

APPELLATE CIVIL.

. Before Mr. Justice Melvill and Mr. Justice Pinhey.

1882
September 25.

BAI BAIBA, APPLICANT, v. BAI DAGUBA, OPPONENT.*

Certificate of heirship—Minor—Regulation VIII of 1827.

Under the provision of Regulation VIII of 1827 a certificate of heirship cannot be granted to a minor.

This was an application for the exercise of the High Court's extraordinary jurisdiction.

One Dipsangji Amarsangji of Rojka in the Ahmedabad District died, leaving two widows Baiba and Daguba, and a minor son Gagubha by the younger widow Daguba. Disputes arose between the widows. Baiba denied the legitimacy of her rival's son, and adopted a boy Nanubha. Daguba contested both the fact and the validity of this adoption. Both parties went up to the District Court with various applications, which resulted in the appointment of the Collector of Ahmedabad to take charge of the property of the deceased, the appointment of Baiba as guardian of Nanubha, the appointment of Dagubha as guardian of Gagubha, and the issue of a certificate to Gagubha declaring him to be the heir of the deceased. The present application was to obtain a cancelment of the certificate of heirship.

Phirozshah M. Mehta and Shantaram Narayan for the applicant.—A certificate of heirship cannot be granted to a minor under Regulation VIII of 1827: *In re Sambhajirav* decided by Sausse, C J., and Hebbert and Newton, JJ., on the 16th of February 1863.

Branson and Gokaldas Kahandas for the opponent.—The Regulation nowhere prohibits the grant of a certificate to a minor. On the contrary the wording does not support the ruling cited. The applicant is himself a minor, and has applied for a similar certificate. The certificate granted prejudices no one.

MELVILL, J.—We think, having regard to all the provisions of Regulation VIII of 1827, that a certificate of heirship cannot be granted under that Regulation to a minor. This was so decided by a Full Bench of this Court, *In re Sambhajirav*, on the 16th of

*Extraordinary Application, No. 150 of 1880.

February, 1863. We accordingly annul the certificate of heirship granted by the District Judge on the 21st of October, 1880, to the minor Gagubha Dipsangji. The parties to bear their own costs in this application.

1882
 BAI BAIBA
 v.
 BAI DAGUBA.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kemball.

KANJI LADHA, PLAINTIFF, v. DHONDE, DEFENDANT.*

January 17.

*Dekhan Agriculturists' Relief Act (XVII of 1879), Section 56—Signed
 balance of account—Evidence.*

A balance of account signed by an agriculturist is an instrument which purports to evidence an obligation for the payment of money, and cannot, therefore, be admitted in evidence, unless written by or under the superintendence of, and attested by, a village registrar, as required by section 56 of Act XVII of 1879.

THIS case was submitted for the decision of the High Court by Rao Saheb G.A. Mankar, Second Class Subordinate Judge of Khed, under section 617 of Act X of 1877. He stated the facts of the case as follows:—

“The plaintiff sues to recover the sum of Rs. 41-8 from the defendant, who is an agriculturist, according to section 2, clause 2 of Act XVII of 1879, upon a *khata*, being an acknowledgment under his signature of a balance of account by the latter in the former's account book. The *khata* is dated 9th October, 1880, that is, six months after a village registrar under Act XVII of 1879 was appointed for Chincholi in this taluka, where the defendant resides. The main question in this case is whether the *khata*, being an acknowledgment of debt by an agriculturist under his signature, is admissible in evidence when it is not registered according to section 56 of Act XVII of 1879. That section runs as follows:—

“No instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge upon any property or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a village

* Civil Reference, No. 39 of 1881.