

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Jacob.

1903.
September 29.

PURUSHOTTAM BHASKAR NADKARNI (ORIGINAL PETITIONER),
APPELLANT, v. BALKRISHNA PANDURANG NADKARNI AND OTHERS
(ORIGINAL OPPONENTS), RESPONDENTS.*

*Civil Procedure Code (Act XIV of 1882), section 265—Execution of decree
—Partition by Collector—Objections to the partition—Court's jurisdiction
to hear the objections.*

Where a decree is sent to the Collector for execution under section 265 of the Civil Procedure Code (Act XIV of 1882), and the Collector contravenes the decretal command of the Court or otherwise acts *ultra vires*, his action is subject to the control and correction of the Court which passed the decree and sent it to him for execution.

Dev Gopal v. Vasudev⁽¹⁾ and *Ganaji v. Dhondu*⁽²⁾ followed.

SECOND appeal from the decision of W. Baker, Assistant Judge of Ratnágiri, confirming the order passed by K. N. Bhide, Subordinate Judge of Vengurla.

Balkrishna Pandurang Nadkarni (respondent 1) brought a suit (Suit No. 179 of 1892) to recover his share by partition of certain lands and joint possession of his shares in other lands.

The Subordinate Judge ordered that the plaintiff should recover separate and joint possession of the shares as asked for in the plaint, and ordered that the defendants should get separate possession of their shares.

On appeal, this decree was "varied by adding a direction that lands yielding yearly Rs. 50 as net profits shall be given to defendant No. 16 out of the property coming to the shares of the plaintiff and defendants 12 to 15."

The application (No. 343 of 1898) to execute this decree was referred by the Subordinate Judge to the Collector for making a partition under section 265 of the Civil Procedure Code (Act XIV of 1882).

The Collector effected a partition, which was objected to by some of the defendants. One of the grounds of objection was :

* Second Appeal No. 246 of 1903.

(1) (1887) 12 Bom. 371.

(2) (1890) 14 Bom. 450.

"That in violation of the decretal order defendant No. 16 has not been allotted land yielding an income of Rs. 50 out of the land that was to go to the shares of plaintiff and defendants 12 to 15."

The Subordinate Judge dismissed the objections on the ground that "the Court has no jurisdiction to interfere with the partition made by the Collector: *Shrinivas v. Hanmant* (I. L. R. 15 Bom. 527)." In dealing with the particular objection set out above, he remarked: "The decree of the Appellate Court directs that lands yielding yearly Rs. 50 as net profits should be given to defendant No. 16 out of the property coming to the shares of the plaintiff and defendants 12 to 15. This direction has not been obeyed, as appears from the Circle Inspector's report accompanying Exhibit 8. But there was no help. In execution of the decree defendant No. 16 has not applied for partition of his share. So have not defendants 12 to 14 as well. The direction could not, therefore, be carried out."

An appeal against this order was dismissed by the Lower Appellate Court with the remark: "It is unnecessary to go into the merits of the case, as no appeal lies to the Civil Court against a partition made by the Collector under section 265, Civil Procedure Code. This is clearly laid down in *Shrinivas Hanmant v. Gurunath Shrinivas* (I. L. R. 15 Bom. 527)."

The petitioner appealed to the High Court.

C. A. Rele, for the appellant (applicant):—The decree in this case was sent to the Collector for execution under section 265 of the Civil Procedure Code (Act XIV of 1882). The Collector executing a decree for partition is a ministerial officer and he is not to contravene the command of the Court. The Court which made the decree has power to hear and decide objections to the division of the estate made by the Collector: *Dev Gopal v. Vasudev*⁽¹⁾; *Ganoji v. Dhondur*⁽²⁾; *Chinna Seetayya v. Krishnavanamma*⁽³⁾; *Krishnaji v. Damodar*⁽⁴⁾. Therefore the Lower Courts were wrong in holding that they had no jurisdiction to interfere with the partition made by the Collector. The case should be sent back for a decision on the merits. The case of *Shrinivas v.*

1903.

PURU-
SHOTTAM
BHASKAR
v.
BALKRISHNA
PANDURANG.

(1) (1887) 12 Bom. 371.

(2) (1890) 14 Bom. 450.

(3) (1896) 19 Mad. 435.

(4) (1903) 5 Bom. L. R. 648.

1903.

PURU-
SHOTTAM
BHASKAR
v.
BALKRISHNA
PANDURANG.

Gurunath⁽¹⁾ is distinguishable. The Collector did not carry out the directions in the decree.

S. S. Patkar, for the respondents No. 1 and 2 (opponents) :—
The case relied upon by the Lower Courts, viz., *Shrinivas v. Gurunath*⁽¹⁾ applies. The appellant did not apply for partition of his share. So, the direction in the decree could not be carried out.

CHANDAVARKAR, J.:—The Lower Courts are not right in supposing that a Civil Court has no jurisdiction to hear objections in any case to a partition effected by a Collector in the execution of a decree of that Court sent to him under section 265 of the Civil Procedure Code. The case⁽²⁾ relied upon by the Lower Courts does not support that view, and other decisions of this Court, for instance, *Dev Gopal Savant v. Vasudev Vithal Savant*⁽³⁾ and *Ganoji Utekar v. Dhondur*⁽⁴⁾, show that where a Collector has in partitioning an estate contravened the decretal command of the Court or otherwise acted *ultra vires*, his action is subject to the control and correction of the Court which passed the decree and sent it to him for execution. In the present case one of the objections raised by the appellant before us is that whereas the decree directed that out of lands to be awarded to the plaintiff and defendants Nos. 12 to 15 lands should be allotted to defendant No. 16 which can yield a net profit of Rs. 50 a year, the Collector has contravened that direction in the partition he has made. If that objection is good, that is, if there is such a direction in the decree and the Collector has made his partition without giving effect to it, his action would be clearly *ultra vires*, and the Court has jurisdiction to set aside the partition wholly or partially as the case may be, and ask the Collector to make a fresh partition in accordance with the terms of the decree. We express no opinion on the merits, but merely hold that the Courts below ought to go into the objections raised and decide whether each of them falls within their jurisdiction, and, if it does, it ought to be disposed of on the merits. We reverse the order of the

¹ (1890) 15 Bom. 527.

² *Shrinivas v. Gurunath* (1890) 15
Bom. 527.

³ (1887) 12 Bom. 371.

⁴ (1890) 14 Bom. 450.

Lower Court and remand the case to be dealt with by the Lower Appellate Court with reference to the remarks above. Costs to abide the result.

Order reversed. Case remanded.

1903.

PURU-
SHOTTAM
BHASKAR
v.
BALAKISHNA
PANDURANG.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Jacob.

KRISHNAJI SAKHARAM PINGLE (ORIGINAL DEFENDANT No. 1),
APPELLANT, v. ANANT AND KESHAVRAO AND OTHERS (ORIGINAL
PLAINTIFFS AND DEFENDANT No. 2), RESPONDENTS.*

1903.

September 30.

*Pensions Act (XXIII of 1871), section 6—Collector—Certificate—Civil
Court—Suit to recover share of allowance for particular years—Certificate
referring only to some years.*

A certificate granted by the Collector under the Pensions Act (XXIII of 1871) authorized the plaintiff to recover his share in the allowance for the years 1889-90 to 1896-97. On the strength of this certificate, the plaintiff brought a suit to recover his share of the allowance for the years covered by the certificate and also for the year 1897-98. The Lower Appellate Court disallowed plaintiff's claim so far as it related to the year 1897-98, on the ground that that year was not included in the certificate:—

Held, that the certificate given by the Collector might refer only to the plaintiff's share in the allowance for particular years, but if the Collector permitted the plaintiff to establish his right to a share in a Civil Court, the plaintiff was not bound under the Pensions Act to get a certificate for each year's allowance before suing for it. The general right being allowed and established, the right to each year's share follows as consequent upon it.

SECOND appeal from the decision of Gangadhur V. Limaye, First Class Subordinate Judge, A. P., at Poona, varying the decree passed by R. G. Bakhle, Subordinate Judge of Haveli.

The plaintiffs brought this suit to recover by partition the separate possession of certain property, and to recover their share in the allowance (Deshpande Hak) for the years 1889-90 to 1897-98.

* Second Appeal No. 53 of 1903.