

It has been argued by Mr. Apte, for the appellants, that the Vatan-dars Act precludes the Civil Court from making such a declaration.

[519] It has been long settled that the Civil Court has still the power to declare the plaintiffs' right to the status of vatan-dars—*Ramchandra Dabholkar v. Anant Sat Shenvi* (1). It was said, however, that the decree of the Court in this case does more than merely declare the plaintiff's status as vatan-dars, as it defines the amount of the share in the vatan. That is true, but the share so defined is in respect of the share in the vatan belonging to their own particular branch, and the declaration does not interfere with the rights of the Collector in any way as given him by the Act. In preparing the register, his duty as determined by s. 67 is confined to specifying the names of the heads of families and the proportionate part possessed by each head, and is in no way concerned with the rights of the members of a particular branch *inter se*. We are of opinion, therefore, that there is nothing in the Vatan-dars Act which takes away the power of the Civil Court to make such a declaration as the lower appeal Court has made in this case.

It was, however, said that as the vatan consisted exclusively of a cash allowance by Government, this was a suit relating to a "money grant" within the contemplation of s. 4 of the Pensions Act, XXIII of 1871, and one which the Civil Court cannot entertain. This objection, it is to be remarked, was unsuccessfully urged in *Ramachandra Dabholkar v. Anant Sat Shenvi* (1) under precisely similar circumstances. As the Vatan-dars Act itself precludes the suit being entertained except for the purpose of declaring the plaintiffs' status as vatan-dars, it cannot, we think, in its restricted form be regarded as a suit relating to a grant of money within the meaning of the above section. We must, therefore, confirm the decree with costs on appellants.

*Decree confirmed.*

18 B. 520.

[520] APPELLATE CIVIL.

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

SOIRU PADMANABH RANGAPPA (*Original Defendant No. 2*),  
Appellant v. NARAYANRAO BIN VITHALRAO AND ANOTHER (*Original Plaintiff and Defendant No. 1*), Respondent.\* [31st August, 1893.]

*Practice—Procedure—Appeal—Appeal between co-defendants—Hindu law—Joint family—Manager—Loan to Manager—Family purpose—Presumption—Evidence—Burden of proof.*

Where a Subordinate Judge dealt with a case at the hearing as raising not only a question between the plaintiff and defendants, but also as between the defendants,

*Held*, that one of the defendants could appeal against the decree as between himself and the other defendant.

*Gudadhar Banerjee v. Mussamat Mun Mohunee Dossa* (2) and *Atma Ram v. Balkishen* (3) distinguished.

There is no presumption that a loan contracted by the manager of a joint Hindu family has been contracted for a family purpose.

[*Appl.*, 7 Bom. L.R. 172 (173); *R.*, 21 B. 808 (815); 27 B. 157 = 4 Bom. E.R. 968 (970); 25 C. 565 (569); 31 C. 643 (644) = 8 C.W.N. 495; 28 M. 229 (235) = 15 M.L.J. 212; 16 C.P.L.R. 42 (44); 12 O.C. 260; *Cons.*, 3 N.L.R. 85 (87); *D.*, 34 A. 135 = 9 A.L.J. 54 = 13 Ind. Cas. 34.]

\* Second Appeal, No. 261 of 1892.

(1) 8 B. 25.

(2) 7 W.R. 366.

(3) 5 A. 266.

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18 B. 520.

SECOND APPEAL from the decision of Arthur H. Unwin, District Judge of Kanara.

Suit against two brothers (defendants Nos. 1 and 2) to recover money due on a promissory note passed by the elder of them (defendant No. 1) to the plaintiff for money borrowed by him as manager of his family. The plaintiff alleged that the two defendants were joint; loan was obtained by defendant No. 1 for trading purposes and for the family.

The first defendant did not appear, and the second defendant pleaded that there was no necessity for the loan, and alleged fraud and collusion between the plaintiff and the first defendant.

The Subordinate Judge passed a decree against the first defendant, but dismissed the suit as against defendant No. 2, and he ordered that his costs should be paid by defendant No. 1.

The first defendant appealed, and on appeal the District Judge raised an issue as to whether the debt contracted by defendant No. 1 was for other than family purposes. He required the second defendant to prove this issue, and found that he had failed to do [521] so. He varied the lower Court's decree by awarding plaintiff's claim against both defendants, one-half to be paid by each, and ordering the second defendant to pay all costs throughout.

The second defendant filed a second appeal.

*N. G. Chandavarkar* for the appellants (defendant No. 2).—In this suit the plaintiff claimed against us. The Subordinate Judge as against us dismissed his suit, but passed a decree against the first defendant. The plaintiff did not appeal as against us. It was the first defendant who appealed. His appeal is against the plaintiff, and resists plaintiff's claim against him. The first defendant could not appeal against the second defendant, and on the appeal brought by the first defendant against the plaintiff the District Judge had no power to vary the decree and make an order against the second defendant—*Greesh Chunder Singh v. Gour Mohun* (1); *Guadhar v. Mun Mohuuee Dossea* (2) and *Atma Ram v. Balkishen* (3). The District Judge was, therefore, wrong in requiring the second defendant to prove the issue raised by him. The plaintiff alleged the debt to be a family debt, and the burden of proof lay on him.

*Shamrao Vitthal*, for respondent No. 2 (the first defendant).—The defendants set up different cases in the lower Court, and the Judge found against us, and directed us to pay the costs of defendant No. 2. Under these circumstances we had a right to appeal and join defendant No. 2 as a respondent to the appeal. In filing the appeal our object was to get the finding of the Subordinate Judge, namely, that the debt was not a family debt, set aside. The cases relied on are, therefore, distinguishable.

No doubt, proper issues have not been framed; still the judgment clearly shows that the Judge has considered the whole of the evidence adduced by the parties, and that after a careful consideration he has come to the conclusion that defendant No. 2 has failed to prove his case.

*D. K. Gandhi*, for respondent No. 1 (plaintiff).

#### JUDGMENT.

SARGENT, C. J.—A preliminary objection has been taken that defendant No. 1 could not appeal as against himself and defendant No. 2. The Subordinate Judge's judgment, however, shows that he dealt with the

(1) 7 W.R. 49.

(2) 7 W.R. 366.

(3) 5 A. 266.

case at the hearing as if it raised not only [522] a question between the plaintiff and defendants, but also one between the defendants, as his decree directs defendant No. 1 to pay defendant No. 2's costs. This distinguishes the case from cases of *Gudadhar Banerjee v. Mussamat Mun Mohunee Dossea* (1) and *Atma Ram v. Balkishen* (2).

But we think that we cannot accept the finding of the lower appeal Court on the issue whether the debt was for a family purpose. It has raised the issue in a form, and dealt with the evidence in a manner, which clearly implies that it considered the *onus* lay on the second defendant to show that the loan was not for a family purpose. This is a mistake, as there is no presumption, as the District Judge would appear to think, that a loan contracted by a manager of a Hindu family is for a family purpose. We must, therefore, without intending to express any opinion on the merits, reverse the decree and send back the case for a fresh decision by the lower appeal Court, having regard to the above remarks. Costs to abide the result.

*Decree reversed and case sent back.*

18 B. 522.

APPELLATE CIVIL.

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

GOVIND BALVANT SHIVNEKAR (*Original Applicant*), *Applicant v.*  
LAKSHMAN BIN NANA TELI (*Original Opponent*), *Opponent.\**  
[5th September, 1893.]

*Civil Procedure Code (Act XIV of 1892), s. 335—Principal and agent—Joint managers—Mortgage by one of such managers—Sale by mortgagee in execution of decree on mortgage and dispossession of the other manager—Application for restoration of possession by other joint manager.*

Kushambhat, the owner of certain property, gave the management of it to his three nephews, Govind, Gajanan and Narayan. Gajanan mortgaged the property to Kamalchand, who sued on the mortgage and got a decree. In execution of the decree the property was sold and purchased by Lakshman who was put in possession by the Court. Govind, one of the managers, then applied for possession, under s. 335 of the Civil Procedure Code (Act XIV of 1892), alleging that he had been wrongfully dispossessed.

*Held*, that the mortgagee Kamalchand got no title to the property by his mortgage from Gajanan against the real owner Kushambhat; and Govind, who was in actual possession as his manager (whether or not there were others equally entitled to share in the management), was entitled to prevent the purchaser [523] Lakshman taking possession, and having been dispossessed had a claim to be restored to possession under s. 335 of the Civil Procedure Code (Act XIV of 1892).

APPLICATION under the extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882) against an order passed by Rao Saheb N. V. Atrs, Subordinate Judge of Baramati.

This was an application under s. 335 of the Civil Procedure Code (Act XIV of 1882) to be restored to the possession of certain land.

The land belonged to one Kushambhat, who gave the management of it to his three nephews, Govind, Gajanan and Narayan. Gajanan alone,

\* Application No. 29 of 1893 under extraordinary jurisdiction.

(1) 7 W.R. 366.

(2) 5 A. 266.