Judge may pass a new decision on the merits; using in the re-trial only such documents on the record of the previous suit as may be admissible in this suit. Costs to be apportioned at the final decision.

Appeal allowed.

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Feb. 8.

Special Appeal No. 582 of 1863.

A'BA'JI bin SANKROJI BHOSLE *Appellant.*
NILOJI bin BA'LOJI BHOSLE *Respondent.*

Pátílki—Eldership—Act XI. of 1843.

In a suit brought for a declaration of right to the *vadítli*, or eldership in a family of Pátíls, with a view to prove title to the *pátílki*, or office of Pátíl—

Held that a Civil Court had no right to entertain such a claim, in order to influence the controlling revenue officer, who had the power, in certain cases, to nominate, from among the shares of a family of hereditary officers, a representative to discharge the duties of the hereditary office.

THIS was a special appeal from the decision of R. F. Mactier, District Judge of Sátará, in Appeal Suit No. 113 of 1863, reversing the decree of the Munsif of Sátará.

A'bánji sued Niloji to have himself declared *vadil* or elder in a family of Pátíls in Mouje Eskal : stating that the revenue authorities had appointed Niloji, who was not the elder ; and that he wished to have his right declared. Niloji denied the claim.

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The following is an extract from the judgment recorded in appeal :—

“This claim all depends on the nature of the evidence as to who was the eldest in certain families. By the family-tree filed, A'bánji is in the seventh generation in the branch of Kamloji, and Niloji, the defendant, is in the eighth. As to the authenticity of this tree, again, there is nothing very certain. Niloji denies the fact of A'bánji's being the elder of the two ; and the truth or otherwise of the family-tree is the chief point in the case. The person who produces this cannot swear to it as true. There are several witnesses (Máhárs and Mángs) who say A'bánji is in the eldest branch of the family. All seem to found their opinion on A'bánji's house being to the right hand of Niloji's ; though they do not show how it is so, as this would clearly depend on the way the houses were looked at ; and this, if it were the case, would be far too slight proof of such a claim as this to be of any material use. The lower court has gone on the evidence of the *Deshpándyá* (a), witness No. 64, who does not speak with any certainty ; and I cannot consent to break through existing rights merely on vague stories about people's houses being on the right or the left of each other. * * * There is not proof enough to satisfy me ; and the claim must be thrown out. The decree of the lower court is, therefore, reversed with all costs.”

The case was heard before WESTROPP and TUCKER, JJ.

Vishvanáth Náráyan Mandlik (with him *Ganpatráv Bháskar*) for the appellant :—The customary *manpán* (privileges and perquisites) of the country being proved to be in the enjoyment of the appellant's family, as the elder branch, and

(a) The hereditary officer under the *Deshmákh* or head of a *parganá*, as the *Kulkarní* is under the Pátíl of a village.—*Molesworth*.

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it being proved to be the custom of the place for the members of the elder branches of the family to have their houses on the right-hand side, the lower court was wrong in not giving due force to such presumptive evidence. The lower court was also wrong in giving any force to existing arrangements made by the revenue authorities, which in their very nature were but temporary, and pending the decision of the Civil Court.

Pándurang Balibhadra for the respondent.

WESTROPP, J. :—If the sharers in the watan do not, within such reasonable time as may be fixed by the Collector or other controlling revenue officer, appoint a fit and proper person from among their number to be the officiating Pátíl, the Collector or controlling officer is at liberty, under Sec. 4 of Act XI. of 1843, himself to exercise the power of selection.

The Civil Court has no jurisdiction in the matter. The suit was brought for a simple declaration of right, in order to influence another and independent authority ; and if it were proved over and over again that appellant was the *vadíl*, we hold that the Civil Court had no jurisdiction to substitute him as *Pátíl*, in lieu of a junior member of the family nominated by the Collector, if the Collector exercised his power of selection upon failure of the sharers to nominate some fit and proper person for the office.

We, therefore, confirm the decree of the District Judge with costs.

Decree affirmed.