

12 B. 278.

[278] APPELLATE CIVIL.

Before Mr. Justice Nanabhai Haridas and Mr. Justice Jardine.

VISHNU HARI KULKARNI (*Original Plaintiff*), *Appellant v.*
 GANU TRIMBAK (*Original Defendant*), *Respondent.*^{*}
 [9th January, 1888.]

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 APPEL-
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Jurisdiction—Bombay Act III of 1874—Vatandar kulkarni and rayat—Perquisites, right to.

Bombay Act III of 1874 does not deprive the Civil Court of its jurisdiction to try the question whether a *vatandar kulkarni* is entitled to receive perquisites from his *rayat*.

SECOND appeal from a decision of M. B. Baker, District Judge of Nasik.

The plaintiff, who was the hereditary *kulkarni* of the village of Maturi, in the Nasik District, sued the defendant, who was a *rayat* of the village, to recover from him certain perquisites of corn and raw sugar, or the equivalent in money. The plaintiff alleged that from time immemorial these perquisites had been paid by each cultivator of the soil. The defendant denied that he had ever made any such payment to the plaintiff, and he contended that the Civil Court had no jurisdiction to try this suit.

The Court of first instance awarded the plaintiff's claim.

The District Judge, on appeal by the defendant, reversed the lower Court's decree.

The plaintiff appealed to the High Court.

Daji Abaji Khare, for the appellant.—Act III of 1874 does not deprive the Civil Court of its jurisdiction to determine the right of a *vatandar kulkarni* to perquisites from his *rayat*. See rule on s. 17 of the Revenue Rules.

Mahadev Chimnaji Apte, for the respondent.—Such a suit cannot be tried by a Civil Court. Under s. 17 of the Act the Collector is given the power of the Civil Court—*Khando Narayan Kulkarni v. Apani Sadashiv Kulkarni* (1).

JUDGMENT.

NANABHAI HARIDAS, J.—Where the question between a *vatandar kulkarni* and a *rayat* is whether the former is entitled to [279] receive any perquisites at all from the latter, we do not think the jurisdiction of the Civil Court to try that question is taken away by any provision of Bombay Act III of 1874. We, therefore, reverse the District Judge's decree, and remand the case in order that he may determine, as the Subordinate Judge has done, upon the evidence in the case, what amount, if any, is due to the plaintiff for the year 1881-82, and pass a fresh decree accordingly, awarding costs, the Collector not having yet exercised his powers under s. 17 of that Act. But neither this decree nor any the District Judge may make is to affect the Collector's powers under that section when he chooses to exercise them. Respondent to pay the costs of this appeal.

* Second Appeal, No. 482 of 1885.

(1) 2 B. 370.