

Mullick (1), it was held by the Calcutta High Court that a refusal to deliver up an idol, so as to prevent the priest from performing his turn of worship, gave the aggrieved party the right to sue for damages. In *Pranshankar v. Prannath Mahanand* (2), it was held that an action would lie to obtain a binding declaration of a person's right to perform the duties of a *pujari* and to receive the proceeds of the *mandir*. This last decision, we think, governs the present case, in which there is no question as to the right of either the plaintiffs or the defendants to recover the offerings from the [551] worshippers, it being apparently admitted that the person performing the service has the right to the fees. The case is not one, therefore, to which the decision in *Shankara v. Hanma* (3) could be applied. Nor is the decision in *Narayan Vithe Parab v. Krishnaji Sadashiv* (4) applicable, for it cannot be said that the office in question is a mere dignity unconnected with any emoluments.

The second objection taken by the Assistant Judge was not suggested by defendant No. 1, either in the original suit or the appeal. If the claim was really open to the objection, the plaintiffs ought to have been allowed the opportunity of amending their plaint when presented, and should now be allowed that opportunity, if necessary.

As to the third objection, we think that the Subordinate Judge's decision as to the land is not open to the comment that it is based on "theoretical considerations" or on "inferences raised as to the most scientific boundary," and that it ought not to have been reversed on that ground. The plaintiffs' title to a specific portion, amounting to a half of the temple lands, is admitted. The real question is as to the actual boundary between the plaintiffs' land and the defendants' land. That question is one of evidence, and should be so dealt with.

We reverse the decision of the lower appellate Court, and remand the case for a re-hearing of the appeal on the merits. Costs to abide the result.

Decree reversed, and case remanded.

13 B. 552.

[552] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

KASAM SAHEB VALAD SHA AHMED SAHEB AND ANOTHER (*Applicants*)
v. MARUTI BIN RAMBHAJI (*Opponent*).^{*} [10th September, 1888.]

Mamltdars' Courts—Procedure applicable to such Courts—Bombay Act III of 1876, ss. 17 and 18—Civil Procedure Code not applicable.

Where a person is dispossessed in execution of a Mamltdar's decree against a third party, his proper remedy is by a suit, and not by a miscellaneous application.

Though the Mamltdars' Courts, as constituted under Bombay Act III of 1876, are Civil Courts, subject to the revisional jurisdiction of the High Court, it does not follow that the provisions of the Code of Civil Procedure are generally applicable to those Courts.

^{*} Application under Extraordinary Jurisdiction No. 76 of 1888.

(1) 3-C. 390.
(3) 2 B. 470.

(2) 1 B. H. C. R. 12.
(4) 10 B. 233.

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Bombay Act III of 1876 provides a special procedure for Mamlatdars' Courts, and there is no indication in the Act of any intention that the rules of the Code of Civil Procedure shall apply to cases for which the special procedure makes no provision.

Sections 17 and 18 of the Act, which relate to the execution of Mamlatdars' decrees, cannot be supplemented, as to matters not referred to in those sections, by any of the provisions of the Code relating to the execution of decrees of Civil Courts.

[F., 24 B. 397 (399); R., 17 B. 645 (647); 18 B. 449 (451); 16 Ind. Cas. 675=6 S.L. R. 67.]

THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

The applicants were dispossessed of certain land in execution of a decree obtained by the opponent against a third party in the Mamlatdar's Court. They applied to the Mamlatdar, under s. 332 of the Code of Civil Procedure, to be restored to possession, but the Mamlatdar refused to interfere. Hence the present application to the High Court under its extraordinary jurisdiction.

A rule *nisi* was granted, calling upon the opponent to show cause why the Mamlatdar's order should not be set aside.

Gangaram B. Rele showed cause:—The Mamlatdar's Act provides a special procedure for the Mamlatdar's Courts. The provisions of the Code of Civil Procedure relating to the execution of decree of Civil Courts do not apply to the execution of Mamlatdar's decree. The Mamlatdar had, therefore, no jurisdiction to entertain an application under s. 332 of the Civil Procedure Code.

[553] *Ghanasham N. Nadkarni, contra.*—The Mamlatdar's Court is a Civil Court. It is, therefore, governed by the rules of the Code of Civil Procedure, except where they are in conflict with the provisions of the special law. The ruling in *Ramachandra v. Bhikibai* (1) shows that the rule of *res judicata* as laid down in s. 13 of the Civil Procedure Code applies to suits filed in Mamlatdar's Courts. He referred also to *Nana Bayaji v. Pandurang Vasudev* (2); *Bai Jamna v. Bai Jadav* (3); *Govinda Babaji v. Naiku Joti* (4); *Mahadaji Govind v. Sonu bin Davlata* (5).

JUDGMENT.

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

BIRDWOOD, J.—The applicants were dispossessed of certain land in execution of a decree made by the Mamlatdar in favour of the opponent and against Mahamad and Mohidin, and applied to the Mamlatdar to be restored to possession. The application, if made to an ordinary Civil Court, was one which could be made under s. 332 of the Code of Civil Procedure. The Mamlatdar declined to make any order on the application, as it was of the nature of a miscellaneous proceeding. It is argued, on behalf of the applicants, that s. 328 and the following sections of the Civil Procedure Code are applicable to Mamlatdars' Courts, which have been held to be Civil Courts; and that, if those sections are not applicable to Mamlatdars' Courts, the Mamlatdar ought, in the present case, to have given the applicants an opportunity of converting their application into

(1) 6 B. 477.
(4) 10 B. 78.

(2) 9 B. 97.
(5) 9 B. H. C. R. 249.

(3) 4 B. 168.

a plaint. We are unable to yield to either of these contentions. In *Mahadaji Govind v. Sonu bin Davlata* (1) it was held that the Mamlatdars' Courts constituted under Bombay Act V of 1864 were subordinate Civil Courts within the meaning of cl. 2 of s. 5 of Reg. II of 1827, which confers on the High Court an extraordinary jurisdiction over subordinate Civil Courts; and the decision in *Bai Jamna v. Bai Jadav* (2) shows that the High Court continues to exercise the same power of supervision over the Mamlatdars' Courts constituted under Bombay Act III of 1876 as it exercised over those Courts as [554] constituted previously to the passing of that Act. But it does not follow that the provisions of the Code of Civil Procedure are generally applicable to those Courts. The object of Bombay Act III of 1876 is to provide a special procedure of a very simple character for Mamlatdars' Courts; and there is no indication, in the Act, of any intention that the rules of the Code of Civil Procedure shall apply to cases for which the special procedure makes no provision. Sections 17 and 18 of the Act relate to the execution of the decisions or awards of Mamlatdars, and cannot, we think, be supplemented, as to matters not referred to in those sections, by any of the provisions of the Code relating to the execution of decrees of Civil Courts. Not only, as we have said, does the Act disclose no intention that the Code should be resorted to for purposes as to which the Act is silent; but there are obviously many provisions in chap. XIX of the Code which would be quite unsuitable to the summary proceedings in Mamlatdars' Courts, as, for instance, the provisions of s. 331. The Act does not seem to contemplate the case of a third party being ousted in execution of an order for possession, for such order is made only on a finding that the defendant himself is in possession and has wrongfully dispossessed the plaintiff within the six months preceding the suit. If a third party should be ousted in execution of a Mamlatdar's award, his proper remedy would apparently be by a suit, and not by a miscellaneous application: see *Govinda Babaji v. Naiku Joti* (3). We can see nothing in the decision in *Nana Bayaji v. Pandurang Vasudev* (4) opposed to this view. We are of opinion, therefore, that it was not competent to the Mamlatdar, in the present case, to give the applicants any redress on their application. It was quite open to them to file a suit; but as they did not ask the Mamlatdar to allow them to change their application to a plaint, it cannot be said that he acted illegally or with material irregularity in not giving them an indulgence which they never sought. We see no reason to interfere with the Mamlatdar's order. The rule granted in this case is, therefore, discharged with costs.

Rule discharged.

(1) 9 B. H. C. R. 249.

(3) 10 B. 78.

(2) 4 B. 168.

(4) 9 B. 97.