

## [APPELLATE CIVIL.]

*Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.*

CHINTO ABA'JI KULKARNI (ORIGINAL DEFENDANT), APPELLANT v.  
LAKSHMIBAI KÒM SAKHA'RA'M ANTA'JI (ORIGINAL PLAINTIFF),  
RESPONDENT.\*

1878.  
January 10.

*Representative vatandárs—Bombay Hereditary Offices Act No. III. of 1874—  
Jurisdiction of Civil Courts.*

Since Bombay Act III. of 1874 came into force, no suit will lie in a civil Court for a declaration that a person is eligible to officiate as a hereditary officer falling within the scope of that Act.

Since that Act became law, none but representative vatandárs, or their deputies or substitutes, can officiate; and the duty of determining what persons shall be recognized as representative vatandárs, is vested in the Collector, whose proceeding is a judicial proceeding.

THIS was a second appeal from the decision of W. H. Newnham, Acting Judge of Poona, affirming the decree of Dinánáth Atmá-rám Dálvi, Second Class Subordinate Judge at Junnar.

Lakshmibái brought this suit in 1876 to establish her right to a fourth share in the kulkarni vatan of Savargaon and Baste, and her right to officiate. The defendant, among other objections, pleaded that, under Bombay Act III. of 1874, the civil Courts had no jurisdiction to try the suit, as he had been appointed by the Collector after due inquiry under that Act. Both the lower Courts held that they had jurisdiction, and allowed the plaintiff's claim on the merits.

*Shámráv Vithal*, for the appellant, contended that the cognizance of the suit by the civil Courts was barred by the Bombay Vatandárs' Act No. III. of 1874, and cited *Khando v. Apáji* <sup>(1)</sup> in support of his contention.

No one appeared for the respondent.

WESTROPP, C.J. :—It does not appear that the right of the plaintiff to a share in the vatan property has ever been disputed by the defendant, or that any possession which she has had of it, or of a share in it, has been disturbed. So that, in deciding this case, our decree cannot affect her interest in, or possession of, that property in any respect. The Subordinate Judge has declared.

Second Appeal No. 270 of 1877.

(1) *Supra*, p. 370.

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her to be the representative vatandár of her husband's branch of the family. The High Court, even before the passing of Bombay Act III. of 1874, never went so far as to declare any member of a family or branch of a family of vatandárs to be the representative of that family or branch. It expressly refused so to do: *Abáji v. Nilóji*.<sup>(1)</sup> It has declared a person to be eligible to officiate—*Ningangavda v. Satyángavda*<sup>(2)</sup>—but not that he was so in preference to any other member of the vatani family. Since Bombay Act III. of 1874 became law, none but representative vatandárs or their deputies or substitutes, as provided for in the Act, can officiate (section 24), and the duty of determining what persons shall be recognized as representative vatandárs is vested in the Collector (section 25). His proceeding is a judicial proceeding (section 72), and there is an appeal from him to the Revenue Commissioner (section 77). These enactments seem to us to exclude, by direct implication, any right on the part of the civil Courts to declare that persons are eligible to serve as hereditary officers falling within the scope of Bombay Act III. of 1874. It has already been determined here, in the case of *Khando v. Apáji*,<sup>(3)</sup> that a suit will not lie in a civil Court to declare a person exclusively entitled to officiate as a hereditary officer. The principle on which that decision was arrived at, is applicable in this case.

We think that, since the Act of 1874 came into force, no suit will lie in a civil Court for a declaration that a person is eligible to officiate as a hereditary officer falling within the scope of that Act. The present suit was instituted on the 12th June 1876, and is, therefore, governed by that Act;—and as the plaintiff's interest in the vatani property has not been assailed, we do not think that she has any cause of action. We reverse the decrees of the Courts below, and direct the plaintiff to pay to the defendant his costs of the suit, and the parties respectively to bear their own costs of both appeals.

*Decree reversed.*

(1) 2 Bom. H. C. Rep. 342. (2) 11 Bom. H. C. Rep. 232. (3) *Supra*, p. 370.