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under s. 306, or in consequence of default of payment of the purchase-money under ss. 307 and 308. The fact that Parshotam, the step-grandson of the decree-holder, purchased the house when it was put up a second time for sale did not necessarily invalidate the sale; although, under cl. 3 of s. 294 of the Code, the Subordinate Court might, on the application of the judgment-debtor or any other person interested in the sale have set aside the sale on this ground, if it were proved to the satisfaction of the Subordinate Court that Parshotam had purchased the house for or on behalf of the decree-holder, Javherbai. In his application to the Subordinate Court, Haribhai did, in fact, state that Parshotam, who had purchased the house when it was "put up again and sold," was Javherbai's grandson; but he rested content with making this statement. He did not say a word which can be construed into an application for an order to set aside the sale. In the absence of such an application the Code does not, in s. 294, contemplate a sale being set aside. No fraud or collusion is charged against Parshotam or Javherbai. As Haribhai was at one time willing to bid more for the property than the sum at which Parshotam purchased it, it is not apparent what possible objection can be taken to Parshotam's act.

As neither of the grounds, on which the Subordinate Court proceeded, are good, the order of the Subordinate Court rejecting the application of Javherbai must be reversed, and the application be remanded to the Subordinate Court for disposal on its merits.

Costs in this Court must be borne by the respondent, Haribhai Madhavji.

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[578] APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice F. D. Melvill.

MOHEYODIN VALAD MASLODIN, (*Applicant*) v. CHHOTIBIBI,
WIFE OF GHASITA MIYA, (*Opponent*)*
[6th January, 1880.]

Bombay Act III of 1874—Act X of 1876—Jurisdiction of Civil Courts.

Neither Bombay Act III of 1874 nor Act X of 1876 contains any provision excluding the jurisdiction of Civil Courts in a suit brought to establish a share in the emoluments of a *vatan* which has ceased to be a service *vatan*.^s

THIS was an application, under the extraordinary jurisdiction of the High Court, against the decision of E. Cordeaux, Judge of the District Court of Khandesh, in appeal No. 74 of 1878, reversing the decree of the Second Class Subordinate Judge of Nandurbar in suit No. 895 of 1877.

The plaintiff Moheyodin brought this suit for Rs. 75, being the amount of eight years' arrears of his share in a certain allowance received by the defendant from Government in lieu of a service *vatan*. The plaint was filed on the 10th November, 1876. The plaintiff produced a certificate from the Collector of the district, as required by s. 6 of Bombay Act XXIII of 1871, sanctioning the suit.

The defendant among other objections, answered that the allowance was payable at the pleasure of Government, and that the suit was not maintainable.

* Application under Extraordinary Jurisdiction, No. 108 of 1879.

The Subordinate Judge awarded the plaintiff's claim (4th March, 1878). In appeal, the District Judge reversed the decree of the first Court, and rejected the plaintiff's claim on the ground that Civil Courts had no jurisdiction to entertain the suit under Bombay Act III of 1874 and Act X of 1876. The following are his reasons:—

"The suit is for eight years' arrears of a share in an annual allowance payable from the Government treasury on account of a *vatan*, called *nirkhi*, formerly an office for fixing and recording current prices. It is not disputed that the *vatan* was originally a service *vatan*, and that it has ceased to be such now; that there has been a settlement whereby a certain cash allowance is now paid in [579] lieu of service. In (Bombay) Act III of 1874, *vatan* property is described as property appertaining to an hereditary office, and includes cash payments; and the expression 'hereditary office' includes such office, even when the service originally appertaining to it has ceased to be demanded. The Collector is bound to prepare and keep a register of non-service *vatan*s, and it is the Collector alone who can determine who are entitled to receive payments of cash allowances; and any settlement made before the date of the Act coming into force for the purpose of relieving the holder of the *vatan*, his heirs, and successor from service, has the same force as if made under the Act. It is urged for the respondent that the present suit is merely to recover a share of the money paid to the appellant by Government, and does not relate to the *vatan*. *

* * * * * It is further urged that the present suit has been sanctioned by the revenue authorities. I am of opinion that this has been done under a mistaken view. In *Vasudev Sadashiv Modak v. The Collector of Ratnagiri* (1) it was decided by the Privy Council that the District Judge was right in dismissing a suit brought to recover certain emoluments due to the appellant as *desh-mukh*, on the ground that it was excluded from the jurisdiction of the Civil Courts by the Pensions' Act XXIII of 1871, s. 3. The decree of the District Judge in that suit was passed in the year 1873, before Bombay Act III of 1874 came into force. The latter Act altogether excludes the jurisdiction of the Civil Courts from cognizance of suits of the present kind, and, therefore, the Collector's sanction was superfluous, and cannot be held to give the Court jurisdiction, however general may be its terms. Legal proceedings with reference to a *vatan* can only be instituted in the manner provided for in s. 6, cl. 1 of Bombay Act III of 1874. Under this view my finding must be that the Court has no jurisdiction, and it is, therefore, unnecessary to consider the other issues. I reverse the decree of the lower Court, and reject the claim of the plaintiff with costs.

"Note.—Under the Bombay Revenue Jurisdiction Act X of 1876, no Civil Court shall exercise jurisdiction as to any claim in respect of any injury caused by exclusion from any hereditary [580] office, recognized as such under Bombay Act III of 1874. The present suit cannot be considered as between private parties for the purpose of establishing any private right."

The plaintiff thereupon applied to the High Court on the 27th September, 1879, under its extraordinary jurisdiction.

Pandurang Balibhadra, for the applicant.—The District Judge was wrong in holding that the suit was not cognizable by Civil Courts under the Bombay Hereditary Offices Act XXIII of 1871 and Act X of 1876.

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All that was necessary under the said Acts was the Collector's sanction for the institution of the suit. The plaintiff has procured the Collector's certificate and filed it in the suit.

Manckshah Jahangirshah, for the respondent.

JUDGMENT.

The following is the judgment of the Court delivered by

MELVILL, J.—The Court is unable to find, either in Bombay Act III of 1874 or in Act X of 1876, any provision excluding the jurisdiction of the Civil Courts in a suit brought, not on account of exclusion from office or service, but to establish a right to share in the emolument of a *vatan* which has ceased to be a service *vatan*. The Court, accordingly, making the rule absolute, reverses the decree of the District Judge, and remands the case for trial on its merits. Costs of this application to be borne by the defendant.

Decree reversed and case remanded.

5 B. 580=6 Ind. Jur. 138.

ORIGINAL CIVIL.

Before Mr. Justice West.

LUCKUMSEY ROWJI (*Plaintiff*) v. HURBUN NURSEY AND
OTHERS (*Defendants*).^{*} [6th September, 1881.]

Defamation—Defamation of a deceased person—Suit by surviving member of family of deceased—Cause of action—Damage to reputation of family of deceased by reason of defamation of deceased.

A suit for defamation can only be brought by the person who has been defamed. The fact that the defamatory statement has caused injury to other persons does not entitle them to sue.

A suit brought by the heir and nearest relation of a deceased person for defamatory words spoken of such deceased person, but alleged to have caused damage to the plaintiff as a member of the same family, *held* not maintainable.

[F., 18 M. 250=5 M.L.J. 89; Appl., 11 A. 104=8 A.W.N. 287; R., 17 B. 573 (575); 19 B. 717 (723); 26 B. 259=3 Bom. L.R. 878; 32 C. 1060=2 C.L.J. 396=9 C.W.N. 847; L.B.R. (1872—1892) 617.]

[581] SUIT for defamation. The plaint stated that the plaintiff was the cousin and the nearest relation and the heir of one Premji Ludha, deceased, who in his lifetime was the headman of the Karad caste, and a man who was generally respected by the Hindu community.

The defendants were leading members of the Dusha Oswal Wania caste, which was so closely connected with the said Karad caste in general and caste relation and by intermarriage as almost to form with it one united caste.

Premji Ludha died on 16th August, 1880, and at his funeral ceremony a large concourse of the said Karad and Dusha Oswal Wania castes, and also of other Hindu castes, assembled out of respect to his memory. The plaint alleged that "the defendants attended at the place where the said ceremony was being performed, and then and there falsely and maliciously spoke and published of the said Premji Ludha that he was 'patit' (thereby meaning that he was a man who had acted contrary to moral and religious principles), and that he was an outcaste sinful man,

^{*} Suit No. 536 of 1880.