1874.

REG. v. MA'NIKRA'M SURAJRA'M.

PER CURIAM: If the facts proved and found had shown that the accused was called on to produce specific documents, and had failed to produce them, then the provision of Section 15 of Bombay Act IV. of 1868 would have been applicable; but the Magistrate's proceedings show that no such specific call was made on the accused, and, therefore, the only penalty which he incurred was that of an adjudication in his absence under Clause 1 of Section 14 of Bombay Act I. of 1865. Consequently, without considering the question raised by the Sessions Court, viz., whether there was evidence sufficient to warrant a finding that the notice was duly served on the accused person, the conviction and sentence must be reversed.

Conviction and sentence reversed.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 218 *of* 1874.

November 16.

NINGANGAVDA' PA'TIL.....*Plaintiff and Appellant.*

SATYANGAVDA' PA'TIL.....*Defendant and Respondent.*

Civil Procedure Code, Sec. 15—*Declaratory Decree—Consequential relief—Act XI. of* 1843—*Patil—Suit for declaration of plaintiff's eligibility to the office of Pátil.*

Where a plaintiff sued for a declaration of his eligibility to the office of *Patil*, if elected under the provisions of Act XI. of 1843, he having been obliged to sue to establish his eligibility in consequence of the defendant's persistent denial of the plaintiff's claim to such eligibility, whereby the revenue authorities were induced to refuse to recognise it:

Held that the suit was cognisable by a Civil Court.

Held also that such a suit would lie, even when the object of it was only to enable the plaintiff to influence the revenue authorities by showing that the Civil Court had declared him eligible for office as *Patil*:

Abáji Sankroji v. *Niloji Báloji* (2 Bom. H. C. Rep. 342) and *Yesáji Apáji* v. *Yesáji Mhálóji* (8 Bom. H. C. Rep. A.C.J. 35) distinguished.

THIS was a special appeal from the decision of N. Daniell, Acting Judge at Dharwar, reversing the decree of Shrinivás Krishná, Subordinate Judge of Gadak.

1874.

NINGANGAVDA' PA'TIL v. SATYANGVADA' PA'TIL.

This suit was instituted by Ningangavdá for the purpose of establishing his right to officiate as *Pátil* of the village of Kurhatti. He alleged that he, the defendant Satyangavdá, and one Makangavdá were full brothers, and that they each had a right to officiate as *Pátil* in turn, but that in 1869 the defendant took objection to the plaintiff's right so to officiate, in consequence of which objection the revenue authorities refused to recognise his claim to the *Pátilship*. The defence chiefly was the denial of the plaintiff's right to the *Pátilship*, and that the action could not be maintained in the civil court, as the power to nominate to the office of *Pátil* when not exercised by the sharers, was vested absolutely in the Collector. The Subordinate Judge, Ráv Sáheb Shrínivás Krishna, held the plaintiff's claim proved, and declared him entitled to officiate as *Pátil*, as prayed for. In appeal, however, that decision was reversed by Mr. Daniell, on the preliminary ground that such an action was not maintainable in the civil court.

He observed :—

" The first point for decision is :—Has this Court or the lower court jurisdiction in this matter ? This action is for a declaratory decree that the plaintiff is entitled to officiate as *Pátil* of his village, and the Vakil for the respondent (plaintiff) represents that the consequential relief derivable from the decree sought will be a revision by the revenue authorities of their order refusing to recognise his right. It is not disputed by the appellant (defendant) that the respondent is a sharer in the *watan*, although there is a denial that he has a right by origin to a specific share in the property, according to the appellant and other near relatives, the respondent having been adopted by a distant member of the family, whose share is less than the share of the appellant. * * *. The Collector's order is Exhibit No. 50 in evidence; from it I gather that the Collector rejects the respondent's claim to officiate, not on the ground that he does not belong to the *watandár* family, but on the ground that he has never officiated. * * * I cannot see that any consequential relief can accrue upon a decree in accordance

1874.

NINGANGAV-DA' PA'TIL v. SATYANGAV-DA' PA'TIL.

with the plaint. The Vakil for the respondent wishes me to try and decide the question of adoption, but this is not a question at issue as affecting the title to officiate, and I must decline to entertain it. I must follow the rulings in *Yesáji Apáji* v. *Yesáji Mhálaji* (*a*) and *Abáji* v. *Niloji* (*b*). Were the suit to establish a right to share in the *watan* which had been ignored, consequential relief might follow a favourable award; but it has never been denied that the respondent is a sharer, and any decision of mine according to the terms of the plaint would not advance the respondent's claim to officiate. I must decide on the issue that this Court and the lower court have not jurisdiction. The decree of the lower court is reversed, and the claim is dismissed with costs."

The special appeal was argued before WEST and PINHEY, JJ., on the 16th November 1874.

Janárdhan Sakhárám Gádgil for the appellant:—The sole question is whether a civil court has jurisdiction in such a case. The cases cited by the District Court do not apply, as they relate only to *Vatan*, which is not recognised by Act XI. of 1843. The right to sue for such a declaration as is now sought has been recognised by this Court:—R. A. No. 57 of 1871 (*Yellappágavdá* v. *Ningavá*), decided 13th March 1872, by MELVILL and KEMBALL, JJ. (*c*); R. A. No. 72 of 1871

(*a*) 8 Bom. H. C. Rep. A.C. J. 35. (*b*) 2 *Idem* 342.

(*c*.) The following extracts from the judgment of the Court bear on the point:—

"It is proved, and is, indeed, admitted, that the plaintiff is an equal sharer with the first defendant, and there is nothing in the evidence to rebut the presumption arising from this equality, or to prove the first defendant's exclusive right to officiate. It appears that until recently the *Inámdár* appointed any sharer in the *watan* who paid him the highest *nazaráná*. Under this system, the plaintiff has occasionally been appointed. There is, therefore, no proof of any recognised family custom, by virtue of which the elder branch of the family has alone officiated.

"We think that the plaintiff should have a declaratory decree that the first defendant's branch of the family has not any exclusive right to officiate, and that the plaintiff is entitled, as an equal sharer with the first defendant,

(*Nangangavdá* v. *Malapágavdá*), decided 17th June 1872 by LLOYD and KEMBALL, JJ.(*d*); R. A. No. 73 of 1871 (*Venktesh* v. *Shivsangappá*), decided 24th June 1872, by LLOYD and KEMBALL, JJ. (*e*); and R. A. No. 74 of 1873 (*Hanmantgavdá* v. *Mhivangavdá*), decided 21st September 1874, by WEST and NA'NA'BHA'I HARIDA'S, JJ. (*f*).

to any privileges which Act XI. of 1873, or any other Act defining the rights of sharers in such *watans*, confers upon the sharers, including the right to officiate as *Pátil* if duly appointed. We cannot give him a more definite decree than this, for we cannot compel the Collector to recognise the nomination of the plaintiff by the sharers, should such nomination be made, nor to appoint him if the sharers should make no nomination."

(*d.*) The part of the judgment bearing on the question is as follows :—

"With respect to the second issue, it has been found by the lower court that the plaintiff is entitled to an eight annas' share of the *watan*, and this finding is not now questioned, and as the right to officiate as *Pátil* naturally appertains to the *watan*, and it has not been shown that the first defendant enjoys any special privilege to officiate in perpetuity to the exclusion of other sharers, we consider that we are justified in granting the declaratory order sought for, though it is not the province of this Court in any way to control the power of appointment which the Collector possesses under Act XI. of 1843."

(*e.*) The material part of the judgment is the following :—

"It is not denied that the plaintiff is in possession of the lands appertaining to the *Pátilship*, and as the right to officiate as *Patil* is incidental to the possession of the *watan*, and the defendant has failed to show any exclusive right to officiate in the office, he is, we find, entitled to the declaratory decree sought for, and we, therefore, reverse the decree of the court below, and declare the plaintiff entitled to officiate as *Pátil*, though this decree will not in any way, affect the power of the Collector under Act XI. of 1843."

(*f.*) The following is the judgment :—

"WEST, J.:—The position of the plaintiff as a member of a *watandár* family is admitted. The presumption with reference to such a family is that all the members of all the branches have a right to their turns of office in succession. This presumption in the present case is not rebutted by the long tenure of office by the father of defendant No. 1, because such a tenure of office was not inconsistent with the right of the plaintiff's branch to take the duties in their turn. It is not proved that the office descended even for one generation exclusively in the branch to which defendant No. 1 belongs : all that appears is that he has come in after his father, and his succession is disputed. The selection of his father by the then *Inámdár* in 1817 proves nothing in favour of an exclusive right confined to his branch : it was quite consistent with the existence of those rights diffused throughout the family, which generally subsisted, and which the British Government made the basis of the arrangements provided for by Act XI. of 1843. We, therefore, confirm the decree of the Assistant Judge with costs."

1874.

NINGANGAV-DA' PA'TIL v. SATYANGAV-DA' PA'TIL.

[WEST, J., referred to *Sadat Alikhan* v. *Khajeh Abdul Gani* (*g*).]

Shivshankar Govindrám for the respondent:—The decisions cited for the plaintiff were passed before Act XXIII. of 1871 came into operation. Sections 3 and 4 of that Act prevent suits such as this being entertained.

PINHEY, J.:—We are of opinion that the District Court was in error in refusing to consider this claim on its merits, on the ground that the civil court has no jurisdiction over the subject-matter of this suit. The cases cited by the District Court in support of its judgment, *Abáji Sankroji Bhonsle* v. *Niloji Báloji Bhonsle* (*h*), and *Yesjái Apáji Pátil* v. *Yesáji Mhálaji* (*i*) are not in point. In both those suits the plaintiffs sought to be declared *Vadil*, or elder among the holders of a *Pátilki watan*, but as the position of *Vadil* amongst *watandárs* is not recognized by Act XI. of 1843, and, therefore, a declaration by the Court as to who is *Vadil* among a family of *watandár Pátil* would not in any way entitle a person to claim the office of *Pátil* to the exclusion of other members of the family, nor even establish any preference in his favour, the Court, in both the cases cited, declared that the claim would not lie, as upon such declaration no consequential relief could be given. The ground of the decision, so far as the claim was brought for the purpose of influencing the Collector, is very particularly noticed in the earlier of the two cases, that in the 2nd volume.

The claim of the plaintiff in the present case is altogether different. In this case the plaintiff seeks to get a decree declaring his eligibility to the office of *Pátil*, if elected under the provisions of Act XI. of 1843; and he has been obliged to sue to establish his eligibility, because his claim to be eligible has been persistently denied by the defendant, and the objections taken by the defendant have induced the revenue authorities to refuse to recognize his eligibility

(*g*) 11 Beng. L. Rep. 227 (P.C.) (*h*) 2 Bom. H.C. Rep. 342.

(*i*) 8 *Idem*. A.C.J. 35.

1874.

NINGANGAVDA' PA'TIL. v. SATYANGAVDA' PA'TIL.

That such a suit is cognizable by a civil court has been repeatedly recognized by the decisions of this Court (it is only necessary to refer to Special Appeal 57 of 1871, decided 13th March 1872, and Regular Appeal 73 of 1871, decided 24th June 1872, and Regular Appeal 74 of 1873, decided 21st September 1874): and that such a suit will lie, even when the object of it is only to enable the plaintiff to influence the revenue authorities by showing that he has been declared by the civil court eligible for office as *Pátil*, is further supported by the remarks made by their Lordships of the Privy Council in *Sadat Alikhan* v. *Khajeh Abdul Gani*.

We, therefore, reverse the decree of the District Court, and remand the case to the District Court for retrial on its merits. Costs to follow the final decision.

Decree reversed and case remanded.

[APPELLATE CRIMINAL JURISDICTION.]

REG. *v.* DEVA' DAYA'L.

November 23.

The Code of Criminal Procedure, Section 346—*Prejudice.*

An accused person whose signature to a statement made by him to the committing Magistrate is not taken, as provided in Section 346 of the Code of Criminal Procedure, is not prejudiced thereby within the meaning of that section, unless he is unfairly affected as to his defence on the merits.

Where a prisoner in the Court of Session was represented by a pleader who had opportunity to object to the admissibility of his statement, and did not, the High Court held that he was not prejudiced.

THE accused Devá Dayál was tried by J. W. Walker, Acting Session Judge of Ahmedabad, for the murder of his wife, Jamná, and sentenced to death.

The accused made a confession of his guilt to the Third Class Magistrate at Dholká on the day that Jamná was found dead, and he admitted the confession of the offence before