

We are of opinion that Cl. 12, and not Cl. 16, of Section I of Act XIV. of 1859 is applicable to a suit to recover the fees of an hereditary office, such as a village Joshi.

It may be that *Krishnabhat v. Kapábhát (f)* decided by COUCH, C.J., and GIBBS, J., which this decision upholds, may be inconsistent with *Rdiji Manor v. Desái Kalliánrái (g)* and the like cases which treated *todá garás* as moveable property and the limit, to suits for it, as six years. It is unnecessary for us now to decide whether or not this inconsistency exists. For my own part, I may say that I have had considerable doubts as to the soundness of those decisions as to *todá garás*.

Having answered the only question submitted for our decision, we remit this case to the Division Court (with that answer) for final disposal.

1872.

BALVANT-
RAV
T. BA'PAJI
v.
PURSHOTAM
SIDHE
SHVAR.

[APPELLATE CIVIL JURISDICTION.]

Miscellaneous Special Appeal No. 22 of 1871.

March 13.

PIRJA'DA' NAŠARUDIN.....*Appellant.*

VENKAT PRABHU*Respondent.*

Jurisdiction—North Kanara—Decree passed by Principal Sadr Amín—Execution of such decree—Act (Bombay) III. of 1863 Secs. 6 & 7—Act XIV. of 1869.

A decree passed by a Principal Sadr Amín of the district of North Kanara before that district was transferred to the Bombay Presidency, should be executed by the First Class Subordinate Judge who has succeeded to the Court and functions of such Principal Sadr Amín, and cannot by him be delegated for execution by a Second Class Subordinate Judge, though the amount of such decree be less than Rs. 5,000.

The provision in the Bombay Courts' Act (XIV. of 1869), that in suits under Rs. 5,000 the Second Class Subordinate Judges only shall have jurisdiction, does not affect the execution of decrees passed before that Act came into force.

THIS was a miscellaneous special appeal from an order of A. L. Spens, Acting District Judge of Kárwár, reversing an order of Venkatráv Pándurang, Second Class Subordinate Judge at Kárwár.

(f) 6 Bom. H. C. Rep. A.C.J. 137. (g) *Ibid* 53.

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Padshá Sáheb, of whom the appellant, Pirjádá, was the heir, held a decree for Rs. 1,300 against Venkat Prabhu, which had been passed by the Principal Şadr Amín of Honore, on the 9th April 1863.

Bombay Act III. of 1863, Sec. 6, enacts that the district of North Kanara, with the exception of the Taluka of Kundapur as transferred from the Presidency of Fort Saint George, shall, from and after the 16th day of April 1862, be subject to the Regulations and Acts which are or shall at any time hereafter be in force within the territories subject to the Presidency of Bombay.

And Sec. 7 enacts, that nothing in that Act shall affect any acts done, or proceedings held, or any sentence passed, or order made in the district of North Kanara, previously to the passing of that Act (15th April 1863).

Under Act VII. of 1843, Section 4 (Madras Code), the jurisdiction of a Principal Şadr Amín in the Madras Presidency extended to suits of the value of Rs. 10,000. By Madras Regulation III. of 1833, a Munsif's jurisdiction was limited to suits whose value did not exceed Rs. 1,000.

In the Bombay Presidency, by Act XIV. of 1869, the jurisdiction of a Second Class Subordinate Judge is limited to suits of the value of Rs. 5,000, while the jurisdiction of a First Class Subordinate Judge is unlimited.

On the 27th August 1868, Pirjádá, as heir of Padshá Sáheb, applied to the First Class Subordinate Judge at Sirsi, to grant a certificate that the decree of the 9th April 1863 had not been satisfied within the jurisdiction of that Court and to transfer the execution of that decree to the Court of the Second Class Subordinate Judge of Kárwár. The application was rejected, and Pirjádá was ordered to apply directly to the Subordinate Judge's Court at Kárwár. Accordingly, Pirjádá, on the 15th September 1868, applied to the Kárwár Subordinate Judge's Court for execution, which the Court granted. Venkatráv, thereon, appealed to the District Judge of Kárwár against the order of the Subordinate Judge. In appeal the District Judge raised the issue "3. What

Court is competent to execute the decree?" On that issue, he found that the First Class Subordinate Judge at Sirsi, and not the Subordinate Judge at Kárwár, was competent to execute this decree.

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The order of the Subordinate Judge at Kárwár was accordingly reversed on the 21st January 1871. Against that order, Pirjádá presented the present special appeal on the 27th April 1871.

The appeal was argued before WESTROPP, C.J., and LLOYD, J., on the 13th March 1872.

Marriott (with him Shántarám Náráyan), for the appellant.

Astey (with him Shámráv Vithal), for the respondent.

WESTROPP, C.J. :—Act III. of 1863, Section 7,* enacts that previous "orders" shall not be by that Act affected; that would include decrees. The Act itself does not purport to provide for the execution of previous decrees.

The Principal Şadr Amín of Honore had power, beyond dispute, to make the decree which he did.

The First Class Subordinate Judge of Sirsi is, in fact, the same Court, and has jurisdiction over the same district.

The provision in Bombay Courts Act, that in suits under Rs. 5,000, the Second Class Subordinate Judge only shall have jurisdiction, does not purport to affect execution of previous decrees.

Ratanchand v. Hanmantráv (a) was decided in the same spirit as we decide this case.

We think that Mr. Spens, the Acting Judge of Kárwár, was right in holding that the 1st Class Subordinate Judge of Sirsi can execute this decree, and, therefore, that Section 284 of Act VIII. of 1859 was not applicable, and that the 1st Class Subordinate Judge could not, under it, delegate the execution of the decree to the Second Class Subordinate Judge of Kárwár.

Appeal dismissed with costs.

* Sec. 7: "Nothing in this Act shall affect any acts done, or proceedings held, or any sentence passed, or order made in the District of North Kanara previously to the passing of this Act."