

*Civil Petition.*

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Feb. 18.

Chintaman Narayan.....*Petitioner.*

Madhavrav Venkatesh.....*Opponent.*

*Jurisdiction—Rent, suit for—Title to land incidentally determined.*

A suit to recover the rents of land situated in District T. may be brought in District S. *where the defendant is residing*, although in such suit the plaintiff's title to the land in respect of which the rent is sought to be recovered may incidentally come in question.

The Petitioner, Chintaman, filed a suit in the Court of the Principal Sadr Amin at Sattara to recover from the defendant, Madhavrav, the balance of the rents and profits of certain lands situated in the District of Thana and Satara. The Principal Sadr Amin rejected the plaint on the ground that he had no power to try the case, and his order was confirmed by the District Judge, R. F. Mactier, who made the following order:—

“This claim being for a portion of the revenues of land in the Thana District, will the claim lie in a Court of the Sattara District !

“I am decidedly of opinion that this claim *will not lie* in a Sattara Court. Sec. 5 of the Civil Procedure Code shows very clearly that if in the case of suits for land, or other immoveable property, such land or property be in the limits of a Court's jurisdiction, that Court may try the case; but here the land in question is situated in the Thana District, out of the Sattara Court's jurisdiction, and the defendant denies the plaintiff's claim altogether ; so that, in deciding the case here, we should have to enter into questions of right to property *not* in this District, and I think it clear that in such a case the claim must be laid in the Court having jurisdiction over the property of which a portion of the revenues is claimed; and this being the case, this Court has no jurisdiction over the revenues of land in the Thana District. The defendant has traversed the plea of the plaintiffs, and they, therefore, would be bound to show, that they had a share in the *inam* land situated in Thana and how could they do this

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in a Sattara Court? I can only account for the claim ever being admitted on the file in this way—that it was filed on the last day of December 1864, on which day more bad claims were filed, than were filed ever since Courts were appointed in this country, and the press of work would be the only ground for receiving the suit without examination. I concur with the lower Court that the claim will not lie in a Court of this District, and confirm the decree with costs on the plaintiffs.”

The case was argued before TUCKER and WARDEN, J. J.

*Shantaram Narayan* for the Petitioner, contended that, as the defendant was personally subject to the jurisdiction of the Sattara Court, the suit would lie. He cited *Denonath Sreemoney v. Hogg (a)*; *Ratanshankar Revanshanker v. Gulabshankar Lalshankar (b)*; *Penu v. Lord Baltimore (c)*, and cases there referred to; Civ. Proc. Code by Broughton, Notes to sec. 5.

*Vishvanath Narayan Mandlik* contra. As the title to the land is disputed the suit must be tried in the district in which the land is situated.

PER CURIAM :—The Court are of opinion that the suit is not for land or other immoveable property, but to recover from the defendant the balance of certain rents and profits which it is alleged that the defendant has received on the plaintiffs’ account, and has neglected to pay over.

The Courts at Sattara had jurisdiction over a claim of this character if the defendant, as seems to be admitted, dwells within their territorial limits, and if necessary, could adjudicate upon the plaintiff’s title to the said lands, though they may be situate in another District. The Court therefore reverses the orders of the District Judge and of the Principal Sadr Amin and directs that the Court of first instance do proceed to dispose of the suit according to law.

*Order made.*

(a) 1 Hyde 141. (b) 4 Bom. H. C. Rep. A. C. J. 173

(c) 1 Ves. 444; T. C. 2 White & T. L. C. Eq. 837 (3rd ed).