

*Special Appeal No. 599 of 1870.*1871.
March 29.YESA'JI A'PA'JI PA'TI'L.....*Appellant.*YESA'JI MHA'LOJI*Respondent.**Civ. Proc. Code, Sec. 15—Declaratory Decree—Right to be declared Vadil or Elder—Act XI. of 1843.*

A suit to be declared *vadil*, or elder, among the holders of a *pátilkí watan* will not lie, as upon such declaration no consequential relief can be given: see Act XI. of 1843.

THIS was a special appeal from the decision of A. G. Watt, Acting Senior Assistant Judge of the District of Puṇá at Solápur, confirming the decree of the Subordinate Judge of Pandharpur.

The special appeal was heard before GIBBS and KEMBALL, JJ.

Shántárám Náráyaṇ for the special appellant.

Nagindás Tulsidás for the special respondent.

PER CURIAM:—In this case the plaintiff sued for a declaratory decree, under Sec. 15 of the Civil Procedure Code, to have it declared that he was *vadil* or elder in the *pátilkí watan* of Tánali to the defendant, who was his half-uncle. The lower courts have rejected the claim, because, 1stly, the plaintiff's father not having been *parágandá* (absent) for twelve years, the plaintiff could not, in accordance with Hindú law, sue; and, 2ndly, that by the decision in 2 Bom. H. C. Rep. 342 (a) such a suit as the present will not lie.

The Court concurs with the Senior Assistant Judge in considering that this suit will not lie, and, therefore, need not consider the other ground for rejection given by that officer. The Court would not have deemed it necessary to place any judgment on record, had it not appeared from exhibit No. 17 that the plaintiff was referred to the civil court by the revenue officer of the district, showing that the previous judgments of this court are not understood. We, therefore, record, for future guidance, that, in the opinion

(a) *A'báji bin Sankroji Bhosle v. Nilóji bin Báloji Bhosle.*

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of this High Court, no court will give a declaratory decree unless it can also, if asked for, give consequential relief ; see the authorities cited in *Beattie et al v. Jetha Dungarsi* (a). Now to apply this principle to the present case. By Act XI. of 1843, the sharers in an hereditary *watan* can select any sharer to perform the duties of the office, or, if the sharers fail to select, the Collector may choose any one of the sharers. If, therefore, a declaratory decree be given, stating that the plaintiff is *vadil*, no consequential relief could follow, as whether he be *vadil* or not he would be just as eligible, and no more so, for the office of *pa'til*, if the sharers, or in their default the Collector, choose to select him.

If the question had been whether the plaintiff was, or was not, one of the *bhadband* or sharers in the *watan*, it would have been a different thing, as in the event of his proving himself to be a sharer consequential relief might have been afforded him if the Collector or his co-sharers ignored his rights.

The decree of the lower court must be confirmed with costs.

Decree confirmed.

(a) 5 Bom. H. C. Rep., O. C. J. 152.