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August 21.

[APPELLATE CIVIL JURISDICTION.]

Regular Appeal No. 3 *of* 1873.

SANGA'PA' MALA'PA' ....*Appellant.*

BHIMANGOWDA' MARIA'PA' ....*Respondent.*

Jurisdiction.—Suit against Collector.—Right to object to jurisdiction.

Although the entry by a Collector of a particular person's name as 'occupant' affords, however mistaken, no ground for an action against the Collector, yet where there is an apparent and reasonable ground for apprehending legal injury from the Collector's proceedings —as when the Collector affirms one person's title to the exclusion of another by entering his name in the register of "*watans*," (compiled under Regulation XVI. of 1827, s. 19), or where damage to a person's right is likely to arise from the Collector's act—it is not improper to join the Collector as a party to a suit.

Where a suit is instituted against a Collector and another person, and the Collector does not appeal—

Held that the question of the District Court's jurisdiction to entertain the suit being a ground common to all the parties affected by the judgment, it is open to the other person to object that the plaint did not disclose a cause of action against the Collector and that the District Court consequently had not jurisdiction.

THIS was an appeal against the decision of M. B. Baker, Senior Assistant Judge, F.P., of Kaládgi, awarding the plaintiff's claim.

The facts of the case are briefly these :—

The plaintiff, Bhimangowdá, alleged that he was the hereditary *Pátil* of the village of Zanmatti and that his family had always officiated as *watandár Pátils*; that although the defendant, Sangápá, had nothing to do with the Pátilship, yet that the second defendant, who is the first Assistant Collector of Kaladgi, had entered Sangápá's name on the register of

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watans as the sole proprietor; and prayed for a decree declaring the plaintiff to be the owner of the *watan* and entitled to officiate perpetually as *watandăr*.

The defendant, Sangápá, denied the plaintiff's right to the *watan*, as also that the plaintiff had officiated in his own right, but asserted that he had only officiated *for* Sangápá.

The Assistant Collector of Kaládgi stated that Sangápá was the owner of the *watan* and entitled as such to officiate perpetually.

The Assistant Judge laid down only one issue for determination, no other having been desired by the parties, viz.: "Is the plaintiff the owner of the *watan* in dispute, and is he entitled to officiate continually?" and found that issue in the affirmative. He therefore decreed for the plaintiff.

Against this decree Sangápá alone appealed.

The appeal was argued before WEST and PINHEY, JJ.

Dhirájlal Mathuradás (Government Pleader) for the defendant Sangápá:—The entry by the Assistant Collector does not affect the rights of the parties *inter se*; there is, therefore, no cause of action against him, and, consequently, no jurisdiction in the District Court: *Fátmá* v. *Daryá Sáheb and J. F. Armstrong, Collector of Kaládgi (a)*; and *The Collector of Poona* v. *Bhavánráv* (b). I take this objection, which is common both to the Assistant Collector, who has not appealed, as well as to my client, the first defendant. I further submit there is no cause of action even against my client: *Bálává* v. *Shidgowdá* (c). On the evidence the plaintiff is not entitled to a decree.

Pándurang Balibhadra for the respondent, the original plaintiff:—The Assistant Collector not having appealed, he must be considered to have waived his right to object on the ground of jurisdiction. That ground is not common to him

(a) Supra p. 187. (b) Supra p. 192.
(c) 7 Bom. H. C. Rep., A. C. J, 99.

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and the defendant, Sangápá, who has appealed, and he, therefore, cannot take it. The plaint does disclose a cause of action against the Assistant Collector, who has made an order that certain duties relating to the office of a *watan* holder shall be performed in perpetuity by the defendant Sangápá to the exclusion of the plaintiff. The Assistant Collector denies the plaintiff's title; asserts that of the first defendant, and sets up his own right to make the *watan* register. A suit for such a declaratory decree, as has been asked for in this case, lies both against the first and the second defendants: *Baboo Bhugwan Singh* v. *Mitturjeet Singh (d)*; *Meghraj Singh* v. *Rashdharee Singh* (e); *Brommo Moyee* v. *Koomodinee Kant* (*f*); R. A. No. 48 of 1871. The plaint distinctly sets forth that the plaintiff is entirely excluded from enjoyment of the *watan* by the act of the Assistant Collector. Upon the evidence the Court below came to a right conclusion.

WEST, J. :—The first objection raised on the hearing of this appeal was that the Assistant Collector having been wrongly included as a defendant, the suit had thus improperly been thrown into a form which made it apparently cognizable only by the District Court as the Court of first instance. As against the Assistant Collector, the plaint, it was said, disclosed no cause of action; the plaint as against him, therefore, ought to have been rejected; and he being excluded as a party, the decree, it was contended, ought to be reversed and the suit remitted for trial, should any cause of action appear as against the defendant, Sangápá, to the Court of the Subordinate Judge within whose local jurisdiction it had arisen. In support of this argument, reference was made to the decisions in *Fátmá* v. *Daryá Sáheb and J. F. Armstrong, Collector of Kaládgi* (*supra*) and *The Collector of Poona* v. *Bhavánráv* (*supra*). In the former of these cases, the suit was by the widow of a deceased *Mullá*, and she sought to have an entry in the Collector's books cancelled by which the name

(*d*) 17 Calc. W. Rep. Civ. R. 169.
(*e*) Ibid. 281. (*f*) Ibid. 467.

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of the second defendant had been registered as occupant of the *Inám* land attached to the *Mulláship.* The Court held that "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, 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 of itself necessarily 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." The Court, therefore, reversed the decree of the Assistant Judge, and, permitting the plaint to be amended by striking out the Collector's name, directed that the proceedings should be transferred to the Court of the Subordinate Judge. Again, in the more recent case, *The Collector of Poona* v. *Bhavánráv* (*supra*), decided on the 9th June last, the Chief Justice said : "If this suit complained only of the entry of the name of the second defendant, Jánkibái, in the books of the Collector, as *Inámdár*, we think that it would not lie against the first defendant, the Collector." It must be taken, therefore, as the settled doctrine of the Court that the entry by a Collector of a particular person's name as 'occupant' in the books, kept for the purpose of determining to whom the duty or the right attaches of settling for the Government revenue, affords, however mistaken, no ground for an action against the Collector. The reason of this, however, is that the entry does not "defeat the title of the plaintiff." Should the Collector proceed further and interfere with the plaintiff's rights by an order placing him in an appreciably worse legal position than that to which he is entitled, the Collector at once becomes liable to an action. Thus in *The Collector of Poona* v. *Bhavánráv* (*supra*) the Collector had ordered that the plaintiff should not draw his share of an *Inám* directly from the village officers. The Collector could not, by this order, really dispose of the relative rights and duties of the plaintiff and of the second defendant for whose benefit the order was

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made; these could be determined only by the Civil Court; yet his interference, being unwarranted, was held to have subjected him to an action. In Regular Appeal No. 48 of 1871, cited for the respondent, the Collector had issued an order by which he declared that the first defendant was the sole owner of a *watan*. The plaintiff, having been previously adjudicated to be a half sharer, was held to have "been forced into the Court by the Collector," and to have had a good ground of action against that Officer, though the Assistant Judge below, relying on the cases of *Bálájí Joshi* v. *Dharmá* (g), and *Sakhárám S. Gadkari* v. *Kalyán Municipality* (h), had determined that no suit lay. No pecuniary advantage was attached to the *Pátilki watan* in that case, except the emoluments of the officiating member, to which the plaintiff could not in general succeed, even though elected without the sanction of the Collector (Act XI. of 1843, Sec. 5); but the order, purporting to exclude him from the position of a co-sharer, was deemed a substantial infringement of his legal rights, entitling him to a remedy at the hands of the District Judge.

Section 19 of Reg. XVI. of 1827 imposes on the Collector the duty of recording the land and allowances attached to hereditary offices, which are then guarded against alienation by Section 20. In performing the function thus assigned to him, the Collector practically determined *primá facie*, under the Regulation law, who were the proper holders of the *watan*, from whom he could require the performance of the services attached to it under Section 38 of Reg. XVII. of 1827, and whose failure to perform those services should entail a forfeiture of the *watan*. These latter provisions have been repealed, but they are substantially revived in the rules published by Government under Bombay Acts II. and VII. of 1863. Under Act XI. of 1843, the Collector has to exact the proper duties from hereditary officers, and, under Sec. 4

(g) 2 Bom. H. C. Rep. 363 (h) 7 Ibid. A. C. J. 33.

of the same Act, to determine at least *primâ facie* whether persons claiming to be sharers of a *watan* really are so for the purposes of election or appointment as office-holders. In doing this, the Collector would be guided by the register of *watandárs* made by him or under his orders. The declaration that *A* was sole *watandár* to the exclusion of *B* would cause *B's* exclusion by the Mámlatdár, or other officer subordinate to the Collector, at the first opportunity, from actual enjoyment as in Regular Appeal No. 48 of 1871. The Assistant Collector in the present case professed to be acting in the performance of his official duties under a delegation from the Collector according to Sec. 5 of Reg. XVI. of 1827. For his acts in this capacity, an Assistant Collector is expressly made subject by Sec. 6 of the same Regulation to the jurisdiction of the Civil Courts, and the entry, constituting a declaration against the plaintiff's title, must, as against the Assistant Collector, be regarded as an official act. It thus falls within the provisions of Sec. 35 of the Indian Evidence Act, and might be used to destroy or impair the plaintiff's title whenever that should come in question in a Court of law. But any act, which injures another's right and would in future be evidence against him, constitutes a cause of action for him against the wrong-doer (1 Wms. Saunders 346 *b* and cases there cited). The plaintiff might thus have claimed at least nominal damages for an act calculated to injure him, even though no injury had actually resulted; and according to the recognized principles applicable to suits for a declaratory decree, he might seek such a declaration against the Assistant Collector. It was not intended, we apprehend, by the decisions pronounced against a Collector's liability in certain cases, to make the question of jurisdiction generally dependent on the result of a suit in which that officer is made a defendant. It may often be a question of considerable difficulty whether the Collector ought to be made a party or not. If he ought, then the suit ought to be brought in the District Court (this is the Collector's privilege), and would be improperly brought in a Subor-

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dinate Court. It would, therefore, be somewhat of a hardship, if on its turning out that the alleged cause of action against the Collector does not strictly constitute one, and the suit as against him therefore fails, the plaintiff should have to begin his proceedings against a co-defendant over again. The nature of the plaint as to the parties against whom a remedy is sought, whether in the event it can be obtained or not, is what primarily determines the jurisdiction of the Court. The intention of the legislature on this point must not be allowed to be defeated by any mere evasion, such as the introduction of the Collector into a suit with which he really has no concern, or in which there is no reasonable pretence of a cause of action against him. In such a case, *Fátmá* v. *Daryá Sáheb* (*supra*) shows that the device will be frustrated as soon as it is discovered, and the cause placed before the proper tribunal at the expense of the plaintiff. But where there was an apparent and reasonable ground for apprehending legal injury from the Collector's proceedings, even though in the end it should turn out that the suit against him cannot be sustained, it is not, according to our view, necessary to annul all that has been done. Much less is this necessary, where, as in the case now before us, damage to the plaintiff's right might at any moment arise from the act complained of. Analogies, supporting the conclusion we have thus arrived at, may be drawn from several of the placita collected in Comyn's Digest, Title Courts (2) on the jurisdiction of the Court of Exchequer, and Bacon's abridgment on the same subject.

The Assistant Collector has not appealed from the decree pronounced against him. This must be taken as an acquiescence on his part in the decree and consequently an admission of the jurisdiction of the Assistant Judge over the cause. On this an objection was taken by the respondent that the present appellant, Sangápá, could not raise the question of jurisdiction which the Assistant Collector had waived. The Assistant Judge's decision had proceeded, it was said, on no ground common to both the defendants except that of Bhim-

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angowdá's ownership of the *watan*, and this question alone could be argued in seeking a reversal of the decree as it affected the Assistant Collector, whose act alone had given occasion to the suit. But a Court, in dealing with a case on the merits, implicitly determines, even when the question has not been expressly raised, that it has jurisdiction over all the parties whom it retains before it, and this is a ground common to all the parties affected by its judgment, differing from other grounds only in this, that an objection based on it may be taken at any stage of the proceedings in the cause. It was open, therefore, to Sangápá to object to the jurisdiction of the Assistant Judge, though, for the reasons we have already given, we think that the objection has not been sustained; but the Assistant Collector's abstinence from appeal may be taken as an admission that, apart from the question of jurisdiction, he considered that a case had been made out against him, and that, therefore, there was at least a cause of action against him set forth on the face of the plaint, which ought otherwise to have been rejected. The cause of action was an act by which Bhimangowdá was to benefit to the injury of Sangápá. If the Assistant Collector's proceeding was, as has now been contended by the appellant, purely futile and inoperative, there was no reason why he should have maintained it against the plaintiff. He has maintained it, and to the end of upholding an interest asserted by himself against that set up by the plaintiff. He cannot now, therefore, rely on *Balavá* v. *Shidgowdá* (*supra*) to show that there was no cause of action against himself. For the purposes of a declaratory suit, there was a good cause of action set forth in the plaint, and one substantially identical as against each of the two defendants. But it has also been disposed of on a ground common to both, and it is thus open to Sangápá alone to challenge the decision on behalf of the Assistant Collector as well as of himself.

It becomes necessary, therefore, to determine whether, on the evidence, the decision of the Assistant Judge in favour

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of Bhimangowdá's ownership of the *watan* can be sustained. The oral testimony is meagre and in some instances manifestly prejudiced. It must be tried by the touchstone of the documents, as to the authenticity of which there is much less room for reasonable doubt. Several witnesses depose to an actual possession of the *pátilki watan* by the plaintiff Bhimangowdá's family for two generations. As to whether the duties performed were those of the Revenue or of the Police *Pátilship*, the witnesses differ. It appears from the statements that Shidápá officiated in one of the offices for 10 or 12 years, and this Shidápá deposes that he received his appointment as Police *Pátil* from Malápá the father of the appellant, Sangápá, and officiated for 20 years. He, however, admits that the plaintiff held the *watan* land. Kásiráv (35) deposes that he officiated as Revenue *Pátil* on the appointment of Jangamápá, the appellant's grandfather, from 1235 to 1244 Phasli. He states also that this Jangamáppá (*Desái*) always employed substitutes for the performance of his *watandár* duties as *Pátil*, though he used sometimes himself to sign the accounts. His statement, that the land attached to the *Pátilship* was first given by Jangamáppá to the plaintiff's father, Mariápá, rests only on the report of his father. The weakness of such testimony as this is obvious. It would not be safe to pronounce decisively on the title without something much more satisfactory to rely upon. The documentary evidence, however, takes us back to 1236 Phasli (A.D. 1827-28). In document, No. 44, Jangamáppá's name appears in that year as Officiating *Pátil* with Mariápá as "nisbat Pátil," *i.e.*, as the servant or deputy of the *Pátil*. In document, No. 43, Jangamáppá's name is entered separately as holder of the *Desái's* and of the *Pátil's* lands—of the latter as officiating *Pátil*. In the series of official documents, which bring the evidence down to a recent period, Mariápá appears to be entered almost invariably as holder of the *watan* "nisbat Pátil," and not as an independent owner. In some of the *Láwani Chittis* or lists of fields cultivated, Malápá's name is entered without

that of Mariápá (50, 51, &c.). In some, Kásiráv's name is entered as the *Kárkun* of Malápá (52, 55). But what are more conclusive than those documents are the papers (59-62) signed by Bhimangowdá himself as "nisbat Pátil." The *watan* holding is thus traced into the possession of the plaintiff's father, and it is made clear that the possession was not originally that of an independent owner holding adversely to the *Desái* family now represented by Sangápá. Marriápá took the land as an assistant or 'nisbat Pátil,' and though it has now been held for more than 40 years by him and his sons, they have continued to perform the duties or some of the duties implied in the designation 'nisbat Pátil.' They could not change the character of their possession by mere continuance of enjoyment, and the independent title to the *watan* asserted by Bhimangowdá cannot, on the evidence, be sustained. We, therefore, reverse the decree of the Assistant Judge with costs.

PINHEY, J., concurred.

Decree reversed with costs.