

1869
Vāku valad
Ram Patil
v.
Pand valad
Malji Patil
et al

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.

Dec 13

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.

The plaintiff Gangadhar Ramkrishna sued Lakshimibai, Kasibai, and Pandurang Agte, the father of the appellant, to recover Rs. 79-5, being part of an annual payment of 200 rupees agreed to be made to the plaintiff by the defendants Lakshimibai and Kasibai, in satisfaction of a debt of Rs. 2 000 due on a bond dated February 1862, and payable out of the revenues of the village of Hingangaon, the whole of which village, without any reservation of the plaintiff's rights had been attached by the third defendant, Pandurang Agte in the year 1865, in execution of a decree he had obtained against Lakshimibai and Kasibai. The plaintiff claimed to recover the balance for the year 1864, and to establish his right to have the annual payment of Rs. 200 continued to him out of the revenues of the attached village till his debts were satisfied.

1869

Ganesh

Pandurang Agte

Gangadhar

Ramkrishna

The defendant Laxmibai admitted the bond, but pleaded want of consideration. The defendant Kashibai admitted the bond, and the defendant Pandurang answered that the bond was without consideration.

The Munsiff of Mayni found that the bond was proved, and that consideration was shown for its execution. He further found that Rs. 200 had been yearly paid to the plaintiff out of the revenues of the village which the third defendant had attached, but decreed the claim against Laxmibai alone, laying the whole costs on her.

Laxmibai appealed against this decree to the District Court; and the Judge held that the claim was improperly brought against her and Kashibai, who should never have been made parties to the suit, as they never refused to pay according to the agreement. He further was of opinion that the third defendant, Pandurang, in attaching the whole village without reservation of the plaintiff's rights as mortgagee, took on himself the liability of paying the permanent annual mortgage charges with which the village was burdened when the attachment took place. He directed accordingly that the third defendant, Pandurang, being dead, his son, Ganesh Pandurang, should be joined as a party to the appeal, and made a respondent.

1869
 Ganesh
 Pandurang Agte
 Gangadhar
 Ramkrishna.

Ganesh Pandurang was accordingly joined, and the Judge found Ganesh was liable for the balance sued for the year 1864. He accordingly amended the Munsif's decree and directed that Ganesh Pandurang should pay the unpaid balance, and the costs of all parties to the suit.

The defendant Ganesh Pandurang appealed from this decision, and the appeal was argued before GIBBS and MELVILL, JJ., this day.

Bhzivramath Mangesh for the appellant:—The Judge has, I submit, illegally made Ganesh Pandurang a respondent. As neither Gangadhar nor Laxmibai has appealed against Ganesh Pandurang, the Judge was wrong in awarding the claim against him under the provisions of Sec. 348 of the Code of Civil Procedure.

Shantaram Narayan for the respondent :—The Lower Court had a discretion in bring the unrepresented parties before it in appeal either as appellants or respondents. The words of Sec. 348 do not confine objections on the part of a respondent to those which he can urge against the party appealing.

PER CURIAM :—The District Judge was in error in (directing without an appeal from the plaintiff Gangadhar) in an appeal by the appellant Laxmibai, that Ganesh Pandurang who was co-defendant with Laxmibai in the original suit, and was identical in interest with her, should be made a party to the appeal as a respondent; and in awarding the whole claim against Ganesh Pandurang the Judge made an award beyond what the parties themselves required. Where a respondent takes advantage of the provisions of Sec. 348, he can only take such objections as have reference to the party appealing; but he cannot, except by bringing an independent appeal, raise objections against parties who do not appeal. We accordingly reverse the decision of the Lower Appellate Court, and suggest that the District Judge might still admit an appeal from Gangadhar against the Munsif's decree, absolving Ganesh Pandurang. We direct the parties to bear their own costs.

Decree reversed.