1870.
In re VISHVANA'TH HARI *et al.*

PER CURIAM:—The Court is of opinion that it is discretionary with the District Judge to grant or to refuse a certificate under Act XXVII. of 1860, and that, if he has refused to grant a certificate, no appeal lies, under Sec. 6 of the Act, against his order.

Appeal dismissed.

June 27.

Special Appeal No. 104 of 1870.

VITHU bin MA'NKU .....*Appellant.*
AMRITA' bin JOTI .....*Respondent.*

Pátílki Watan—*Eldership—Act XI. of 1843—Jurisdiction.*

Where the plaintiff sued to be declared entitled to the office of *Mulki Pátil* in the village of Kotávery, as being the senior of his family, and alleged that the defendant, the actual incumbent of that office, had no right to share in the management of the *watan*, and had, in fact, until 1866, upon the death of the father of the plaintiff, never done so, it was held that the Civil Courts had jurisdiction to entertain the claim of the plaintiff.

Abáji bin Sankroji v. *Niloji bin Báloji* (*a*) distinguished.

THIS was a special appeal from the decision of R. F. Mactier, District Judge of Sátárá, in Appeal Suit No. 196 of 1869, reversing the decree of the Munsif of Máyaní.

The plaintiff, Vithu bin Máṇku, sued to obtain a declaration that he was the *vaḍil* (senior) in his family, and, as such, entitled to hold permanently the office of *mulkí páṭíl* in his village, Kotávery. He stated that the *watan* had been in his family for more than one hundred years, till the death of his father in 1866, when the revenue authorities made the defendant *páṭíl*, and referred the plaintiff to the Civil Court. He, therefore, brought this suit to have his right to the *watan* declared, and to be declared entitled to do the work, take the proceeds, and enjoy the *mánpán*.

The defendant answered that the plaintiff was a stranger to the *watan*, which belonged to him, the defendant, as *vaḍil* or senior, and that the duties vested in him as such.

(*a*) 2 Bom. H. C. Rep. 363 (342, 2nd ed.).

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VITHU MA'NKU v. AMRITA' JOTI.

The Munsif of Máyaní decided that the plaintiff was entitled to the *watan*, and that the defendant had never had the *vahivát* or enjoyment of it. He, accordingly, declared that the plaintiff was entitled to the office and emoluments and *mánpán* of the *mulkí pátíl*.

The defendant appealed to the District Court of Sátárá, and R. F. Mactier, District Judge, reversed the decision of the Munsif, on the preliminary ground that a Civil Court had no jurisdiction in the matter. He delivered the following judgment:—

"On this point a final decision of the High Court has been given in a case precisely like this, Special Appeal No. 582 of 1863, from this district, *Abáji bin Sankroji* v. *Niloji bin Báloji* (*b*), that a Civil Court has no jurisdiction in the matter.

"And even if it were proved that the plaintiff was *vadíl*, the court has no jurisdiction to substitute him as *pátíl*. I consider that this court has here no jurisdiction, and that, moreover, to pass any decree such as is asked for, and which would be in effect contrary to the orders of the Collector passed under Act XI. of 1843, which gives him full authority in such cases, would be wrong. A court has no business to make orders which it cannot carry out. To reject the present claim does not seem to interfere with Sec. 15 of the Civil Procedure Code, and to admit it and decide without power to carry out its orders, would be ridiculous, and lower the authority of this court and of the Collector, who has full authority to give orders in such cases, and who would not listen to a decree of this court, even if it were made, in favour of the plaintiff. I, therefore, dismiss this claim, with costs on the plaintiff."

The plaintiff appealed from this decision, and the appeal was argued before GIBBS and LLOYD, JJ.

Dhirajlál Mathurádás for the appellant.

(*b*) 2 Bom. H. C. Rep. 342 (2nd ed.).

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VITHU MA'NKU v. AMRIT JOTIA'.

PER CURIAM :—There is a difference between this case and that alluded to by the District Judge, and reported in the second volume of the Bombay High Court Reports at p. 342 (2nd ed.) In the latter case both parties were admittedly sharers, and the original plaintiff wished to be declared "*vadil*," and the High Court refused so to declare.

In the present case the original plaintiff alleges that the original defendant has never shared in the management of the *watan* at all, and that he (the plaintiff) is sole owner. This is a different matter, as, under Act XI. of 1843, the Collector must choose between the sharers. If, therefore, the original defendant be not a sharer, his appointment would not be legal. We consider, therefore, that the District Judge was in error in not trying the present appeal on its merits; and we reverse his decree, and return the case to the District Court for this purpose: costs to follow.

Decree reversed and suit remanded.

June 29.

Miscellaneous Appeal No. 6 *of* 1869.

VIRSINGA'PPA' bin BASLINGA'PPA' .....*Appellant.*
SADA'SHIVA'PPA' A'PPA' GOLKHANDI and ANANTACHA'RYA bin HARI ACHA'RYA ...*Respondents.*

Court's Sale—Setting aside Sale—Fraud in conducting Sale—Irregularity—Civ. Proc. Code, Secs. 256 *and* 257.

The provision contained in Sec. 256 of the Code of Civil Procedure, that applications to set aside a Court's sale of immoveable property must be made within thirty days from the date of the sale, relates only to applications to set aside the sale for irregularity, and not to cases in which there has been a fraud committed by the officer of the Court who conducts the sale.

THIS was a miscellaneous appeal from an order passed by J. R. Naylor, Acting Senior Assistant Judge of Kaládgi, refusing to set aside a sale alleged to have been made by auction in execution of a decree, on the ground that the sale had already been confirmed by his predecessor.