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## [371] APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Candy.*VORA ISABALLI (*Plaintiff*) v. DAUBHAI MUSABHAI AND OTHERS  
(*Defendants*).<sup>\*</sup> [26th September, 1889.]*Mamlatdar—Mamlatdar's decree, by whom it may be questioned—Reference by Collector—Practice—Procedure—Act III of 1876.*

A party aggrieved by a Mamlatdar's decree may apply to the High Court to set it aside, or may question its validity by a suit in a Civil Court.

But where a Collector referred the record and proceedings in a case decided by a Mamlatdar under Act III of 1876, in order that the decree might be set aside as *ultra vires*, the High Court declined to interfere.

REFERENCE from W. Woodward, Esq., Acting Collector of the Panch Mahals.

The Collector referred the record and proceedings in a case decided by a Mamlatdar under Bombay Act III of 1876 to the High Court that it might reverse, under its extraordinary jurisdiction, his order which the Collector thought to be *ultra vires*.

## OPINION.

JARDINE, J.—Since *Mahadaji v. Sonu* (1) was decided, Reg. II of 1827, s. 5, cl. 2, has been repealed. Any party aggrieved by the Mamlatdar's decree might have applied to this Court to set it aside and its validity may be questioned by suit in a Civil Court. We decline to interfere.

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## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice Hart.*BAROTE GAGA PARSHOTAM (*Plaintiff*) v. SEPOY PANJU  
RAMJAN (*Defendant*).<sup>†</sup> [19th September, 1889.]*Small Cause Court—Jurisdiction—Act IX of 1887, s. 33—Construction.*

Section 33 of Act IX of 1887 precludes a Subordinate Judge, invested with Small Cause Court powers under s. 28 of Act XIV of 1869, from entertaining a counter claim beyond the pecuniary limits of his Small Cause Court jurisdiction.

[*Appr.*, 5 Bom.L.R. 398 (404).]

THIS was a reference from Khan Saheb Jehangirsha Edalji Modi, Subordinate Judge of Virangam, under s. 617 of the Civil Procedure Code.

[372] The question referred for the High Court's decision was:—

Whether a Subordinate Judge, invested with the powers of a Small Causes Court under s. 28 of Act XIV of 1869, can, after the passing of Act IX of 1887, yet entertain counter claims beyond the pecuniary limits of his Small Cause Court jurisdiction?

\* Civil Reference, No. 17 of 1889.

† Civil Reference, No. 11 of 1889.

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

The Subordinate Judge's opinion was in the negative.

*Shantaram Narayan*, (Government Pleader), for the plaintiff contended that the Court invested with Small Cause Court powers under Act XIV of 1869 had no power to entertain a claim by way of set-off beyond its pecuniary jurisdiction.

*Narayan Ganesh Chandavarkar contra.*

OPINION.

SARGENT, C. J.—We agree with the Subordinate Judge that he is precluded by s. 33 of Act IX of 1887 from entertaining the counter claim which is beyond the pecuniary limit of his Small Cause Court jurisdiction.

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APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and  
Mr. Justice Hart.*

BAPU KHANDU (*Original Defendant No. 2*), Appellant v. BAJI JIVAJI (*Original Plaintiff*) AND OTHERS (*Original Defendants 3 and 4*), Respondents. \* [1st October, 1889.]

*Jurisdiction—Act XVI of 1838, s. 1, cl. 2—Mamlatdar's Court a Revenue Court within contemplation of Reg. XVII of 1827—Construction—Optimus legis interpret consuetudo, maxim. application of—Landlord and tenant.*

On the 13th December, 1863, prior to the passing of the Mamlatdar's Act III of 1876, one Bhavanji sued defendants Nos. 1 and 2 in a Mamlatdar's Court for the purpose of restraining them from disturbing him in the possession and enjoyment of the lands in dispute. On the 17th January, 1864, the Mamlatdar made an order to that effect against the said defendants, who omitted to sue to set aside that order. In 1866, Bhavanji being then dead, his widow (defendant No. 3) executed in favour of the plaintiff a *miraspatra* in respect of the lands in dispute, which was also ratified by her adopted son (defendant No. 4). In 1871 the plaintiff sued to recover possession of the lands. Defendants Nos. 1 and 2 contended (*inter alia*) that the lands were their private property and had never been in the possession of Bhavanji or his widow. The suit went up to the High Court,

[373] and was remanded for the determination of the issues, *viz.*, (1) whether Bhavanji had at the time of his death such a title to the lands as would have entitled him to make a *mirasi* lease thereof, and (2) whether there was any valid adoption of defendant No. 4 by defendant No. 3. On remand the Court of first instance found on the issues in the affirmative, being of opinion that defendant No. 3 was in possession at the time the *miraspatra* was executed to the plaintiff. The defendants appealed, and the Subordinate Judge, A.P., confirmed the lower Court's decree. He treated the Mamlatdar's order as one made under the Mamlatdar's Act, and, as such, binding conclusively on the defendants, as it had not been set aside within three years from its date. On appeal to the High Court:

*Held*, that the Subordinate Judge with appellate powers was wrong in treating the Mamlatdar's order as passed under the Mamlatdar's Act. The order was one of a Revenue Court under s. 1, cl. 2, of Act XVI of 1838.

It was contended that the Mamlatdar could not make such an order under Act XVI of 1838.

*Held*, that, although the Collector's Court was the only Revenue Court contemplated by Reg. XVII of 1827, since the passing of Act XVI of 1838 the Mamlatdar's Court was always regarded as a Revenue Court empowered to deal with a

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\* Second Appeal, No. 82 of 1888.