

17 B. 681.

APPELLATE CIVIL.

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

MAHADU (Original Defendant No. 2), Appellant v. LAKSHMANAN.
(Original Plaintiff), Respondent.* [20th September, 1892.]

Jurisdiction—Revenue Jurisdiction Act (X of 1876), s. 4 (c)—Mortgage—Suit for redemption—Sale of mortgaged land by Native Chief for arrears of assessment—Purchaser at sale—Claim by purchaser against mortgagor and mortgagee.

The plaintiff sued to redeem certain land mortgaged by him to the first defendant. The second defendant claimed the land as owner, alleging that the mortgagor and mortgagee had failed to pay the assessment on the land to the Native Chief to whom it was due. The latter had accordingly sold it by public auction to realize the assessment, and he (defendant No. 2) had bought it. The Court of first instance rejected the plaintiff's claim on the ground that the suit could not be entertained by a Civil Court under the provisions of the Revenue Jurisdiction Act (X of 1876) and the Land Revenue Code (Bombay Act V of 1879).

On appeal the District Court reversed the decree and remanded the case for trial on the merits.

Held, confirming the order of the District Court, that Government having rendered no assistance in the proceedings for the realization of the revenue by the [682] Native Chief on which the defendant relied, the jurisdiction of the Civil Court was not taken away by s. 4 (c) of the Revenue Jurisdiction Act (X of 1876).

APPEAL against an order passed by G. C. Whitworth, District Judge of Nasik.

The plaintiff sued to redeem certain land mortgaged by him to defendant No. 1. Defendant No. 2 was in possession.

Defendant No. 1 (Vithu) answered that the mortgage debt was not paid off, and that a large sum was still due to him.

Defendant No. 2 (Mahadu valad Shama) resisted the claim. He admitted that the land in dispute originally belonged to the plaintiff and had been mortgaged by him to defendant No. 1, but he alleged that they had both failed to pay the Government assessment due to the Chief of Vinchur, who had thereupon sold the land at public auction for the recovery of the arrears of assessment, and that he (defendant No. 2) had purchased it. He, therefore, claimed to hold the land as owner.

The Subordinate Judge rejected the plaintiff's claim on the following grounds:—

"Now the simple question is that whether, after the land has been disposed of for default in payment of arrears of Government revenues thereon by the occupants thereof, can the Civil Court take cognizance in having the land restored to the occupant. My opinion is in the negative. The reasons are that s. 4, both paragraphs of cl. (c) and last paragraph of cl. (f) of the Revenue Jurisdiction Act (X of 1876) prevents Civil Courts from entertaining claims against Government or others for setting aside sales for arrears of land revenue or claims connected with or arising out of any proceedings for the realization of land revenue or respecting the occupation of vacant land. Here, if there is any claim of the plaintiff or defendant No. 1, it is against not defendant No. 2, but against the Vinchurkar Chief, who is not made a party. The Vinchur Chief with respect to the land occupies the same position as the British Government with respect to revenue-paying lands in British India, and as the Collector's

* Appeal No. 22 of 1892.

1892
SEP. 20.
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APPEL-
LATE
CIVIL.
—
17 B. 681.

proceedings under ss. 56 and 57 of the Land Revenue Code (Act V of 1877) could not be taken cognizance of by the Civil Courts, so the Vinchurkar Chief having exercised a similar power [683] under ss. 56 and 57 of the Land Revenue Code in respect of the lands in suit for arrears of revenue, the Civil Court cannot take cognizance."

On appeal by the plaintiff the District Court reversed the decree and remanded the case for trial on the merits. The Judge remarked :—

"I think the Subordinate Judge was wrong in regarding the Vinchurkar as standing in the place of Government for the purposes of the Land Revenue Code and the Revenue Jurisdiction Act. If the Vinchurkar was an independent Chief, then Vinchur was not British India, and the Acts named would not apply at all. But it is admitted that the Vinchurkar was the holder of a *saranjam* and exercised both civil and magisterial powers under *sanads* from the British Government, and there is nothing to show that he had higher rights in revenue matters than can be conferred upon holders of alienated villages under the Land Revenue Code. These do not include the power of forfeiture of land. Only forfeiture to Government is recognised (s. 153), and Government was not concerned in this matter. If the land was sold for default, it was sold subject to the first defendant's lien; if it was not sold, it is still the plaintiff's, subject to the first defendant's lien."

Defendant No. 2 preferred a second appeal.

Shivram Vithal Bhandarkar, for the appellant.

Daji Abaji Khare, for the respondent.

JUDGMENT.

SARGENT, C. J.—As it is clear from the judgment of the Subordinate Judge, and it is also assumed by the District Judge, that Government rendered no assistance in the proceedings for the realization of the revenue by Vinchurkar, on which defendant No. 2, relies, we must hold that the jurisdiction of the Civil Court is not taken away by s. 4 (c), Act X of 1876. And we, therefore, confirm the order with costs.

Order confirmed.

17 B. 684 (F.B.).

[684] FULL BENCH.

Before Mr. Justice Parsons, Mr. Justice Telang, and Mr. Justice Candy.

RATULAL RANGILDAS (*Plaintiff*) v. VRIZBHUKHAN PARABHURAM
(*Defendant*).* [22nd April and 27th September, 1892.]

Stamp—Order for payment of money on a person not a banker.

The plaintiff agreed to lend money to the defendant for payment of his trade debts, &c. In pursuance of the agreement the defendant gave his creditors "*chits*" for certain sums. These "*chits*" were addressed to the plaintiff and requested him to pay the amounts mentioned therein. He did so, and now sued for the amount advanced. It was contended by the defendant that the "*chits*" being cheques or bills of exchange were inadmissible in evidence, because unstamped. The Court found that by the agreement the plaintiff was not constituted the defendant's banker within the meaning of cl. (6), s. 3 of the Stamp Act, 1879.

Held that the *chits* did not require a stamp.

[D., 13 Ind. Cas. 330=38 P. L. R. 1912=184 P. W. R. 1912.]

* Civil Reference, No. 21 of 1891.