

1872.  
June 19.

[APPELLATE CIVIL JURISDICTION.]

*Regular Appeal No. 28 of 1870.*

THE GOVERNMENT OF BOMBAY ..... *Appellant.*

RANMALSINGJI AMARSINGJI..... *Respondent.*

*Jurisdiction—Consent—Land situated beyond British Territories.*

The Raja of Dangadra—an independent Chief—sued the Government of Bombay for a village which he described in the plaint as situated in the Raja's own territory. The District Judge of Ahmedabad rejected the suit for want of jurisdiction, as the village in dispute was beyond the British territories. On appeal, the High Court remanded the case for retrial on the merits on the agreement by the plaintiff that he would so amend the plaint as to bring the suit within the jurisdiction of the Ahmedabad District Court. The plaint was accordingly amended, and the District Court decided the case on the merits in favour of the plaintiff. The High Court, however, finding that the amendment did not alter the original statement in the plaint regarding the situation of the village, and finding that the plaintiff's evidence and arguments were directed solely to prove that the village was not in British but foreign territory, annulled the decree, although both the parties expressed their willingness that the appeal should be decided on the merits, the court acting on the rule of law that no consent of parties can give to the court a jurisdiction which it does not possess over the subject matter of the suit.

THIS was a Regular Appeal from the decision of C. B. Izon, Acting District Judge of Ahmedabad, in Original Suit No. 1 of 1866.

Ranmalingji, the Rajah of Dangadra, brought this suit against the Government of Bombay to establish his proprietary title to the village of Sultanpur which he described in the plaint as situated in his own territory. He alleged that in consequence of a quarrel arising between himself (Ranmalingji) and the Chief of Bajana, the Bombay Government interfered between them, and in 1862 took possession of the village in dispute, referring the plaintiff to a civil suit to prove his title thereto. On the 27th October 1866, the suit was rejected by the District Judge of Ahmedabad on the ground that that court had no jurisdiction to try the claim. The Judge observed :—

“This is a plaint in which the Rajah of Dangadra wishes to recover from Government the village of Sultanpur and

three years' mesne profits. He says that as there was a quarrel between him and the Chief of Bajana about this land, Government interfered. This is clearly not a civil but a political matter. Government annexes a village, and a Chief comes to my court and claims it as part of his dominions, over which he is sovereign. No civil court can try such a case. It makes no difference whether the land claimed be one village or a large kingdom, the same principle rules in both cases. Section 1 of Act VIII. of 1859 gives civil courts cognizance in cases of a civil nature, but no law allows me to decide such a case as this, nor can any Government give a court power which is not according to law. Therefore, even were the document purporting to be a copy of a resolution of Government (but not certified) proved to be so, it could give me no power save what I already have. Suppose, I was to try this suit and decide for the plaintiff; in carrying out the decree of my court, I should have to order land to be given up, which by the decree would be decided to be beyond my jurisdiction, in the dominions of a foreign Chief. No court can do so. The plaintiff, if he wishes to get the village, must proceed by appeal to the Supreme Government or the Secretary of State for India or Parliament. He cannot bring matters of annexation before any civil court with a view to having his land restored to him."

On appeal, the High Court remanded the case for trial on the merits, the plaintiff's Vakil, with the consent of the Government Pleader, having agreed to amend the plaint in such a manner as to show that the suit was within the jurisdiction of the District Court of Ahmedabad. On remand, the District Judge, on the plaint being amended by the plaintiff, framed the issue: "can plaintiff establish his right to the village either by original title or by a prescriptive title, acquired by long possession?," and disposed of the case on the merits, holding the plaintiff's claim proved (4th February 1870). The Judge remarked:—

"The village is one isolated from the Veramgaum Taluká, and it cannot be shown that Government occupied it or

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1872. derived revenue from it. It adjoins the villages of  
 THE GOVERNMENT OF BOMBAY. Dangadra. The Chief of Dangadra had received some  
 rent for grass from it; it had been granted in former  
 RANMAL. times as a portion for maintenance to a daughter of the  
 SINGJI AMAR- Chief who married the Mussulman Nawab of Radhanpur,  
 SINGJI. and at a later period in the dispute between Dangadra and  
 Bajana, it is incidentally referred to as belonging to Dan-  
 gadra and this long before the present dispute, and when it  
 is not to be supposed that there was any intention to make  
 evidence to be, perhaps, afterwards used against Government.  
 The plaintiff and his ancestors were, as I believe, for nearly  
 a century, at least, always in possession of the village.

“ I find that the plaintiff has proved a prescriptive title to  
 the village of Sultanpur and the lands thereof.

“ I accordingly declare his proprietary right to the same,  
 and direct that the defendant do deliver up possession of  
 them to the plaintiff.”

Against this decree, the Government of Bombay appealed  
 to the High Court on the 6th June 1870. The appeal was  
 argued before Sargent, Acting C.J., and Melvill, J., on the  
 19th June 1872.

*Latham*, Acting Legal Remembrancer, and *Dhirajlal Ma-*  
*thuradas* (Government Pleader) for the Appellant.

*Shantaram Narayan* for the respondent.

*Cur. adv. vult.*

SARGENT, C.J. :—We are reluctantly constrained to come  
 to the conclusion that the District Court of Ahmedabad  
 had no jurisdiction to try this suit; such was in the first  
 instance the conclusion of the District Judge; and though  
 his decree was reversed and the case remanded by the  
 High Court, it is clear that the ground of that reversal  
 was not that this court dissented from the view taken by  
 the District Judge as to the law bearing on the question,  
 but that the plaintiff entered into an undertaking so to  
 amend his plaint as to bring the subject of his claim within  
 the jurisdiction of the Civil Court. The judgment of this

Court was as follows :—“ As the plaintiff, through his pleader Mr. Nánábhái Haridás, states that his present claim is only to be declared the proprietor of the village of Sultanpur, situate in the Pergunah of Veramgaum in the British district of Ahmedabad, and as Mr. Dhirajlál, on behalf of the Government of Bombay, admits that the said village is located within the territorial jurisdiction of the District Court at Ahmedabad and signifies the assent of Government to the remand of the suit for disposal by the District Court of Ahmedabad on the merits, the court reverses the decree of the District Judge of Ahmedabad, dated the 27th October 1866, and inasmuch as the reference of a suit to the Assistant Judge of the value of Rs. 29,400 was illegal, the court further annuls the previous orders made by the District and Assistant Judges in the course of the suit, and directs that the plaint be returned to the plaintiff to be amended in the manner which has been agreed upon, and that upon its being so amended, the said plaint be registered in the court of the District Judge of Ahmedabad and be disposed of by the District Judge on the merits.”

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From this it is evident that the plaintiff, through his pleader, agreed to admit that the village in dispute was not situated beyond British territory, but in the Purgana of Veramgaum in the British district of Ahmedabad, and consequently within the jurisdiction of the District Court of Ahmedabad, and he further undertook to amend his plaint accordingly. The amendment, which he has actually made, is as follows :—

“ Owing to my plaint containing the words, ‘ the village of Sultanpur,’ a village of my ‘ Táluká,’ the Judge thought that my object was to have the Civil Court make a declaration of my right to rule (or govern) in the said village, and thereupon recorded a finding that the Civil Court had no jurisdiction in such political matters. I, therefore, in that behalf make an amendment here, and state, for clearness’s sake, that I have no desire at all in this matter to have any determination of political matters. The claim is simply for having a declaration of my proprietorship.”

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The plaint, as thus amended, contains no admission that the village in dispute is in British territory. The original statement in the plaint, that the village is in the plaintiff's territory remains unaltered, and the evidence offered by the plaintiff and the arguments founded upon it, has been directed solely to the establishment of the allegation that the village is not in British but in foreign territory. Under these circumstances, the case comes before us in precisely the same state as when it was last before the court; and although both parties are willing that we should decide the case on the merits, no consent of parties can give to the court a jurisdiction which it does not possess over the subject matter of the suit; and we have, therefore, no choice but to annul the decree of the court below, as having been made without jurisdiction.

Under all the circumstances of the case, we order that the parties bear their own costs.

*Decree reversed without costs.*

[APPELLATE CIVIL JURISDICTION.]

June 26.

*Special Appeal No. 39 of 1872.*

JA'DAV RUGHNA'TH ..... *Appellant.*

RA'IJI HIMMAT ..... *Respondent.*

*Registration—Act XVI. of 1864, Sections 13 and 14,—Act X. of 1862—  
 General exemptions—Surrender by a tenant to his landlord.*

A document, which is substantially a surrender by a tenant of his interest in land to his landlord, and, as such, is exempted from stamp duty by Act X. of 1862 under the general exemption clause, does not require registration under Act XVI. of 1864, Sections 13 and 14.

THIS was a special appeal from the decision of W. H. Newnham, Acting District Judge of Súrat, in Appeal Suit No. 191 of 1870, confirming the decree of C. Edalji, Subordinate Judge of Wagra.

Jáдав Rughnáth brought this suit against Ráiji Himmat, to establish his right to sell certain land and a *gabán*