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Subordinate Judge has correctly appreciated the law governing the case, and we amend the decree of the Assistant Judge by striking out so much of it as declares that the plaintiff's right of ownership is subject to any right on the part of the defendant. Costs throughout on the defendant.

Decree reversed.

13 B. 83.

[83] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

PARSHA AND OTHERS (*Original Plaintiffs*), Appellants v. LAGMYA SHAN AND OTHERS (*Original Defendants*), Respondents.*
[3rd April, 1888.]

Jurisdiction—Bombay Hereditary Offices' Act (III of 1874), s. 18—Suit by village Mahars to recover aya—Declaratory suit.

Section 18, (1) as much as s. 25 of the Bombay Hereditary Offices' Act (III of 1874) excludes by direct implication any right on the part of the Civil Courts to declare that persons are eligible to serve as hereditary officers under the Act.

Khando Narayan v. Apaji Sadashiv (2) and *Chinto Apaji v. Lakshmi Bai* (3) followed.

Ramchandra Dabholkar v. Anant Sat Shenvi (4) distinguished.

The plaintiffs sued, as *vatandar Mahars* of certain villages, to establish their right to receive the *aya* attached to their office, as against defendants, who were the *vatandar Mangs* of the same villages, and who claimed the right to receive the *aya* equally with the plaintiffs.

Held, that the suit was not cognizable by a Civil Court.

[F., 25 B. 186; R., 29 B. 480 (504) = 7 Bom. L.R. 497.]

THIS was a second appeal from the decision of E. M. H. Fulton, Acting District Judge of Belgaum, in appeal No. 58 of 1885 of the District file.

[84] The plaintiffs—four in number—sued for a declaration of their right to receive *aya* due to them as village *Mahars* as against defendants Nos. 1 to 5, and also for an injunction restraining defendants Nos. 6 to 15 from paying *aya* to defendants Nos. 1 to 5. The plaintiffs alleged that

* Second Appeal, No. 125 of 1886.

(1) Section 18:—When all or any of the property of a village *watan* of lower degree than that of Patel or Kulkarni consists of a right to levy in money or kind directly from individuals, it shall be lawful for the Collector, on the application of any person interested, to cause the nature and extent of such right and of the duties to be performed, and the persons, families, or classes liable to make payment and to perform the duties, to be defined in writing by a Panchayat of five persons; whereof two shall be appointed by the villagers, two by the *watandars*, and one, who shall be *Sir Panch*, by the Collector.

The decision shall be in accordance with the opinion of the majority of the Panchayat, provided that in case the villagers or the *watandars* fail to nominate members within seven days, the Collector shall appoint such members as may be required to constitute a Panchayat of five:

Provided also that, in case the Panchayat do not come to a decision within seven days from the appointment of the *Sir Panch*, the Collector may himself pass a decision.

The decision of the Panchayat or of the Collector, as above provided, shall be final and binding on all persons or classes whose rights, duties or liabilities have been submitted to such decision.

(2) 2 B. 370.

(3) 2 B. 375.

(4) 8 B. 25.

they were the *vatandar Mahars* of certain villages in the taluka of Chikodi, and as such entitled to receive *aya* from the *rayats* of those villages ; that the defendants Nos. 1 to 5 had intruded on their rights, and prevented them from receiving the *aya* attached to their office : hence the present suit.

The defendants Nos. 1 to 5 replied (*inter alia*) that they were the *vatandar Mangs* doing service and receiving *aya* from the *rayats* in precisely the same manner as the plaintiffs did, and that the suit was not cognizable by the Civil Court.

Defendants Nos. 6 to 15 contended that the *Mangs* were as much entitled as the *Mahars* to receive *aya*, that some of the *rayats* paid it to the *Mangs* and some to the *Mahars*, and that they had never paid it to the plaintiffs.

The Subordinate Judge held, on the authority of *Nabu Pira v. Naro Shidheshwar* (1) and *Appana v. Nagia* (2), that the suit was cognizable by the Civil Court. He found that the plaintiffs were the *vatandar Mahars* of the villages, that the defendants Nos. 1 to 5 were intruders, and that the plaintiffs were entitled to the relief claimed. He, therefore, passed a decree in plaintiffs' favour, declaring their exclusive right to receive *aya*.

On appeal, the District Judge held that the suit was barred under s. 18 of Bombay Act III of 1874 by which Civil Courts were precluded from declaring that a particular class of village servants was or was not entitled to receive *aya*. The decree of the Subordinate Judge was, therefore, reversed, and the suit dismissed with costs.

Against this decision the plaintiffs preferred a second appeal to the High Court.

Maneshshah Jehangirshah, for the appellants:—Section 18 of Bombay Act III of 1874 is not stronger or more restrictive in its [85] operation than the sections relating to the higher *vatandars*. The Collector is, no doubt, authorized under this section to determine a dispute like the present. But his jurisdiction is not exclusive. It is concurrent. In the present case neither party has invoked his aid. He has not yet exercised his powers under s. 18. The suit is, therefore, not barred—*Ramchandra Dabholkar v. Anant Sat Shenvi* (3) and *Vishnu Hari Kulkarni v. Ganu Trimbak* (4).

Gokaldas Kahandas Parekh, for the respondents.—The Collector is the only functionary who is now invested with powers to determine disputes, like the present, between rival *vatandars*. His jurisdiction is as exclusive under s. 18 as it is under s. 25 of the Hereditary Offices' Act. Even if the Civil Court could pronounce its decision on the present question, that decision would not bind the Collector. The decision would be perfectly useless. The rulings in *Khandu Narayan v. Apaji Sadashiv* (5) and *Chinto Abaji v. Lakshmi Bai* (6) are conclusive on the present question.

JUDGMENT.

The judgment of the Court (BIRDWOOD and PARSONS, JJ.) was delivered by

BIRDWOOD, J.—In this suit the plaintiffs claim, as *vatandar Mahars* of certain villages, the right to receive the *aya* relating to their office, as against defendants Nos. 1 to 5, who are *Mangs* of the same villages and claim the right to receive the *aya* equally with the plaintiffs. The plaintiffs sue also to restrain the defendants Nos. 6 to 15 from paying *aya* to

(1) 9 B. 28.

(2) 6 B. 512.

(3) 8 B. 25.

(4) 12 B. 278.

(5) 2 B. 370.

(6) 2 B. 375.

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the defendants Nos. 1 to 5. An objection was taken to the suit that the plaintiffs, who belong to a numerous class, having the same interest as they have in the suit, have omitted to adopt the procedure prescribed by s. 30 of the Code of Civil Procedure. With that objection it is unnecessary for us to deal, as we concur with the lower appellate Court in holding that the suit itself is not maintainable in a Civil Court.

The claim is based on the alleged right of the plaintiffs to perform the duties in respect of which the *aya* is payable. They do not seek to establish their right generally to be recognized [86] as *Mahars* from whose number the Collector could, under s. 18 of Bombay Act III of 1874, select, according to the procedure thereby provided, the persons liable to perform the duties; in which case the principle of the decision in *Ramachandra Dabholkar v. Anant Sat Shenvi* (1) might possibly be applicable to the case; but they claim the right themselves to perform the duties on account of which the *aya* is payable. The suit is, therefore, barred by s. 18 of the Act, the clear intention of which is to leave such a matter to be defined, on an application being duly made to the Collector in that behalf, by the *panchayat* appointed under the section. Section 64 of the Act, moreover, empowers the Collector to determine the right and duties of *vatandars* independently of any control by the Civil Court. The case is, therefore, governed by the decisions in *Khando Narayan v. Apaji Sadashiv* (2) and *Chinto Abaji v. Lakshmbai* (3). In the former case it was said that "the Civil Courts have no power to give to the plaintiff the declaration that he seeks, because not only can they not afford a consequential remedy, but because they can no longer establish a right which the Collector would be bound to respect." The latter case was one under s. 25 of the Act, which has no immediate bearing on the present case, as it does not apply to hereditary offices of lower degree than *patel* or *kulkarni* (see s. 3 of the Act). But the principle of that decision is applicable to the present case; and the argument relied on in the judgment of Westropp, C. J., shows that s. 18, as much as s. 25, excludes by direct implication any right on the part of the Civil Courts to declare that persons are eligible to serve as hereditary officers under the Act. On these grounds we confirm the decree of the lower appellate Court, with costs.

Decree confirmed.

13 B. 87.

[87] APPELLATE CIVIL.

*Before Mr. Justice Nanabhai Haridas, Mr. Justice Birdwood, and
Mr. Justice Parsons.*

In re HORMASJI IRANI.* [1st May, 1888.]

Stamp Act I of 1879, art. 5 (c), sch. I—Agreement to rent pasture ground—Construction—General Clauses Act I of 1868, s. 2—Growing grass.

By a rent-note dated the 28th July, 1885, the executant Babaji agreed to take for five months from the executee Hormasji a certain pasture ground attached to the military cantonment at Poona. The note recited that Babaji was to

* Civil Reference, No. 51 of 1887.

(1) 8 B. 25.

(2) 2 B. 370.

(3) 2 B. 375.