

1872.
 THE GOVERNMENT
 OF BOMBAY
 v.
 RANMAL-
 SINGJI AMAR-
 SINGJI.

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*

(building site) as the property of his judgment debtor, Bái Lakhmi. Jádav had previously attached the said property in execution of a decree obtained by him against the said Lakhmi. The attachment, however, was raised on the application of the defendant, Ráiji, under Sec. 246 of the Civil Procedure Code. In the documentary evidence filed by Jádav in the suit, was a writing, dated Samvat 1921 (1st August 1865). This document was passed by Ráiji and his brother Tulsi to Bái Lakhmi as her tenants. It purported to relinquish all rights to a house, a *gabhán*, and some trees which formed part of certain land which Raiji and his brother had held as Lakhmi's tenants. The value of the property was not stated in the document.

The defendant, among other things, pleaded the Statute of Limitation, and stated that he had been in possession of the property in his own right for more than 12 years.

The Subordinate Judge threw out the claim as barred by limitation (23rd August 1870), holding the document of Samvat 1921 inadmissible in evidence, as it was not registered, registration being necessary under Act XVI. of 1864. In Appeal, Jádav, among other objections, took exception to the Subordinate Judge's improper rejection of the document of Samvat 1921. The District Judge, however, confirmed the Lower Court's decree (13th December 1871), and gave the following reasons for not admitting the above document in evidence:—

“ The document of Samvat 1921 is passed by Ráiji and Tulsi to Lakhmi, and purports to relinquish all rights to a house, *gabhán*, land and trees belonging to certain land which they had held as tenants of hers, and was rejected because not registered, under Section 13 of Act XVI. of 1864, which was then in force. It is not disputed that the value of the property is above Rs. 100, but it is contended that the document creates no new right, and, therefore, does not fall under the section. It, however, clearly ‘ purports to extinguish a right or title in immovable property;’ and the Lower Court was right in rejecting it being unregistered.”

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Against this decree, Jádav preferred a Special Appeal to the High Court on the 6th January 1872, and in the memorandum of appeal took the following grounds of objection on the point of registration:—(1) The Lower Court was wrong in holding that the document of Samvat 1921 required registration, without ascertaining whether the lease, which the said document purported to surrender, was one that required registration under Act XVI. of 1864. (2) The Lower Court held that the said document extinguished an interest in land of the value of more than 100 Rs., whereas, the said document requiring no stamp under Act X. of 1862, the interest relinquished by it was of no value, under Act XVI. of 1864.

The appeal was argued before Sargent, C.J., and Kembal, J., on the 26th June 1872.

Chunilál Mánikhlál for the special appellant:—Where the value of immoveable property is not stated in a document as in the case of the document of Samvat 1921, the question whether such document requires registration or not is determined by considering whether or not such document is subject to the payment of stamp duty. If it is exempted from stamp duty, as the document in question is, under the general exemption clause in Act X. of 1862, Schedule A, being a surrender or renunciation of land, its registration is not necessary. No external evidence should be taken to ascertain the value of immoveable property, where the writing itself does not state such value. He cited *Ishan Chunder v. Sooja Bebee* (a); *Rohinee Debia v. Shib Chunder* (b), and referred to Sections 13 and 14 of Act XVI. of 1864.

Dhirajlál Mathurádás contra; the document in question is not a surrender or renunciation by a ryot or other actual cultivator of the land, within the meaning of the general exemption clause at the end of Schedule A of the Stamp Act of 1862. That exemption does not apply to the surrender of a lease of property of the description mentioned in the document of Samvat 1921; it applies only to the renunciation of land by cultivators as distinguished from a house and a building site.

PER CURIAM :—The Court considers that the Acting Judge was wrong in refusing to admit the document dated Samvat 1921 in evidence. It is substantially a surrender by a tenant of his interest to his landlord and as such being exempted from stamp duty by Act X. of 1862, it does not require registration, regard being had to Sections 13 and 14 of Act XVI. of 1864.

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The decree must be, therefore, reversed and the case remanded for the Judge to take into consideration the document in question, and to pass a new decree. Costs to abide the result.

Decree reversed and case remanded.

[APPELLATE CIVIL JURISDICTION.]

Civil Petition.

July 2.

MAHA'DA'JI GOVINDPetitioner.

SONU bin DAHLATA'Respondent.

Extraordinary Jurisdiction of High Court—Power of Superintendence—Reg. II. of 1827 Sec. V., Cl. 2—Stat. 24 & 25 Vict. Ch. 104, Sec. 15—Mámílatdár's Court—Act (Bombay) V. of 1864.

Distinction between the High Court's Extraordinary Jurisdiction under Cl. 2 of Sec. 5 of Reg. II. of 1827, and its general power of superintendence, under Section 15 of Stat. 24 and 25 Vict. Cap. 104, pointed out, and the occasion for the exercise of the former stated.

The Mámílatdárs' Courts, constituted under Bombay Act V. of 1864, are Subordinate Civil Courts within the meaning of Cl. 2, Sec. 5, Reg. II. of 1827. The High Court has, therefore, power, in the exercise of its Extraordinary Jurisdiction, to set aside an order made by a Mámílatdár under Bombay Act V. of 1864.

THIS was a petition to the High Court for the exercise of its Extraordinary Jurisdiction under Regulation II. of 1827, Sec. 5, Clause 2, praying for the reversal of an order made by the Mámílatdár of Suvarnadurg in the Ratnágiri District under Bombay Act V. of 1864. The order was passed by the Mámílatdár in a summary suit brought by Sonu against Mahádáji Govind for restoration of possession of