

15 B. 107.

[107] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Parsons.*SAKHARAM LAKSHMAN (*Original Plaintiff*), Appellant v. GOVIND JOTI AND ANOTHER (*Original Defendants*), Respondents.*

[14th August, 1890.]

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15 B. 107.*Jurisdiction—Bombay Civil Courts' Act XIV of 1869, s.17—Reference by District Judge to Assistant Judge—Jurisdiction of Assistant Judge on case so referred—Practice.*

A District Judge referred for trial an appeal to his Assistant Judge under s. 17(1) of the Bombay Civil Courts' Act XIV of 1869. The Assistant Judge dismissed the appeal for default of the appellant's (defendant's) appearance on the day fixed for hearing. An application was afterwards made to the Assistant Judge for the re-admission of the appeal, but he refused the application. A similar application was then made to the District Judge. He granted the application and ordered the appeal to be re-admitted to the file. The appeal was then heard and decided by the Assistant Judge, who reversed the lower Court's decree. On appeal by the plaintiff to the High Court,

Held, that the order of the District Judge re-admitting the appeal was *ultra vires*. By the reference under s. 17 of the Bombay Civil Courts' Act XIV of 1869 the Assistant Judge acquired full jurisdiction to try the appeal according to the procedure laid down by the Civil Procedure Code (Act XIV) of 1882. The Assistant Judge had jurisdiction, under s. 558 of the Code, to entertain the application for re-admission, and his order refusing to re-admit was not subject to reversal or review by the District Judge. The order of the District Judge re-admitting the appeal was made without jurisdiction, and the proceedings subsequent thereto were also without jurisdiction and invalid.

THIS was a second appeal from a decision of J. FitzMaurice, Acting Assistant Judge of Satara.

The plaintiff obtained a decree against the defendant for the possession of certain land. The defendant appealed.

The appeal lay to the District Court of Satara, and the District Judge of that place referred it to the Assistant Judge for trial.

[108] The defendant (appellant) did not appear on the day fixed for the hearing, *viz.*, the 26th November, 1888, and the Assistant Judge accordingly dismissed the appeal.

On the 28th November, 1888, the defendants applied to the Assistant Judge to re-admit the appeal, but he rejected their application.

On the 7th December, 1888, the defendants applied to the District Judge for an order that the appeal should be re-admitted. The District Judge made the order, and the appeal was then re-admitted upon the file: It was subsequently heard by the Assistant Judge, who reversed the decree of the lower Court.

The plaintiff preferred a second appeal to the High Court.

* Second Appeal No. 627 of 1889.

(1) Section 17 of Bombay Civil Courts' Act XIV of 1869 :—

The Governor of Bombay in Council may, by notification in the *Government Gazette* empower any Assistant Judge to try such appeals from the decrees and orders of the subordinate Courts as would lie to the District Judge and as may be referred by him to the Assistant Judge.

Decrees and orders passed under this section by an Assistant Judge shall have the same force and shall be subject to the same rules as regards procedure and appeals as decrees and orders passed by the District Judge.

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Goverdhanram Madhavram, for the appellant.—The District Judge's order for the re-admission of the appeal was without jurisdiction. When an appeal is referred under the Bombay Civil Courts' Act XIV of 1869 for trial, the Judge to whom it is so referred is competent to deal with it, as well as it could be dealt with by the Court which referred it. The Assistant Judge's order declining to re-admit it was final, and could not be interfered with by the District Judge. The re-admission and the subsequent hearing of the appeal were without jurisdiction and, therefore, null and void.

Ganesh Ramchandra Kirloskar, for the respondents.—The order of the District Judge was not made without jurisdiction. The District Judge is not so completely deprived of his control over the appeals referred by him to his Assistant Judge as to be unable to make an order of re-admission one without jurisdiction. The appeal, although referred, continues to be on the District Judge's file, and the District Judge can make any order in respect thereof.

JUDGMENT.

SARGENT, C.J.—In this case the Assistant Judge, to whom under s. 17 of the Bombay Civil Courts' Act, 1869, the appeal had been referred by the District Judge for trial, dismissed it on the 26th November, 1888, for default of the appellants (original defendants) to attend on that day. An application was made to the Assistant Judge on the 28th November for the re-admission of the appeal, and it was refused by him on that same day. A similar application was made to the District [109] Judge on the 7th December, 1888, and it was granted by him. The Assistant Judge then re-heard the appeal, and passed the decree from which the present appeal is brought by the plaintiff.

The first ground of appeal is that the District Judge had no jurisdiction to entertain the application of the 7th December, or to re-admit the appeal after the Assistant Judge had refused to re-admit it. On the other side it is contended that as the Assistant Judge had disposed of the appeal, the application to re-admit it was properly made to the District Judge, and that the Assistant Judge had no power to receive such an application and so that his order of refusal is a mere nullity. We are of opinion that the former is the correct view. By the reference made under s. 17 of Bombay Civil Courts' Act, 1869, the Assistant Judge acquired full jurisdiction to try the appeal, which means to fully hear and finally dispose of the appeal according to the procedure laid down in the Code of Civil Procedure for the hearing of appeals. The provisions relating to this procedure commence with s. 555 and include s. 558, which gives the power of re-admitting an appeal after it has been dismissed in default. The Assistant Judge, therefore, had jurisdiction to entertain the application for re-admission, and his order refusing to re-admit was not subject to reversal or review by the District Judge. This being so, the order of the District Judge re-admitting the appeal was made without jurisdiction, and the proceedings subsequent thereto are equally without jurisdiction and invalid.

We, therefore, reverse the decree appealed against, and restore the order of the 26th November dismissing the appeal, since that order has not as yet been set aside by any legal order. The plaintiff to have all costs incurred by him since the dismissal order.

Decree reversed.