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COLLECTOR OF KHEDA' v. HARISHANKAR TIKAM *et al.*

The case is very similar to the one I alluded to in the course of the argument, and I think that Reg. V. of 1827, Sec. 1, applies, and the District Judge was, therefore, correct in the decision he arrived at.

PER CURIAM:—The Court confirm the decree of the District Court with costs.

Decree confirmed.

Jan. 9.

Special Appeal No. 485 *of* 1866.

PAYA'PPA' bin SHESHA'PPA' NA'DNI' .....*Appellant.*
DHONDO NA'RA'YAN DA'MLE .....*Respondent.*

Reg. XVIII. of 1831—*Act III. of* 1863 (*Bombay*)—*Jurisdiction.*

A suit was instituted in a court, which at the date of the filing of such suit was in a Non-Regulation District, to recover possession of a piece of land situate in a village then within the jurisdiction of that court; when the Regulations were introduced, the Regulation Court, which succeeded the said court, was placed in a district different from that to which the said village was annexed.

Held that the village in which the suit arose having been transferred to a district different from that which included the court which had succeeded the Non-Regulation Court, this last-named court had no jurisdiction to try and determine the suit.

Held, also, that an appeal to a Judge of one district from a decree of a subordinate court in another district, when such an appeal was permissible, was not an appeal which could be referred by the District Judge for trial to a Principal Sadr Amín under Reg. XVIII. of 1831, Sec. 3.

Quære—When a district, or particular portion of a district, is for the first time brought under the Regulations, can the Regulation Court, which is established in the territory where a Non-Regulation Court previously existed, continue the trial of suits instituted in the Non-Regulation Court, if no provision have been made in the Act by which the Regulations became operative in the said territory, for the continuance of the trial of such suits by the said Regulation Court.

THIS was a Special Appeal from the decision of Ráv Báhádur Tirmalráv Vyankatesh, Principal Sadr Amín in the District of Dhárwár, in Appeal Suit No. 44 of 1864 on the file of the Dhárwár Judge's Court, confirming the decree of the Munsif of Tásgám.

The appeal was heard before TUCKER and GIBBS, JJ.

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PAYA'PPA' S. NA'DNI' v. DHONDO N. DA'MLE.

Shántárám Náráyan and *Dhirajlál Mathurádás* for the appellant.

The facts of the case sufficiently appear from the following judgment:—

TUCKER, J.:—The plaintiff sued as the *khátedár*, or registered holder, of a particular field in the village of Jughal, Táluká Athni, to recover the said field from the defendant, whom he alleged to be his tenant, but who refused to give up the field.

The defendant denied that he was a tenant of the plaintiff, or that the plaintiff had ever let this field to him. He further asserted that the land was his *mirási* land, and that he and his ancestors had always paid the Government assessment. That when the village of Jughal was held by the Kágvádkar family, the plaintiff was Kamávisdár of the village, and the assessment of the field was assigned to him as remuneration for his office, and, therefore, the field appeared in his name in the village books; but that he (the plaintiff) never had any proprietary right in the field, but was merely an assignee of the Government assessment, and on the village lapsing to the British Government, and the cessation of his office, the plaintiff had no claim whatsoever on the land.

The Munsif at Tásgám (Hanmantráv Subáji), on the 31st of December 1865, decided that the land was entered in the plaintiff's name in the Government books, and that it was established that the defendant's family had for a long time paid rent for the land to the plaintiff. He, therefore, decreed that the defendant should restore the land to the plaintiff.

The Principal Ṣadr Amín of Belgám (Tirmalráv Vyankatesh) affirmed this decree, as he found it proved that the land belonged to the plaintiff, and that the defendant was the plaintiff's tenant.

In special appeal it has been contended (1) that the Principal Ṣadr Amín had no jurisdiction to try the appeal, as, under Reg. XVIII. of 1831, the District Judge had no power to refer this appeal for trial to the Principal Ṣadr Amín, as

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it was not an appeal from a decree made by a Munsif within the district; (2) that the Munsif at Tásgám had no jurisdiction to make the decree, as the suit had been filed when the Tásgám court was a court in a Non-Regulation Province, and it could not be proceeded with afterwards in a court established under the Regulations, there having been no provision in Act III. of 1863 which authorised the courts in the Regulation Districts to continue the trial of the suits which were pending in the Non-Regulation Court previously existing.

The history of the litigation in this case is as follows:—

The suit was instituted in a court at Tásgám, which at the time formed a portion of certain territory in the Southern Maraṭhá Country, which was not then under the Regulations. By Act III. of 1863 (Bombay) the province of Sátárá, as well as this territory, was brought under the Regulations; and by a proclamation in the *Government Gazette*, dated the 10th of June 1863, the táluká of Tásgám was included in the Sátárá collectorate, and the court of the Munsif established there became a court in the Sátárá district. By a proclamation dated 26th August 1863, the village of Jughal, in which the land which forms the subject of this action was situate, was annexed to the district of Dhárwár, and consequently ceased to be within the jurisdiction of any court in the Sátárá district. Notwithstanding this change in the distribution of territory, the Munsif at Tásgám proceeded to dispose of this suit, which he decided on the 31st of December 1863; and an appeal from this decision was made to the District Judge at Dhárwár, who referred it for determination to the Principal Ṣadr Amín, at Dhárwár, from whose decree the present special appeal has been made.

We are of opinion that, under any circumstances, this was not an appeal which could be referred by the District Judge for trial by a Principal Ṣadr Amín. Sec. 3 of Reg. XVII. of 1831 only authorises the Zillá Judge to refer to Native Judges, or Principal Ṣadr Amíns, appeals from decisions *made in any part of the Zillá* by principal or junior Native

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Commissioners, *i.e.* by Ṣadr Amíns and Munsifs; and the decree in this suit, having been made by a Munsif sitting in another district, could not, under this Regulation, be sent to a Principal Ṣadr Amín for disposal. Further, we are of opinion that it was not competent to the subordinate court at Tásgám, after it had been included in the Sátárá district, to determine a question of the right to land situate in a village which had been annexed to the Dhárwár district; and that, consequently, the decrees passed in this case by both the lower courts are equally without jurisdiction. We must, therefore, annul the decrees of both the lower courts; and as it is not clear that any court now existing in the Dhárwár district is competent to continue the hearing of a suit which commenced in a Non-Regulation Court, and was pending when the village out of which the suit arose was brought under the Regulations, we consider that the best thing, which can be done for the plaintiff, will be to permit him to withdraw from the suit, with liberty to bring a fresh action to recover this land. The plaintiff is not represented in special appeal, so that we must remand the appeal to the lower appellate court, with a direction that the suit be remitted to the court in which the trial took place, with a direction that the plaintiff be allowed to withdraw from the suit, with permission to bring a new action, under Sec. 97 of the Code of Civil Procedure. We may remark that neither of the lower courts appears to have entered upon the substantial question raised by the defence, namely, that the plaintiff was never the holder of the land under the State, but had simply obtained an assignment of the assessment payable by the defendant to the ruling power as remuneration for the office which he held in the village under the jahágirdár of Kágvád. Under the circumstances, it appears just that each party should bear his own costs in all courts.

GIBBS, J.:—I concur.

Decrees of both the lower courts annulled.