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injunction to prevent the Special Respondent adopting a stranger; but the former is a contingent right, as by Hindu Law the Special Respondent can adopt, and, if she does, the right of Special Appellant to be heir would fail. *Pranputti Korr v. Lalla Futteh Bahadoor.** On the 2nd point we decline to grant an injunction, as, even if the widow adopt a stranger, such adoption is not illegal and we cannot therefore bar her so doing. We must therefore confirm the decree of the Court below with costs.

Decree confirmed.

*8 Sevestre's Rep. p. 277.

Special Appeal No. 19 of 1859.

Bapuji Balwant.....*Appellant.*

Raghunath Vithal.....*Respondent.*

Jurisdiction—Boundaries—Encroachment—Act (Bombay)

II. of 1866.

April 5.

Where boundaries are removed or destroyed and when new ones are to be fixed, or where a question arises where boundaries run, the case falls under sec. III. of Bombay Act II. of 1866; but where the question between the parties is whether there has been an encroachment by the defendant on the lands of the plaintiff the Civil Courts have jurisdiction.

This was a Special Appeal from the decision of A. Lyon, Assistant Judge at Thanā, in Appeal Suit No. 45 of 1867, reversing the decree of the Munsif of Mahad.

Bapuji Balwant in his plaint alleged that in the village of Vile Tarf Nizampur in the Rajpura Talukā, certain land (survey No. 371), measuring in all six acres and 30 chains, was entered in his name; that out of this land in the Eastern direction four acres and two chains belonged to him by proprietary right, for which he paid the Government assessment, but that the defendant Raghunath Vithal, in July 1865, took possession of the said land and obstructed the plaintiff's management. He therefore sued for possession of it.

The defendant answered that the land in dispute belonged to him by proprietary right and had been in his management as proprietor for more than twelve years: that there was a plot of land of six acres and 30 chains lying to the west

and north of the land in dispute which was entered in the plaintiff's name; and that the field to the east of this land of the plaintiff (including the disputed land) also of six acres and thirty chains was entered in his name, and that this land was managed by him as before.

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The Munsif held that the land enjoyed by the plaintiff and defendant, including the land mentioned in the plaint, was their ancestral property; that at the time of the survey half of the land was entered in the name of each, but that the defendant managed two *bighas*, eighteen *pands*, and fifteen *kithas* more than his half, and that therefore this excess should be restored to the plaintiff. In appeal the Assistant Judge recorded the following judgment:—

“It seems to me clear that it is a boundary dispute. There is no dispute as to the fact, that each party has a certain portion of the field. The only question raised is the extent of the portion belonging to each, or in other words the position of the boundary. I, therefore, hold that under Bombay Act II. of 1866 the claim is not within the jurisdiction of this Court or of the Munsif's Court: *Narayan v. Damle vs. Dhodu Damodhar.*” (a)

The case was heard before COUCH, C.J., and GIBBS, J.

Shantaram Narayan for the Appellant—The Assistant Judge was wrong in holding that he had no jurisdiction in this case. The suit is not one to determine boundaries but is an ordinary ejection suit. Even if the Court has to determine the boundaries, still its jurisdiction is not ousted. Section 3 of (Bombay) Act II. of 1866 provides that disputes regarding boundaries shall be dealt with in accordance with the provisions of (Bombay) Act I. of 1865. Under that Act, when the boundaries are once fixed, the power of the survey officers is at an end, as will appear from secs. 12, 13, and 14 of the Act, and questions regarding them are then to be decided by the Civil Courts. The Collector, by section 31 of Reg. XVII. of 1827 had power to decide disputes regarding boundaries; but this section was repealed by (Bombay) Act II. of 1866, so that the Collector's Court is closed, and the

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Survey Court is also closed after the measurement and survey are concluded, and, therefore, the Civil Court alone has jurisdiction in such cases, not perhaps to declare what ought to be the boundaries, but to declare the parties' rights according to the boundaries fixed by the Survey.

Bahiravnath Mangesh, for the Respondent—The defendants held the land ever since the survey, when the boundaries were marked out, and the boundaries, so fixed once, cannot be disturbed otherwise than under the provisions of the Act.

COUCH, C. J.—The suit is to recover a piece of land in the possession of the defendant, and the question is whether there is any encroachment, for, if so, the Civil Courts will have jurisdiction. The case quoted by the Assistant Judge (b) does not apply: In that case the complaint was that the defendant had disturbed the boundaries; and the suit had been instituted before the Act of 1866. This Court therefore decided that the appeal lay to the Collector and not to the Judge. This decision has misled the lower Court; it does not appear to have occurred to it that the suit in that case was filed before (Bombay) Act II. of 1866 came into operation, and that the present suit was of a different nature. It is not easy to say what is a boundary dispute. It seems to me, however, that when boundaries are removed or destroyed and new ones are to be fixed, or when the question is where the boundaries run, the case would fall under sec. 3 of (Bombay) Act II. of 1866. In the present case, the Mansif has found an encroachment on the part of the defendant. We must, therefore, remand the case to the Appellate Court for retrial on the merits.

GIBBS, J.—I quite concur. The question being whether the defendant has committed an encroachment, this case is within the cognizance of the Civil Court. Should there be any dispute after the marks have been fixed, the Collector sets the boundaries right and re-erects the old ones, and this is taken out of the hands of the Civil Courts, and very properly so, as no civil rights of the parties are involved in the matter.

Decree reversed and case remanded.

(b) 4 Bom. II. C. Rep. A. C. J. 167.