

Special Appeal No. 412 of 1869.

Vaku valad Ram Patil *Appellant,*
 Pand valad Malji Patil, etal *Respondents.*

*Agreement to officiate patil—Public policy—Vacating
 Office.*

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An agreement between two members of a patil family that they are to officiate in turns is not illegal as being opposed to public policy. The Court will not however compel the actual patil to vacate office under such an agreement as long as his appointment under Act XI. of 1843 is unrevoked.

This was a Special Appeal from the decision of S. N. Tagore, Assistant Judge, Khandesh, in Appeal Suit No. 153 of 1869, confirming the decree of the Munsif of Tengora.

The plaintiff, Vaku Patil, brought this suit to establish his right to officiate as patil of Sonapur alternately with the defendants, and to cause the defendants to give over charge of the office to him in accordance with the terms of an agreement dated the 27th of January 1862. The agreement was to this effect: "Pandu Patil has been appointed by the Government in succession to his father. Pandu has spent two hundred rupees to obtain the order of appointment, out of which sum one-half is to be borne by him, and one-half by Vaku. Hereafter the two are to officiate in turns Pandu should give up when called upon by Vaku."

The defendants denied that they had executed the agreement relied upon by the plaintiff, and further alleged that they had been appointed by the Collector for life, as belonging to the elder branch of the family, and that the plaintiff had never held the office of patil.

The Munsiff of Tengora found that there was no evidence to show that the plaintiff and defendants were entitled to officiate by turns; and that the agreement relied upon was not proved. He accordingly rejected the claim of the plaintiff.

The plaintiff appealed from this decision to the District Court; and S. N. Tagore, the Assistant Judge, held, that no usage or custom was established showing that the plaintiff was entitled to claim performance of the patil's duties by turns with the defendants. "Where," he said, "no such right to

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claim performance exists, the Collector has, under Sec. 4 of Act XI. of 1843, an absolute power to nominate any member of the family to act as patil, and the consent of the plaintiff to such nomination was not necessary under the circumstances. The agreement also, though proved to have been duly executed, is directed in its spirit against public policy, being inconveniently restrictive of the choice of the Collector of a competent person to the office, and is therefore invalid." The Assistant Judge accordingly confirmed the Munsiff's decree.

The plaintiff appealed from this decision, and the appeal was heard this day before WARDEN and MELVILL, JJ.

Nanabhai Haridas for the appellant :—The agreement is not illegal. The Collector has an absolute power to appoint only when the sharers, having been asked to nominate, fail to do so, and cannot agree. As between the parties, the plaintiff has a right to claim alternate performance of the duties of this office, for the agreement is shown to have been duly executed.

PER CURIAM:—We do not think that the agreement relied upon by the plaintiff is either illegal or contrary to public policy. We amend the decree by declaring that the plaintiff is entitled under the agreement to a half share in *patil-ki-ratan* as claimed, but we reject his claim to officiate, as the defendant, Pandu, cannot be compelled to vacate office so long as his appointment is unrevoked.

Decree amended with costs on appellant.

Special Appeal No. 379 of 1869.

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Ganesh Pandurang Agte... .. Appellant.

Gangadhar Ramkrishna Respondent.

Procedure—Objections taken by respondent—Civ.

Pro. Code Sec. 348.

A respondent in taking advantage of the provisions of Sec. 348 of the Civil Procedure Code, can only take such objections as have reference to the party appealing. If he wishes to raise objections against parties who do not appeal, he must do so by independent appeal.

This was a Special Appeal from the decision of R. F. Maetier, District Judge of Satara, in Appeal Suit No. 13 of 1869, amending the decree of the Munsiff of Mayni.