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plaintiff could not succeed in this suit. The property, of which possession is sought in this suit, was specifically awarded to Sanganabasaya as against the defendant by the decree of the Court dated 23rd March 1870; and, if that decree were not time-barred, Sanganabasaya or his legal representative could now obtain possession of the property claimed in this suit by taking out execution proceedings on that decree. Therefore, I hold that the present suit is barred alike by s. 2 of Act VIII of 1859 and s. 11 of Act XXIII of 1861, and that the fact of execution of the decree passed in 1870 being time-barred, does not confer on Sanganabasaya, or on any legal heir of his, any new right to sue for the estate of Shidramaya, or any part thereof.

It was argued that the decree of 23rd March 1870 must be [254] regarded as a mere declaratory decree, because the estate of Shidramaya, at the date of the decree, was in the possession of the nazir, and not in the possession of the defendant; but I do not agree to this. The suit was not merely for a declaration of right, but also to obtain possession of the estate of Shidramaya, and to remove defendant's obstruction to Sanganabasaya taking possession of it from the nazir, and the decree passed was one for possession of the estate of Shidramaya, which the nazir may or may not have been justified in resisting, and which might now be executed if it were not time-barred.* The decree of the lower Court will be affirmed with costs.

Decree affirmed with costs.

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APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
 Mr. Justice Kemball.*

GOPAL HANMANT GUMASTE (Original Plaintiff), Appellant v.
 SAKHARAM GOVIND AND OTHERS (Original Defendants),
 Respondents.* [23rd June, 1879.]

Bombay Act III of 1874, ss. 10 25, and 56—Representative vatandar—Civil Court—Jurisdiction—Res judicata.

A decree of the District Court at Sholapur, made in 1863, declared the plaintiff to be a hereditary deputy *vatandar* of a certain *deshpande vatan* vested in the defendants as hereditary *vatandars*, and, as such deputy, entitled to receive a certain sum annually out of the income of the *vatan*. The plaintiff received moneys from time to time under his decree. He was not, however, subsequently to the decree, registered and treated as "a representative *vatandar*" under Bombay Act III of 1874, s. 56. In 1875 plaintiff made a *darkhast* for the attachment of a certain amount belonging to the *vatan* for arrears due to him under his decree. The money was accordingly attached. Subsequently, the Collector issued a certificate to the Subordinate Judge, who had attached it, for the removal of the attachment, under Bombay Act III of 1874, s. 10. The Subordinate Judge accordingly ordered it to be removed, and his order was affirmed by the Assistant Judge in appeal. The plaintiff thereupon specially appealed to the High Court.

Held that the lower Courts had no option, but to raise the attachment on receiving the Collector's certificate,

Held, also, that as the plaintiff having, according to law as it stood in 1863, succeeded in then establishing his right to be a hereditary deputy *deshpande*, he was [255] entitled to the benefit of s. 56 of Bombay Act III of 1874. His *status*

* Miscellaneous Special Appeal, No. 7 of 1876.

as hereditary deputy *vatandar* was a fact which neither a Revenue nor a Civil Court could properly ignore or re-open. It was *res judicata*.

Held, further, that as plaintiff was not registered and treated as "a representative *vatandar*" under Bombay Act III of 1874, although the decree of 1863 entitled him to be so registered, a Civil Court had no jurisdiction to register him as such a representative *vatandar*, or to direct that he should be so registered by the Collector, and that any application for such registration should be made to the Collector.

[F., 6 B. 129 (192).]

THIS was an appeal from the decision of E. Cordeaux, Assistant Judge at Sholapur, affirming the order of Madhavray Janoji, Subordinate Judge at the same place, in an execution proceeding.

The material facts of the case are these. In 1855 the deceased plaintiff, Hanmant Sakharam, father of the appellant Gopal, brought a suit against the defendants in the Court of the Sadr Amin at Sholapur, and claimed to be a hereditary deputy *vatandar* of a certain *deshpande vatan* vested in the defendants as hereditary *vatandars*. In that suit he prayed for a declaration of his right as such hereditary deputy *vatandar*, and for payment thenceforward of a certain sum annually out of the income of the said *vatan*, with arrears for certain previous years. The Sadr Amin dismissed the plaintiff's claim on the 12th December 1859. The District Judge in appeal reversed the decree of the first Court, and awarded the plaintiff's claim on the 5th October 1863, except as to arrear for previous years. The decree of the Appellate Court declared the plaintiff to be hereditary deputy *vatandar*, and, as such, entitled to receive annually out of the *vatan* the sum claimed by him. The plaintiff received money from time to time under his decree of the 5th October 1863. He was not, however, registered and treated as "a representative *vatandar*" under Bombay Act III of 1874, s. 56. On the 8th February 1875 the plaintiff made a *darkhast* for the attachment of Rs. 1,933 in the mamlatdar's treasury at Sholapur due to the defendants on account of the *vatan*. He applied for this attachment, as certain arrears were due to him under his decree of the 5th October 1863. The money was accordingly attached on the 2nd April 1875. On the 11th August 1875 the Collector issued a certificate to the Subordinate Judge, who had attached the money, for the removal of the [256] attachment under Bombay Act III of 1874, s. 10. The Subordinate Judge thereon ordered it to be removed, and dismissed the plaintiff's *darkhast*. His order was affirmed in appeal by the Assistant Judge.

The plaintiff thereupon specially appealed to the High Court. *Goculdas Kahandas*, for the appellant.—The right of the plaintiff as a hereditary deputy *vatandar* was ascertained and established by a competent Civil Court, after due inquiry, long before Bombay Act III of 1874 came into force. The lower Courts were wrong in giving a retrospective effect to that Act. The rights of hereditary deputy *vatandars* are recognized, and they are treated as representative *vatandars* by s. 56 of the Act. The lower Courts have overlooked the provisions of that section. The Collector has granted his certificate under s. 10, but it does not apply to the case. The plaintiff himself must be regarded as a *vatandar* under his decree of 1863. The first part of s. 10, therefore, does not prevent him from receiving the profits of the *vatan* by an attachment under his decree, because neither the *vatan* nor the profits thereof are alleged to have been assigned as remuneration to an officiator under s. 23. The Collector cannot be supposed to have acted under the latter part of the section, because it only applies to persons

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other than *vatandars*. The certificate, therefore, does not fall within the provisions of s. 10, and is, consequently, illegal. The lower Courts were wrong in removing the attachment on the authority of that certificate.

Nanabhai Haridas (Government Pleader) in support of the judgment of the lower Court.—The plaintiff has not been registered and treated as a representative *vatandar* under s. 56 of the Act. The Civil Courts have no power to register him as such or to direct the Collector to do so. Under s. 25 of the Act the Collector alone has the power to determine what persons shall be recognised as representative *vatandars* and to register their names. Section 26 prescribes the manner in which he is to conduct his enquiry. The only course, open to the plaintiff, was to have applied to the Collector for the recognition of his right and the registration of his name as a representative *vatandar*, and [257] to establish his claim to that officer's satisfaction. But he has not done so. He has no remedy in the Civil Courts. The lower Courts, therefore, were justified in removing the attachment on receipt of the Collector's certificate. It is the intention of the Act to protect the rights of hereditary *vatandars*, and to secure the continuance of the *vatans* in their families or those of recognized officiators. The plaintiff is neither a hereditary *vatandar* nor an officiator under the Act.

Manekshah Jehangirshah, for the respondents.

JUDGMENT.

The following is the judgment of the Court:—

WESTROPP, C.J.—The plaintiff claimed by his plaint to be a hereditary deputy *vatandar* of a *deshpande vatan* vested in the defendants as hereditary *vatandars*. He, by that plaint, substantially asked for a declaration of his right as hereditary deputy *vatandar* (*gumastagiri*) and for payment thenceforward, in that respect, of a certain sum annually out of the income of the defendants' *vatan* to which he (the plaintiff) as such hereditary deputy was entitled. He also prayed for arrears due to him in that capacity previously to the filing of his plaint in 1855. That suit was No. 543 of 1855. The Munsif decreed against him on all points. On appeal (No. 207 of 1860) to the District Judge of Sholapur (the Honourable Mr. Hobart), he on the 5th October 1863 reversed the decree of the Munsif, and granted the plaintiff's claim, save so far as regarded arrears due previously to the filing of the plaint. The formal decree, prepared we suppose by the shiristedar or other officer of the District Court, is very badly drawn up. It simply states that the District Judge amends the decree of the Munsif; but the written judgment of the District Judge (when read with the plaint) shows what were the particulars in which he amended the decree of the Munsif, and that the decree of the District Judge must be substantially taken to have been, and to be not only a declaration of the plaintiff's right to be hereditary deputy *vatandar*, but also that thenceforward he was entitled to receive annually out of the *vatan* the sum claimed by him in the plaint. The *darkhast* of the 18th November 1863 to the District Court, and the District Judge's order made upon it, completely confirm this view of his decree. [258] We may observe that it was made by him on retrial after an order of remand by the High Court dated the 17th April 1863. The plaintiff received money from time to time under that decree of the 5th October 1863. The last payment to him appears to have been Rs. 540-3-8, and is endorsed upon the decree. Subsequently, while the

vatan was under attachment in respect of the same decree for recent arrears due to the plaintiff, the Collector, on the 11th August 1875, issued a certificate to the Subordinate Judge's Court, which was as follows: "Certificate is hereby granted to the Rao Sahab Second Class Subordinate Judge of the Court at Sholapur (as follows): Gangabai, the wife (or widow) of Shrinivas, the heiress of the deceased Vyankatray of, &c., has a *vatan* for which (she) received cash, total Rs. 1,933, in respect of a *deshpande vatan*; and the same [*i.e.*, the said amount] is not liable to [*i.e.*, such as can] be transferred (alienated) to others than the *vatandar* of this *vatan*. [This] certificate is therefore granted to the Rao Sahab Subordinate Judge of the Court at Sholapur under the provision of s. 10 of Act No. III of 1874, in order that the *darbhast* No. 486, dated the 2nd of April 1875, from the said Court (requesting) the keeping under attachment of Rs. 1,290, which have become due and also Rs. 630, which are to become due in the next month, in respect of the *hakk* (right) of *deshpande*, and which are obtainable from the *kacheri* (office) of the mamlatdar of Sholapur, be removed (*i.e.*, withdrawn or cancelled)." This was signed by the Collector.

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Upon receipt of that certificate the Subordinate Judge made an order for removal of the attachment. The plaintiff appealed to the Assistant Judge (Mr. Cordeaux), who affirmed that order. The plaintiff has made a special appeal to this Court. Both the plaintiff (appellant) and the respondent Gangabai, the present claimant of the *vatan*, have been represented by pleaders; and notice of this case was given to the Government Pleader, in order that he might appear, should Government think proper to instruct him to do, although the Collector is not a party to the suit. The Government Pleader has appeared and argued in support of the orders of the Courts below removing the attachment.

[259] The learned pleader for the plaintiff (appellant), relying on s. 56 of the Hereditary Officers' Act (Bombay) III of 1874, says that the right of the plaintiff, as an hereditary deputy having been ascertained in due course of law in 1863 long before Bombay Act III of 1874 was passed or came into force, he is entitled to be registered and treated as a representative *vatandar* under that section. Next, referring to s. 10 of the same Act, he says that the plaintiff being, for the reason just stated, entitled to be regarded as a *vatandar*, the first part only of that section could, under any circumstances, be applicable to his decree of 1863 or the attachment under it, inasmuch as the latter part is applicable to such persons only as are not *vatandars*, and that, in order to render the first part applicable to him as a *vatandar*, it should appear that the plaintiff had seized under his decree or attachment some portion of the *vatan* assigned under s. 23 of the same Act as remuneration of the actual officiator, which is neither alleged nor implied by the Collector's certificate. Hence it is contended for the plaintiff that the Collector's certificate was insufficient in law, and that, therefore, the attachment was improperly removed.

The plaintiff having, in due course of law, as the law then stood, succeeded in 1863 in establishing his right to be a hereditary deputy *deshpande*, would indeed seem to be entitled to the benefit of s. 56 of Bombay Act III of 1874. The decree of the District Judge in 1863, declaring and enforcing that right, stands unappealed against, unreversed, and in full force, unless, indeed, the plaintiff has since done some act or made some omission whereby he has forfeited that right, and it has not been

1879 alleged on behalf of the defendant Gangabai that any such occurrence has
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LATE established in 1863, is a fact which neither a Revenue nor a Civil Court
CIVIL could ignore or reopen. It is *res judicata*. But his right, as such here-
4 R. 254. ditary deputy *vatandar*, to be registered and treated as "a representative
vatandar," is created by Bombay Act III of 1874. He has not, as a
fact, been so registered. Although the decree of 1863, in the absence of any
subsequent forfeiture [260] of office, may and does entitle him to be so reg-
istered, yet it is evident that a Civil Court has not jurisdiction to register
him as a representative *vatandar* or to direct that he should be so register-
ed by the Collector. Section 25 of the same Act confers upon the Collector
the jurisdiction to determine the persons who shall be recognised as re-
presentative *vatandars* and to register their names. Section 26 requires
him, for the purpose of arriving at his determination, to take into con-
sideration "the records or other evidences available," amongst which, in
such a case as the present, would be the decree of 1863 as a judicial declara-
tion of the plaintiff's *status* as hereditary deputy; and s. 56 of the Act
would show the right, newly conferred by the Legislature upon a person
holding such a *status*, to be registered and treated as a representative
vatandar. To the Collector the plaintiff should apply for such recognition
of his right and registration. It does not appear that he has so applied.
The investigation, by the Collector, of the plaintiff's claim to be treated
and registered as a representative *vatandar*, either under s. 56 or any other
section of the Act, is a judicial proceeding (s. 72), and the decision upon
that investigation is open to appeal to the authorities pointed out in ss. 74
and 77, and to revision by Government (s. 79). Whether an ultimate ap-
peal would, notwithstanding the first portion of s. 77, lie to Her Majesty
in Council, it is not for us now to express any opinion.

The form of the Collector's certificate of the 11th August 1875 leads
to the conclusion that when granting that certificate he was not aware
that the decree of 1863 declared the plaintiff's *status* to be that of a here-
ditary deputy. If the Collector were aware of that fact, he would more
probably have followed the first part of s. 10 in his certificate than the
latter, and proceeded to state, if such be the fact, that the portion of the
vatan attached, or some part of that portion, had been assigned, under
s. 23 of the Act, as remuneration of the officiating *deshpande* since the Act
came into force.

Under the circumstances, however, we think that the lower Courts
had no option but to raise the attachment upon receiving [261] the Col-
lector's certificate. We affirm the order of the Assistant Judge, except
as to costs. The parties must, respectively, bear their own costs of the
application and of both appeals.

We must leave the appellant to such application as he may be ad-
vised to make to the Collector to be registered and treated as a represent-
ative *vatandar*. The jurisdiction in that respect does not lie in the
Civil Court.

Order affirmed.