

We think, therefore, that for these reasons, and not for the reasons relied upon by the District Judge, he was justified in rejecting the plaint, and we affirm his order.

As regards the stamp, we are of opinion that it, being one for 10 rupees, would have covered damages to the extent of Rupees 130 and no more, and that there was no reason why the plaintiff should not have named the amount of damages which he sought to recover as compensation for the injury of which he complained.

We see no grounds sufficient to induce us to permit the plaintiff to amend his plaint, he having delayed the presentation of it until the last day, or last day but one, on which the law of limitation would permit him to file it.

We decide nothing as to the propriety of joining both defendants in one action, and as to the necessity of suing them, if at all, separately. It is unnecessary for us to determine that question, and by our silence on that point we are not to be understood as concurring in the course adopted by the plaintiff.

Order affirmed.

[APPELLATE CIVIL JURISDICTION.]

Regular Appeal No. 65 of 1871.

April 9.

FA'TMA' KOM NUBI SA'HEB *Appellant.*

DARYA' SA'HEB and THE COLLECTOR of

KALADGI *Respondents.*

Proper framing of plaint—Amendment—Collector's books—Title.

A person, claiming a share in land in right of heirship cannot sue a Collector for entry of his name in the revenue books, but sue the coheirs for an award of a share in the land, or for a declaration of right to such a share.

The Collector's book is kept for purposes of revenue not for purposes of title, and the fact of a person's name being entered in the Collector's book as occupant of land, does not, necessarily, of itself establish that person's title, or defeat the title of any other person.

1873.

 GIRDHARLAL
 DAYALDA'S
 v.
 JAGANNA'TH
 GIRDHAR-
 BHAI AND
 CHOTA'LAL.

1873.
 FA'TMA' KOM
 NUBI SA'HEB
 v.
 DARYA'SA'HEB
 AND THE
 COLLECTOR OF
 KALADGI.

FA'TMA', the appellant, brought this suit to obtain a decree directing the Collector of Kaladgi to enter her husband's lands in her name in the Revenue books. Her husband, Nubi Sáheb, died on the 31st October 1868; and after that event she applied for and obtained a certificate of heirship; which she presented to the Collector and requested him to enter in her name the *Inám* lands which formerly stood in her husband's name; the Collector, instead of doing so, entered the lands in the name of Daryá Sáheb. She, therefore, prayed for a decree for the entry of her name in the Collector's book.

Daryá Sáheb answered *inter alia* that he was the heir of the deceased Nubi Sáheb, and that the lands were entered in his name with the consent of Huzrutmá, the elder widow of Nubi Sáheb.

The Collector answered that the lands were entered in the Government books with the consent of the senior widow of Nubi Sáheb; and that the certificate obtained by the plaintiff showed that she was only one of the heirs of Nubi Sáheb.

The Senior Assistant Judge threw out the plaintiff's claim on the ground that she failed to prove herself to be the sole heir of the late Nubi Sáheb, and held that, on that ground alone, she could not claim to have the whole property entered in her name.

In special appeal, Fátmá, among others, took this objection:—A decree for ownership should have been given to the extent of the rights of the appellant, but the claim should not have been rejected.

The special appeal was argued before WESTROPP, C.J. and MELVILL, J., on the 9th April 1873.

Macpherson (with him *Fakiráppá*) for the appellant.

Mayhew, Legal Remembrancer (with him *Dhirajlál Mathurádás*, Government Pleader) for the respondents.

1873.

FA'TMA' KOM
NUBI SA'HEB
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AND THE
COLLECTOR OF
KALADGI

WESTROPP, C.J.:— We think that the Collector has been unnecessarily made a party to this suit and that the plaintiff's professional adviser in the Court below has not properly framed her suit. The prayer for relief, which her plaint ought to have contained, should have been for an award of her share in the property of her deceased husband, or for a declaration of her right to such a share, and not for the entry of her name in the Collector's book. The fact that another person's name has been entered in the Collector's book, as occupant of the land, does not necessarily of itself establish that person's title, or defeat the title of the plaintiff. The Collector's book is kept for purposes of revenue and not for purposes of title, and, as a general rule, although there may be more persons than one entitled to land, it is the practice of collectors, as a matter of convenience, to enter in their books only the name of one person as occupant of a field or recognized share of a field. The Collector, therefore, ought not to have been made a party to this suit. The proper parties as defendants would have been the present first defendant Daryá Sáheb, the elder widow of Nubi Sáheb (Huzrutmá), and the other persons, if any, claiming to be heirs of Nubi Sáheb. In that case, the Collector not being a party, the plaint should have been presented in the Court of the Subordinate Judge of Bagalkot, as the lowest court having jurisdiction. We think that the proper course in the present case, in order, so far as possible, to save expense to the parties (an object which should never be lost sight of by Courts of justice), will be to reverse the decree of the Senior Assistant Judge and to strike out the name of the Collector as a defendant, and, as he very properly does not ask for costs against the plaintiff, without costs, and to permit the plaintiff to amend her plaint by praying to be allotted her share in the property of her deceased husband, Nubi Sáheb, and by adding, as parties to this suit, Huzrutmá, his other widow, and the other persons, if any

1873. such there be, who claim to be his heirs, and to direct that, after the making of those amendments, this cause and all the proceedings therein be transferred to the Court of the Subordinate Judge of Bagalkot for retrial on the merits. The parties respectively to be at liberty to give such further evidence as they may be advised and as may be legally admissible. Costs of suit and of this appeal to follow the result of the retrial.*

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COLLECTOR OF
ALADGI.

Decree reversed and case remanded.

[APPELLATE CIVIL JURISDICTION.]

1873.
April.

Special Appeal No. 337 of 1872.

VRIJAVALABHDA'S KHUSHA' LDA'S.....Appellant.

THE COLLECTOR OF AHMEDABAD.....Respondent.

Bombay Act IV. of 1868, Sec. 4—Non-liability to pay assessment—Possession.

Where land in a Town in the Presidency of Bombay was found to have been in plaintiff's possession from 1858 to 1871 without any payment by him of Land Revenue to Government:—

Held that it was not liable to pay assessment under Bombay Act IV. of 1868.

THIS was a special appeal from the decision of F. D. MELVILL, District Judge of Surat, in Appeal No. 273 of 1871, reversing the decree of M. H. Scott, Assistant Judge in the same district.

Vrijavalabhdás brought this suit to obtain a declaration that he was entitled to hold, free of assessment, a certain piece of ground in the town of Ahmedabad belonging to him, and to recover back Rs. 178-8-0, which he had paid, under protest, in obedience to an order of the defendant, on account of assessment on the ground.

* *Vide infra* p. 192 and p. 194