

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 GOVIND .....*Petitioner.*

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

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certain immoveable property. Sonu's plaint was presented on the 21st December 1869 and the Mámlatdár's order was made on the 16th May 1870, directing possession of the disputed property to be restored to Sonu.

The petition was first heard *ex parte* by Gibbs and Kemball, J.J., on the 10th November 1870 when the Mámlatdár's decree was annulled. A *rule nisi* for a review was granted on the 29th September 1871, and the same having been subsequently made absolute, the petition was restored to the file and argued before Sargent, Acting C.J., and Melvill, J., on the 2nd July 1872.

*Vishvanáth N. Mandlik* for the petitioner:—The Mámlatdár's decree was made without jurisdiction. The alleged dispossession, as would appear from his decision, took place in February 1869, and the suit was not filed till the 21st December 1869, which was more than six months from the time of the dispossession.

*Shántarám Náráyan* in support of the Mámlatdár's decree:—The power vested in the Sudder Dewanee Adawlut by Cl. 2, Sec. 5 of Reg. II. of 1827, was to be exercised only in the case of courts which that Regulation constituted and not in the case of courts constituted by any other law. The Mámlatdárs' Courts, therefore, are not Subordinate Civil Courts within the meaning of that Regulation.

SARGENT, C.J.,:—This is an application for the exercise of the Court's Extraordinary Jurisdiction with a view to set aside an order made by a Mámlatdár under Bombay Act V. of 1864.

What is called the Extraordinary Jurisdiction of this Court (as distinguished from its general power of superintendence vested in it by Section 15 of Stat. 24 and 25 Vict., Cap. 104) is derived from Clause 2, Section 5, Regulation II. of 1827, which is as follows:—

“ It shall also be competent to the said Court (the Sudder Dewanee Adawlut) to call for the proceedings of any Subordinate Civil Court and to issue such orders thereon as the case may require.”

This power, which has been transferred to the High Court by Section 9 of the above statute, enables this Court to pass any order it may see fit in regard to the proceedings of any Civil Court subordinate to it. The words of the law impose no limit on the exercise of the power ; but the Court, has, in its discretion, consistently refused to exercise its Extraordinary Jurisdiction except in cases which disclose some grave and patent error, not otherwise to be remedied. The questions which we have to consider are, (1) whether the Mámlatdár's Court is a Subordinate Civil Court, and if so, (2) whether the present application discloses a fit case for the exercise of our Extraordinary Jurisdiction.

As to the subordination of the Mámlatdárs' Courts to the High Court, there can, we think, be no question. Though Bombay Act V. of 1864 confers upon the Mámlatdárs' Courts a new jurisdiction, it expressly declares the Courts to be the same Courts which are referred to in Regulation VI. of 1830, which Regulation provided that an appeal should lie from the decisions of those Courts to the Collector or Sub-Collector, and from that officer to the Sudder Dewanee Adawlut. Thus the Mámlatdárs' Courts were distinctly subordinated to the Sudder Dewanee Adawlut, and any powers which the Sudder Dewanee Adawlut had, by virtue of such subordination, have been transferred to the High Court. If the Mámlatdárs' Courts were subordinate to the Sudder Dewanee Adawlut, under Regulation VI. of 1830, they are subordinate to the High Court now. The circumstance that Regulation VI. of 1830 has been repealed by Bombay Act II. of 1866, and that Bombay Act V. of 1864 makes no provision for appeals from the Mámlatdárs' Courts, does not affect the question. The High Court cannot be deprived of any power vested in it by its Charter over Subordinate Courts by any Act of the Bombay Legislature ; nor, it may be added, is there any reason to suppose that there was an intention to deprive it of such power.

The whole question then resolves itself into this. Are the Mámlatdárs' Courts, " Civil Courts " within the meaning of Clause 2, Section 5, Regulation II. of 1827? It has been

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argued before us that the sole object of that clause was to give to the Sudder Dewanee Adawlut a control over the Courts which were constituted by that Regulation. But we see no reason to think that such was the intention. On the contrary, it seems unreasonable to suppose that there could have been an intention to give to the highest court of appeal a general power of interference, in regard to a particular class of suits, and to exclude that power in regard to another class of suits of a similar character and of at least equal importance. For a reference to Chapter VIII. of Regulation XVII. of 1827 (which Regulation was passed simultaneously with Regulation II. of 1827) shows that the class of cases assigned to what were ordinarily called the Revenue Courts, included all claims for the possession of lands and other questions of a civil nature involving the most important interests of the community.

It would be difficult to believe, and certainly should not be assumed without strong evidence, that the Legislature, while constructing the same machinery of appeal from the Revenue, as from the ordinary Civil Courts, thought it desirable to give to the highest court of appeal an additional power of interference with regard to the proceedings of the ordinary Civil Courts, but refused to give it the same power to remedy similar failures of justice in the Revenue Courts. So far from there being any strong evidence of such intention we think that the words of Clause 4, Section 21, Regulation II. of 1827, which speak of the suits "which come under the civil cognizance of the Collector in pursuance of Chapter VIII. Regulation XVII. A.D. 1827," and the provisions of the last-mentioned Chapter (and particularly Section 32), declaring that in their proceedings generally the Revenue Courts should be held to be Courts of Civil Jurisdiction, sufficiently indicate that the power of the Sudder Dewanee Adawlut to call for the proceedings of the Subordinate Civil Courts under Clause 2, Section 5, Regulation II. of 1827 was intended to apply to the Revenue Courts created by Regulation XVII. as well as to the ordinary Civil Courts constituted by Regulation II. of 1827.

It is scarcely necessary to add that the power thus given, to call for the proceedings of the Collector's Court, as being a Subordinate Civil Court, necessarily involved, upon the passing of Regulation VI. of 1830, the power to call for the proceedings of the Mámlatdár's Court, which was subordinate to that of the Collector.

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Having thus arrived at the conclusion that we have the power, in the exercise of our Extraordinary Jurisdiction, to set aside an order made by a Mámlatdár under Bombay Act V. of 1864, we have next to decide whether sufficient grounds have been shown in the present instance.

After a careful consideration of the proceedings, we are of opinion that sufficient grounds have not been shown. It is not clear on the face of the Mámlatdár's proceedings that he was in error in holding, as he certainly did hold, that a dispossession had taken place within 6 months. The process of reasoning by which he arrived at this conclusion may be somewhat confused and not, in every particular, satisfactory. But we think that we should not interfere, unless it be quite clear that the Mámlatdár's order has been made without jurisdiction, and this certainly is not clear in the present instance.