1900.

VENKAPPA BAPU v. JIVAJI KRISHNA.

of spiritual purposes was not exhausted by the first adoption. The second adoption was necessary to perform those rites which had to be repeated every year. The attainment of ceremonial competency by reason of investiture or marriage of the first son, whether natural or adopted, could not dispense with this necessity of second adoption to continue these rites. As has been shown above the sacra represent not only the idols in the place of worship, but also the rites and the services to the manes which have to be performed in memory of the father at least twice a year though not more. The argument of ceremonial competency is thus without much force. Spiritual efficacy of worship and oblation really represent the services the son has to render to his father all his life and that makes it necessary for the widow to adopt when her son dies without issue. The mention of investiture, marriage or competency as limitations on the widow's power has reference more to the ceremonial law than to the civil law as administered by the Court, and the whole current of recent decisions has been to base this limitation solely on the question whether the widow's act of adoption derogated from her own rights or the vested rights of others. The vested rights of no other relations were affected by Tulsawa's adoption of the plaintiff.

We therefore confirm the decree of the Lower Court and dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Ranade and Mr. Justice Crowe.

1900. *November* 5.

LAKSHMAN (ORIGINAL PLAINTIFF), APPELLANT, *v.* ANTAJI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Land Revenue Code (Bombay Act V of 1879), secs. 119, 120 and 121—Boundary dispute—Settlement of such dispute by Collector—Civil Court's jurisdiction—Jurisdiction.

Section 121 of the Land Revenue Code (Bombay Act V of 1879) must be read along with sections 119 and 120 of the Code.

It is only when a boundary dispute arises between the owners of adjoining lands, and the Collector is called upon to determine the dispute, that his determi-

* Second Appeal, No. 346 of 1900.

nation becomes final under section 121 of the Code so as to oust the jurisdiction of the Civil Court.

SECOND appeal from the decision of Ráo Bahádur Mahadeo Shridhar, First Class Subordinate Judge, A.P., of Ratnágiri, reversing the decree of Ráo Sáheb K. H. Kirkire, Second Class Subordinate Judge at Vengurla.

Plaintiff Lakshman Narayan Kamat was the owner of a plot of land (Survey No. 658) and the defendants Antaji Yashwant and others were owners of a neighbouring plot (Survey No. 650).

Survey No. 658 lay to the west and Survey No. 650 to the east of a public road which ran between the two plots of land.

At the time of the survey settlement no dispute was raised before the survey officers as to the boundaries of these plots.

The plots in dispute were situate on the east of the public road, *i. e.* on the side of defendants' land.

In 1896 plaintiff sought to recover possession of the plots in dispute as forming part of his land, alleging that he had been dispossessed of them by defendants in 1889.

Defendant No. 1 denied the alleged dispossession and contended (*inter alia*) that the plots in dispute were included within the boundaries of his land and had been in his possession for more than twelve years.

Defendants Nos. 2 to 4 did not contest the suit.

The Court of first instance awarded plaintiff's claim, holding that the boundary marks had not been correctly laid down at the time of the survey and that the plots in dispute belonged to plaintiff.

This decree was reversed, in appeal, by the First Class Subordinate Judge, A.P., of Ratnágiri, who held that the dispute being substantially a boundary dispute, the Court had no jurisdiction to entertain the suit under section 121 of the Land Revenue Code (Bombay Act V of 1879).

Against this decision plaintiff preferred a second appeal to the High Court.

V. G. Bhandarkar for appellant (plaintiff).

Ráo Bahádur *G. N. Nadkarni* for respondent No. 1 (defendant No. 1).

1900.

LAKSHMAN v. ANTAJI.

RANADE, J.:—In this case the original claim was for possession and profits of certain plots of land which plaintiff claimed fell within his thikán and the defendant said were included in his thikán. The defendant did not urge in the first Court that the dispute was really a boundary dispute.

Both the lower Courts held it proved that the plots in dispute, as settled by the survey map, fell within respondent's No. 650, and not appellant's No. 658. The first Court, however, held that the survey boundary marks were not correctly laid down at the time of the survey, and it decided, on the evidence, that the plots in dispute belonged to the plaintiff-appellant before us. In appeal the lower Appellate Court held that as the dispute was really a boundary dispute, the decision of the survey officer was final under section 121 (Land Revenue Code), and it accordingly dismissed the claim.

There can be no doubt that the lower Appellate Court was in error in holding that the present case fell under section 121, Land Revenue Code. Section 121 must be read along with sections 119, 120. There must be a boundary dispute between the owners of neighbouring numbers, and when there is such a dispute the law gives power to the Collector to make a final determination of the dispute with the help of the survey record and other evidence. There is nothing in this case to show that any dispute was thus raised before the survey officers when the survey map was prepared, nor was there any dispute raised which the Collector had to adjudge under section 121. The lower Appellate Court's view, therefore, of the application of section 121 to this case is obviously mistaken. The cases cited in the judgment presuppose that there had been a settlement by the Collector, either proved or alleged by the parties. As the present dispute has now been going on over twelve years, we do not think it will be fair to dismiss the claim as suggested by the respondent. Following the decisions in *Krishnarav Sitaram Paranjpe* v. *Lakshman Ganoji More*,[1] *Bala bin Joti Shirke* v. *Nana bin Dhulappa Hunargi*,[2] *Trimbak Narayan Palekar* v. *Joseph Braz D'Souza*,[3] we think that we must reverse the decision of the lower Appellate Court,

(1) (1883) P. J. p. 191. (2) (1898) P. J. p. 41.
(3) (1890) P. J. p. 152.

and in remanding the case we direct it to ascertain if there has been any decision by the Collector under section 121 and decide the case accordingly. If there has been no such decision, it should require the plaintiff-appellant to apply to the Collector, and secure a decision of that officer, and then the lower Appellate Court should dispose of the case. The costs will depend upon the final decision, and must be settled by the lower Appellate Court.

Decree reversed and case remanded.

1900.

LAKSHMAN v. ANTAJI.

APPELLATE CIVIL.

Before Mr. Justice Ranade and Mr. Justice Crowe.

THE ANKLESVAR MUNICIPALITY (ORIGINAL DEFENDANT), APPELLANT, *v.* RIKHAVCHAND KAPURCHAND (ORIGINAL PLAINTIFF), RESPONDENT.*

1900. *November* 19.

Municipality—Bombay District Municipal Act (VI of 1873), secs. 17, 48 and 64—Street—Public street—Street lighted and swept by Municipality.

The mere circumstance that a street is lighted and swept by a Municipality is not of itself sufficient to convert a private into a public street.

SECOND appeal from the decision of Ráo Bahádur Krishnamukh A. Mehta, Acting First Class Subordinate Judge, A.P., of Broach, reversing the decree of Khán Sáheb J. E. Modi, Second Class Subordinate Judge at Anklesvar.

Plaintiff Rikhavchand Karpurchand was owner of a house situate in the Mewára Falia Street at Anklesvar. In front of this house he had an *otla* abutting on the street.

The street contained about fifty houses. It was open at one end only. At this end there was a gate which was closed at night by the residents of the street.

The street, however, was lighted and swept by the Municipality.

On the 26th of March, 1896, the Municipality removed the *otla* from the front of the plaintiff's house, on the ground that it was an encroachment on a public street.

* Second Appeal, No. 139 of 1900.