

17 B. 230.

[230] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Birdwood.

PITAMBAR MANCHARAM (Original-Applicant), Appellant v.
ISHVAR JADURAM (Original Opponent) Respondent.*

[25th February, 1892.]

Jurisdiction—Heirship—Application for declaration of heirship—Bombay Regulation VIII of 1827, s. 2—Subordinate Judge invested with function of District Court under Act VII of 1889—Jurisdiction of such Judge to hear such application.

A Subordinate Judge who (under s. 26 of Act VII of 1889) has been invested by Government with the functions of a District Court under Act VII of 1889 has jurisdiction to hear and determine an application made under s. 2 of Bombay Regulation VIII of 1827(1).

[F., 18 B. 748 (749); 19 B. 399 (400).]

THIS was a reference made by G. McCorkell, District Judge of Ahmedabad, under s. 617 of the Civil Procedure Code.

The appellant, Pitambar Mancharam (original applicant), presented a petition under Bombay Regulation VIII of 1827 in the Court of the Subordinate Judge of Kaira, praying to be declared the heir of one Motiram Ghelabhai, deceased. Under s. 26 of Act VII of 1889 that Court had been invested by Government with the functions of a District Court under Act VII of 1889 (2).

[231] The respondent, Ishvar Jaduram (original opponent), contended (*inter alia*) that the Court of the Subordinate Judge had no jurisdiction to entertain the application under Regulation VIII of 1827, which conferred jurisdiction only upon Zilla Courts.

The Subordinate Judge held that he had no jurisdiction to entertain the application under the regulation, and rejected it.

The applicant appealed to the District Court, and the District Judge being doubtful, referred the following question for the decision of the High Court:—

“Had the Subordinate Judge authority to hear and determine an application made under s. 2 of the Bombay Regulation VIII of 1827?”

There was no appearance for the parties.

* Civil Reference No. 2 of 1892.

(1) Clause 2 of s. 2 of Bombay Regulation VIII of 1827 is as follows:—

“If an heir, executor, or administrator is desirous of having his right formally recognised by the Court for the purpose of rendering it more safe for persons in possession of, or indebted to, the estate to acknowledge and deal with him, the Judge, on application, shall issue a proclamation in the form contained in Appendix A, inviting all persons who dispute the right of the applicant to appear in the Court within one month from the date of the proclamation, and enter their objections, and declaring that, if no sufficient objection is offered, the Judge will proceed to receive proof of the right of the applicant, and if satisfied, grant him a certificate of heirship, executorship, or administratorship.”

(2) Clauses 1 and 2 of s. 26 of Act VII of 1889 are as follows:—

“(1) The Local Government may, by notification in the official gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

“(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court.”

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OPINION.

SARGENT, C. J.—We think that s. 28 of Act VII of 1889 (1) distinctly applies the provisions of s. 26 and the other sections set out in s. 28 to certificates granted under Regulation VIII of 1827 and applications for such certificates made after the commencement of the Act.

Order accordingly.

17 B. 232.

[232] APPELLATE CIVIL.

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

GITABAI (*Original Defendant*), *Appellant v.* BALAJI KESHAV
SHASTRI NAGARKAR (*Original Plaintiff*), *Respondent*.^{*}
[2nd March, 1892.]

Specific performance—Agreement to sell—Reversionary interest, sale of—Purchase-money less than market value of reversion—Stat. 31 Vic., c. 4—Inadequate consideration.

The rule observed in England until the passing of Stat. 31 Vic., c. 4, that specific performance of an agreement to sell a reversionary interest should not be decreed where the purchase-money was less than the market value of the reversion.

Held, not to be the rule in India.

[1906 P.W.R., p. 104.]

THIS was a first appeal from the decision of Khan Babadur L. G. Fernandez, First Class Subordinate Judge of Poona.

Suit for specific performance of an agreement to sell a house.

The defendant, Gitabai, was the daughter-in-law and heiress of one Nana, deceased. On 18th December, 1885, Nana had agreed to sell the house in question to the plaintiff for Rs. 2,000, and then received Rs. 25 earnest-money. At the time of the agreement Nana was not entitled to the possession of the house. His adoptive mother, Renukabai, was in possession and management, and under the will of her deceased husband she was entitled to it during his lifetime and after her death it was to go to Nana.

On Renukabai's death the plaintiff, in accordance with the agreement, tendered the rest of the purchase-money to Nana, and asked him to execute a conveyance, but he refused. Nana subsequently died, and the plaintiff now sued the defendant, as his representative, to enforce the agreement of sale.

The defendant pleaded that Nana was of weak mind, and had been induced by the plaintiff's misrepresentation to enter into the agreement; that the agreement was, therefore, invalid, and that the suit was time-barred.

* Appeal No. 47 of 1890.

(1) *Section 28*.—Notwithstanding anything in the regulation of the Bombay Code No. VIII of 1827, the provision of s. 3, s. 6, sub-s. (1), cl. f, and ss. 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26 and 27 of this Act with respect to certificates under this Act and applications therefor, and of s. 98 of the Probate and Administration Act, 1881, with respect to the exhibition of inventories and accounts by executors and administrators, so far as they can be made applicable, apply, respectively, to certificates granted under that regulation, and applications made for certificates thereunder, after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.