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defendants Nos. 10 and 11 every year their share (*viz.*, Rs. 419-8-0) of the pension, but instead of paying them Rs. 1,056-9-0 which they had previously enjoyed from the Kolegaum *saranjam* it was agreed that he should deduct Rs. 485-1-0 "for Sardarki" and give them the balance Rs. 571-8-0. The present dispute is in regard to this sum of Rs. 485-1-0. In the absence of any other evidence to indicate whether this sum of Rs. 485-1-0 was intended to be personal to Madhavrav, we must take it that it was intended by the parties to be treated in the same way as the previous item of Sardarki (Rs. 500) in 1848, *i.e.*, divisible like the rest of the ancestral property. Under this view of the matter we think that the Subordinate Judge was right in his order regarding this item.

At the hearing of the appeal, mention was made of the expenses necessarily incurred by defendant No. 1 in collecting the *saranjam* and pension from the various Government Treasuries. But no issue was raised as to this point in the lower Court, nor was any objection taken in the memorandum of appeal. It is, therefore, too late now to consider the point.

A further objection has also been taken that the Subordinate Judge did not decree the shares of the defendants other than defendant No. 1 who claimed partition. This should now be [527] done. In the property in which defendants Nos. 10 and 11 have their admitted share, the branches of Bhivrav and Yashvantrav and Balvantrav have each $\frac{1}{3}$ rd of the remainder. Plaintiff represents $\frac{1}{9}$ th of Bhivrav's $\frac{1}{3}$ rd; defendant 2 another $\frac{1}{9}$ th and defendant No. 1 another $\frac{1}{9}$ th; defendant No. 8 represents $\frac{1}{3}$ rd of Bhivrav's $\frac{1}{3}$ rd and defendant No. 9 the remaining $\frac{1}{3}$ rd of Bhivrav's $\frac{1}{3}$ rd; defendants Nos. 3 and 4 represent Yashvantrav's $\frac{1}{3}$ rd; defendants 5, 6, 7 represent Balvantrav's $\frac{1}{3}$ rd. In the property in which defendants 10 and 11 have no share the division will be the same, exclusive of any deduction on account of defendants 10 and 11. The Subordinate Judge ordered each party to bear his own costs. Under the circumstances, we think the same order will be fair in the present appeals.

Decree amended.

15 B. 527.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

SHRINIVAS HANMANT AND OTHERS (*Original Applicants*), Appellants
v. GURUNATH SHRINIVAS AND ANOTHER (*Original Opponents*),
Respondents.* [17th December, 1890.]

Civil Procedure Code (Act XIV of 1882), s. 265—Partition effected by Collector in execution of a decree—Not subject to revision by Civil Court—Execution of decree.

When the Collector makes a partition under s. 265 of the Code of Civil Procedure (Act XIV of 1882), the Civil Court has no power to examine his work or to direct him to make a fresh partition.

Dev Gopal Savant v. Vasudev Vitthal Savant(1) followed.

[N.F., 15 M.C.C.R. 139; R., 28 B. 238; Expl., 5 Bom. L.R. 648.]

* Appeals Nos. 91 and 92 of 1889 and Nos. 3 and 4 of 1890.

(1) 12 B. 371.

APPEALS from the orders of Rav Bahadur Babaji Lakshman, First Class Subordinate Judge of Dharwar, in miscellaneous cases Nos. 80 and 81, 94 and 95 of 1888.

[528] The appellants applied to the First Class Subordinate Judge of Dharwar to set aside the partition made by the Collector in execution of decrees Nos. 249 and 250 of 1882. They alleged that the partition was not in accordance with the terms of the decrees, and that the decree-holders had in collusion with the Circle Inspector effected an improper division of the lands in dispute by securing an allotment of better lands to himself than had been awarded to them.

The Subordinate Judge dismissed the applications as barred under art. 165 of the Limitation Act (XV of 1877).

Against this decision the applicants appealed to the High Court.

Macpherson (with him *Shamrao Vithal*), for appellants.—Article 165 of the Limitation Act applies to cases falling under s. 332 of the Code of Civil Procedure (Act XIV of 1882). The present case is governed by art. 172 of the Limitation Act.

Latham (Advocate-General) (with him *Manekshah Jehangirshah*), for respondents.—The Civil Court has no jurisdiction to revise a partition effected by the Collector under s. 265 of the Code of Civil Procedure—*Dev Gopal Savant v. Vasudev Vithal Savant* (1); *Parbhudas Lakhmidas v. Shankar Bhai* (2).

JUDGMENT.

BIRDWOOD, J.—The appellants in these cases complained to the Subordinate Judge that a partition made by the Collector under s. 265 of the Code of Civil Procedure was not a proper one. They alleged that the plaintiff had, in collusion with the Circle Inspector, secured the allotment of better land to himself than had been given to them, and they asked that the possession which had been given to the plaintiff might be cancelled. The Subordinate Judge dismissed the application as time-barred. It is unnecessary to discuss the question of limitation dealt with by the Subordinate Judge, as we are of opinion that the preliminary objection taken by the respondents must prevail, *viz.*, that the Civil Court has no jurisdiction to interfere in the matter. The language of s. 265 is clear. "The partition," it says, "shall [529] be made by the Collector," and according to a certain law. The power thus given to the Collector is not in any way made subject to the superintendence of the Civil Court or to revision by a Civil Court. No doubt, the Collector cannot refuse to carry out the decree or order of the Court (*Ganoji v. Dhondu* (3)); but when he has made a partition under the section, the Court has no power to examine his work or to direct him to make a fresh partition. In *Satyagavada v. Appa* (4) Melvill and Nanabhai Haridas, JJ., observe that "though the Civil Court might not be able to entertain the question whether, as between the parties to the suit, the partition had been properly made by the Collector, it was bound to inquire into the complaint of a third party, alleging that he had been illegally dispossessed." These learned Judges evidently were of opinion that it was not open to one of the parties to move the Civil Court in such a matter. In *Dev Gopal Savant v. Vasudev Vithal Savant* (1) this Court distinctly ruled that the Civil Court could not interfere upon an allegation that the Collector had made an objectionable partition, as to do so would be to take the execution out of the

(1) 12 B. 371. (2) 11 B. 662. (3) 14 B. 450. (4) P.J. for 1881, p. 31.

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Collector's hands in direct contradiction of the law. We follow that ruling, and as in the present cases the allegation amounts to no more than that the partition made is an unequal one, we think that the Subordinate Judge had no power to interfere. For this reason we confirm the decrees with costs. The complaining parties can, if so advised, apply for redress to the Collector.

Decrees confirmed.

15 B. 530.

[530 CRIMINAL REFERENCE.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS *v.* SHERIAR ARDESEER ERANI.*
[18th December, 1890.]

Police Act (XLVIII of 1860), s. 11, cl. 2—License—Tea and sodawater shops—Construction.

The words "hotel, tavern, shop or place" in the second clause of s. 11 (1) of the Police Act (XLVIII of 1860) are wide enough to include every place mentioned in the first clause of that section.

THIS was a reference by W. R. Hamilton, Second Presidency Magistrate, Bombay, under s. 432 of the Criminal Procedure Code (Act X of 1882).

The reference was in the following terms:—

"Sheriar Ardepeer Erani and three others have been charged before me with keeping tea and sodawater shops without a license from the Commissioner of Police. The question is whether such shops require to be licensed.

"Under Act XIV of 1842 coffee shops, eating houses, and places of public resort required a license from the Court of Petty Sessions. The fees, &c., levied under the Act were applied, it seems, towards keeping the town clean, and when a Municipality was established by Act XIV of 1856, the former Act was repealed. Neither by the new Act, nor by any subsequent Municipal Act has the power to levy taxes on coffee houses, &c., been revived.

"By the Police Act XLVIII of 1860, s. 11, persons in Calcutta and Madras who kept coffee-house, &c., were required to [531] take out a license. A separate clause of the same section applied to Bombay, and under it a person who kept a hotel, tavern, toddy shop, or place for

* Criminal Reference, No. 147 of 1890.

(1) Section XI of Act XLVIII of 1860 provides as follows:—"Whoever, in the Towns of Calcutta and Madras has or keeps any hotel, tavern, punch-house, ale-house, arrack or toddy shop, or place for the sale or consumption of ganja, chandu, or other preparation of opium, hemp, or other intoxicating drug, plant, or substance, or any eating-house, coffee-house, boarding-house, lodging-house or other place of public resort and entertainment, wherein provisions, liquors, or refreshments are sold or consumed (whether the same be kept or retailed therein or procured elsewhere), without a license from the Commissioner of Police; and

whoever, in the town of Bombay has or keeps any such hotel, tavern, shop or place, or who sells by retail in any place any spirituous or fermented liquors without such license, shall be liable to a fine not exceeding fifty rupees, &c."