

cases the preamble of the Act cannot be allowed to cut down the express enactment. In *Kirparam v. Nagindas* (1), the point has been virtually decided.

[316] There was no appearance for the respondent.

JUDGMENT.

SARGENT, C.J.—The District Judge dismissed the appellant's application for a certificate under s. 4 (a) of Act VII of 1889 on the ground that he was not a representative of the deceased Jagjivan, meaning, we presume, not his heir. The preamble to the Act speaks of representatives of the deceased. But s. 4 (a) expressly provides for the production of a certificate by a person suing the debtor of the deceased "who claims to be entitled to the effects of the deceased or to any part thereof." Here the appellant claims the debt as part of the deceased's effects which was sold as such by the Court and purchased by him at auction sale. In *Kirparam v. Nagindas* (1) it was apparently assumed, and we think correctly, that such a purchaser would require a certificate before the Court could pass a decree on the debt.

We must, therefore, reverse the decision of the lower Court and send back the case to be disposed of according to law without intending to express any opinion as to the merits. Costs to abide the result.

Decree reversed.

18 B. 316.

APPELLATE CIVIL.

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

LALITAGAR KESHARGAR (*Original Plaintiff*), Appellant v. BAI SURAJ (*Original Defendant No. 1*), Respondent.*
[18th April, 1893.]

Husband and wife—Suit for restitution of conjugal rights—Cause of action—Jurisdiction.

The plaintiff sued his wife for restitution of conjugal rights in the Court of the Subordinate Judge of Borsad, within whose local jurisdiction the plaintiff resided. The defendant contended (*inter alia*) that the Subordinate Judge of Borsad had no jurisdiction to entertain the suit, on the ground that she was living outside his jurisdiction. The Subordinate Judge dismissed the suit for want of jurisdiction. On appeal by the plaintiff, the decree was confirmed. On second appeal,

[317] *Held*, reversing the decree, that the Court of Borsad had jurisdiction. The cause of action, in a suit by a husband for restitution of conjugal rights, consists in the wife's absenting herself from her husband's house without his consent, and it must, therefore, be deemed to arise at his house.

SECOND appeal from the decision of T. Hart-Davies, Joint Judge of Ahmedabad.

The plaintiff sued his wife Bai Suraj and others for restitution of conjugal rights. The suit was filed in the Court of the Subordinate Judge of Borsad, within whose local jurisdiction the plaintiff resided.

* Second Appeal No. 900 of 1891.

(1) P. J. for 1893, p. 55.

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The plaintiff alleged that Bai Suraj was plaintiff's wife, and lived and cohabited with him till about a year and a half prior to the institution of the suit, when she went to reside at her father's house, and declined to return to the plaintiff. The other defendants, who were the parents and other relatives of Bai Suraj, were joined, as she was acting under their advice.

The defendants alleged that the plaintiff ill-treated his wife, and contended (*inter alia*) that the Subordinate Judge of Borsad had no jurisdiction to entertain the suit, because they (the defendants) resided at Kasore, a village in the Gaikwar's territory.

The Subordinate Judge decided all the issues, on the merits of the case, in the plaintiff's favour, but rejected the suit, on the ground of want of jurisdiction, for the following reasons:—

"It is now to be seen whether the Court has jurisdiction to entertain this claim against these defendants, who reside at a place outside the jurisdiction of the Court. Under s. 17 of the Civil Procedure Code a suit may be instituted in a Court within the local limits of whose jurisdiction (a) the cause of action arises, or (b) all the defendants at the time of the commencement of the suit actually or voluntarily reside or carry on business or personally work for gain, or (c) any of the defendants at the time of the commencement of the suit actually or voluntarily resides * * *

* * *; provided that either the leave of the Court is given or the defendants who do not reside * * * * as aforesaid, acquiesce in such institution. It seems that neither the cause of action has arisen, nor the defendants Nos. 1, 2 and 3 actually or voluntarily reside within the jurisdiction of this Court. According to the plaintiff's own allegations and also [318] according to the allegations of his witnesses Nos. 26 and 30, the defendant No. 1 went by the permission of her husband (the plaintiff) to her parents' house with her brother. The plaintiff admits that he had sent the witness No. 32 to call her, but that she did not come. Thus the cause of action arose at Kasore and not at Borsad. The cause of action accrued where the demand was made, and that demand was met with refusal. * * * "I find that the Court has no jurisdiction, and the suit must be dismissed."

On appeal by the plaintiff the Joint Judge concurred with the Subordinate Judge in his view as to jurisdiction, and confirmed the decree.

The plaintiff preferred a second appeal.

Govardhanram M. Tripathi, for the appellant.—It is the duty of married persons to live together—*Weldon v. Weldon* (1); *Dadoji v. Rukmabai* (2). The cause of action, therefore, in cases like this, arises at the place from which the wife improperly absents herself, that is, at the husband's house; see also *Binda v. Kaunsilia* (3).

JUDGMENT.

SARGENT, C. J.—It is unnecessary to consider where the defendant was residing at the time the suit was instituted. The cause of action, in a suit by a husband for restitution of conjugal rights, arises from the duty of the wife to reside with her husband, unless he has been guilty of some matrimonial offence, which justifies her, in the eye of the law, in living apart from him. See the remarks of Sir J. Hannen in *Weldon v. Weldon* (1). As the cause of action consists in absenting herself from her husband's

(1) 9 P.D. 52.

(2) 10 B. 301.

(3) 13 A. 126 (140).

house without his consent, it must be deemed to arise at his house. In this view of the cause of action, it arose, in the present case, at Borsad, and the Subordinate Judge had, therefore, jurisdiction. We must, therefore, reverse the decree, and send back the case to the lower Court of Appeal for disposal on the merits.

Decree reversed and case sent back.

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[319] APPELLATE CIVIL.

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

DE SOUZA DEVINO (*Original Plaintiff*), *Appellant v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (Original Defendant), Respondent.** [20th April, 1893.]

Service inam land—Suit for a declaration of title to trees thereon and for damages—Jurisdiction of Civil Courts—Section 4, Clause (a) of the Bombay Revenue Jurisdiction Act (Bombay Act X of 1876)—Hereditary Offices Act (Bombay Act III of 1874)—Hereditary office—Hereditary officer—Officiator.

Section 4, cl. (a) of the Bombay Revenue Jurisdiction Act (Bombay Act X of 1876) is not intended to apply only to the property appropriated to the payment of the officiating member of a vatandar family, the expression used being "hereditary officer" and not the person performing the duties of the "hereditary office" to which by the Hereditary Office Act (Bombay Act III of 1874) the distinct denomination of "Officiator" is given.

The plaintiff complained that he was prevented from cutting the trees growing on land situate in the village of Tungarli, belonging to certain persons who had sold the trees to him. He claimed damages and an injunction restraining the Collector from interfering with him. The defendant pleaded that the trees did not belong to the plaintiff's vendors, being on service inam land. The lower Court dismissed the plaintiff's claim, holding that the land, on which the trees were growing, was service inam land, and that the plaintiff's vendors had no title to them. On appeal, the High Court, on the evidence, upheld the lower Court's decision that the land was inam service land, but held that it did not necessarily [320] follow that the trees upon it were the property of Government and not of the vatandars. The latter might be the owners of the trees subject to a condition. The case was, therefore, remanded to the District Court for a finding on an issue as to whether the holders of service inam lands had a title to the trees on the lands, and if so, whether they had the right to cut down trees without the permission of the Collector. On this finding the District Judge found in the affirmative. The case then came again before the High Court, when a preliminary objection was taken that under s. 4 of Act X of 1876 the Court had no jurisdiction.

* Appeal No. 45 of 1891.

† Section 4, cl. (a) of the Bombay Revenue Jurisdiction Act:—

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters:—

(a) Claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874 or any other law for the time being in force, or of any other village officer or servant, or

Claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

Suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any other officer duly authorized in that behalf, or

Claims against Government relating to lands held under treaty, or to lands granted or held as saranjam, or on other political tenure, or to lands declared by Government or any other officer duly authorized in that behalf to be held for service.