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**GOVIND.**

own judicial conscience. His duty as a Magistrate is to prevent a disturbance of the peace, and provided he acts within the powers given him by law, there is nothing in the Code which would justify any of the parties in attempting to hamper the beneficent exercise of his discretion. Proceedings under section 145 of the Code are by section 435 expressly excluded from the class of proceedings liable to be dealt with on revision. And in all the cases in which the High Courts have interfered with proceedings purporting to have been taken under Chapter XII, that interference has been justified by the fact that the orders revised were not really orders under that chapter at all, but would have required, to validate them, powers which the Legislature has not seen fit to confer on any one. The powers which are conferred by Chapter XII appear, however, to be such that in order to attain their object, the prevention of disturbances and other offences affecting the public, they must necessarily be exercised with promptitude, and it would paralyse the Magistracy in the preventive action contemplated in Chapter XII if, at the moment when such action is about to be taken, parties to a dispute likely to cause a breach of the peace could tie the hands of the Magistrate by obtaining a stay of his proceedings and a transfer to another Court. For these reasons we must decline to interfere, but direct that the remarks in this order should be communicated to the First Class Magistrate concerned, so far as they apply to the proceedings taken or to be taken by him.

*Order accordingly.*

## APPELLATE CIVIL

*Before Mr. Justice Fulton and Mr. Justice Crowe.*

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BHIVA AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, v. VITHYA AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

*Vatan—Bombay Act III of 1874, Sec. 18—Suit for a declaration of right to a share in a vatan, and to participate in the emoluments of the vatan—Jurisdiction of the Civil Court to entertain such suit—Jurisdiction.*

Where the plaintiffs sued to obtain a declaration that they were entitled to a third share in a Mahárki vatan and to participate in the profits of the vatan,

\* Second Appeal, No. 73 of 1900.

*Held*, that under section 13 of Bombay Act III of 1874 the Civil Court had no jurisdiction to make the declaration sought.

*Parsha v. Lagmya* (1) followed.

SECOND appeal from the decision of J. B. Alcock, District Judge of Násik, reversing the decree of Ráo Sáheb V. G. Kaduskar, Subordinate Judge of Satána.

Plaintiffs sued for a declaration that as vatandár Mahárs they were entitled to a third share in a Mahárki vatan and to enjoy a third share in the profits of the vatan. They also prayed for an injunction restraining the defendants from obstructing them in the enjoyment of the said share, and for damages.

Defendants denied that the plaintiffs had any share in the Mahárki vatan.

The Court of first instance dismissed the suit on the ground that the plaintiffs had not proved their right to any share in the vatan in question.

On appeal the District Judge held that the plaintiffs had proved their claim. He, therefore, reversed the decision of the first Court and granted the declaration sought.

Against this decision defendants appealed to the High Court, contending (*inter alia*) that the Civil Court had no jurisdiction to entertain the suit under Bombay Act III of 1874.

*S. R. Bakhle*, for appellants (defendants).

*D. A. Khare*, for respondents (plaintiffs).

FULTON, J.—The plaintiffs sued to obtain a declaration that they as vatandár Mahárs are entitled to a third share in the Mahárki vatan and to enjoy a third share in the profits of the said vatan and to recover Rs. 6 as damages from the defendants, and to obtain an injunction restraining the defendants from obstructing them in the enjoyment of the said share.

There is no dispute about the vatan lands. The plaintiffs, it is admitted, are in possession of the Taralki Inám land and the defendants are in possession of the Mahárki Inám land, neither party claiming any share in the lands held by the opposite party. The whole dispute is about the plaintiffs' right to perform a share

(1) (1898) 13 Bom., 83.

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of the service for the villagers and to receive from them a share of the customary emoluments whether in money or kind (such as the skins of animals).

Now it seems to us that, having regard to section 18 of Bombay Act III of 1874, the Civil Courts have no jurisdiction to make the declaration sought, and consequently cannot award damages or grant the injunction. The decision in *Parsha v. Lagmya*<sup>(1)</sup> is an express authority on the point. Section 18 reserves to the Collector the duty of defining, with the aid of a panchayat, or otherwise as provided, the nature and extent of the right to levy in money or kind from individuals and the duties to be performed, and the persons, families or classes liable to make payment and to perform the duties: and, if the Civil Courts had concurrent jurisdiction to define such rights and duties of the Mahárs *inter se*, the object of the section, which seems to be to enable the Collector to adjudicate on such matters, if possible by means of a panchayat, would be frustrated. The learned pleader for the respondents referred us to Part X of the Act; but that part, while conferring on the Collector certain powers for the registration of the names of vatandárs and the determination of their respective responsibilities and duties, does not conflict in any way with the provisions of section 18. He also referred us to the decision in *Govind v. Bapuji*<sup>(2)</sup>, which, however, turns on different sections of the Act relating, as it does, to a kulkarni vatan in regard to which there is no section similar to section 18.

Whether a suit by Mahárs would lie for a declaration that they were members of a Mahárki vatan, remains undecided. The present suit, in which the plaintiffs claim a third share in the vatan and to receive a third share of the profits, seems clearly to clash with the Collector's jurisdiction under section 18 to define the nature and extent of the right to levy the emoluments in money or kind, and the persons, families or classes liable to perform the duties.

After such rights and duties have been duly defined, the Civil Courts may have jurisdiction to enforce them; but we think that they have no power to declare their nature or extent.

(1) (1888) 13 Bom., 83.

(2) (1893) 18 Bom., 516.

We must, therefore, reverse the decree of the lower Appellate Court and reject the claim. But as the question of jurisdiction was not raised by the defendants in either of the lower Courts or taken in the memo. of second appeal, and time had consequently to be given for argument, we think it fair to direct that the parties severally pay their own costs throughout.

*Decree reversed.*

## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Crowe.*

GUDDAPPA AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v.  
TIRKAPPA (ORIGINAL DEFENDANT), RESPONDENT.\*

*Res judicata—Civil Procedure Code (Act XIV of 1882), Sec. 13, Explan. II—  
Different suits for the same land alleging different titles.*

The plaintiffs sued to recover certain land, alleging that on the death of the widow of the former owner they became entitled as reversioners. They had previously sued the defendant for the same land claiming as the surviving members of the joint family to which the former owner belonged. That suit had been dismissed.

*Held*, that the present suit was barred by the provisions of section 13 of the Civil Procedure Code (Act XIV of 1882).

SECOND appeal from the decision of R. J. C. Lord, District Judge of Dhárwár, reversing the decree of Ráo Sáheb Ezra Reuben, Second Class Subordinate Judge of Háveri.

Suit to recover possession of land. The plaintiffs were first cousins of one Ningappa, who died in 1870 leaving a widow named Chenbasava. She died in 1894 and the plaintiffs took possession of the land in dispute. The defendant Tirkappa was the brother of Chenbasava, and he filed a suit in the Mámíatdár's Court for possession, alleging that his sister Chenbasava had transferred the land to him. The Mámíatdár passed a decree in his favour. The plaintiffs in collusion with the village officers managed to delay the delivery of possession to the defendant and they filed a suit (No. 19 of 1895) in the Subordinate Judge's Court claiming the land as the co-parceners of their cousin Ningappa and

\* Second Appeal, No. 198 of 1900.

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