APPELLATE CIVIL.

Before Mr. Justice Chandavarkar.

1909. *February* 12.

KRISHNAJI PANDURANG SATHE (ORIGINAL DEFENDANT), APPELLANT, *v.* GAJANAN BALVANT KULKARNI (ORIGINAL PLAINTIFF), RESPONDENT.*

Jurisdiction—Tipnis Pansare right—Right to levy toll on exports of paddy from foreign territory—Such a right is nibandha under Hindu law—The right is immoveable property—Suit to enforce the right in British Courts.

The plaintiff sued to recover from the defendant a certain sum of money on account of toll leviable, under a grant from the Peshwas and known as the Tipnis Pansare right, on paddy exported from the territory of the Punt Suchiv to Pen, *viâ* Umber Khind in British territory. The cause of action arose admittedly in foreign territory; but it was contended the suit lay in the British Courts because the defendant resided in British jurisdiction :—

Held, overruling the contention, that what the plaintiff claimed was an allowance granted by the Peshwa in permanence, and such an allowance, whether secured on land or not, being according to Hindu law, *nibandha,* was immoveable property.

The Collector of Thana v. *Hari Sitaram*(1), followed.

Held, further, that this immoveable property was situate, in the eye of law, in a foreign state; and that the British Court had no jurisdiction to try a suit for the determination of a right to or interest in the property, when the right was denied.

Keshav v. *Vinayak*(2), applied.

The Courts in India have jurisdiction to try actions relating to such property where the persons against whom relief is sought are living within the jurisdiction, but that is upon the ground of a contract or some equity subsisting between the parties respecting immoveables situated out of the jurisdiction.

SECOND appeal from the decision of F. X. DeSouza, District Judge at Thana, confirming the decree passed by S. G. Kharkar, Subordinate Judge at Pen.

Suit to recover a sum of money from the defendant.

The plaintiff was the holder of a right, known as the Tipnis Pansare right, which consisted in levying a certain fee or rate

* Second Appeal No. 668 of 1907.

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on all imports into and exports from the Songhad Taluka, which now forms part of the territory of Punt Suchiv of Bhor. The right in question was to levy two annas on every khandy of paddy carried from the territory of Punt Suchiv to Pen, *vid* Umber Khind. The right was conferred on the plaintiff by the Peshwas.

The plaintiff filed this suit to recover the sum due to him in exercise of this right from the defendant.

The defendant pleaded among other things want of jurisdiction.

The Subordinate Judge held that the suit was bad for want of jurisdiction. He said as follows:—

"*Keshav* v. *Vinayak*(1) shows that suits as to rights in respect of immovable property arising in States must be filed in the Courts of the States themselves. A *varshashan* allowance was in dispute in the above suit. Hence, in the present case the right to levy fees on carts passing by a particular road is also similar to the above right of *varshashan* allowance. Hence, the present suit must be filed in the Court of Pali and not in this Court."

This finding was on appeal reversed by the lower appellate Court, and the case was remanded for trial on merits. The learned Judge remarked:—

"The ruling in *Keshav* v. *Vinayak*(1) does not apply in the case. The *varshashan* referred to therein was a charge on the revenue of a village which is clearly different from the claim in the present case where it is a fee on carts taken from one place to another. In the case referred to, the *varshashan* was to be taken from the Nizam's territory at Aurangabad. There is no such thing in this case."

In trying the case upon its merits the Subordinate Judge found the plaintiff's claim proved. His decree was, on appeal, confirmed by the lower appellate Court.

The defendant appealed to the High Court.

P. P. Khare, for the appellant:—The question involved in this case is one of *nibandha*, which is immoveable property; and, therefore, the suit ought to have been instituted in the territories of the Native State where the right is to be exercised. See *Keshav* v. *Vinayak*(1) and Dicey's Conflict of Laws, Introduction.

(1) (1897) 23 Bom. 22.

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P. B. Shingne, for the respondent:—The suit is one for recovering an amount of money due in respect of a right. We do not sue to recover immoveable property, such a suit is governed by section 17 of the Civil Procedure Code of 1882.

We sue for money, and the defendant raises a question of title. In such a case the question of jurisdiction has to be decided by reference to the plaint and not by looking at the stand taken by the defendant.

CHANDAVARKAR, J.:—The action in this case was brought by the respondent to recover a certain sum of money from the appellant on account of toll leviable on paddy exported from the territory of the Punt Suchiv to Pen, viâ Umber Khind in British territory. The respondent alleged in his plaint, and it is found proved by both the Courts below, that under a grant from the Peshwas, who were the rulers at that time of the territory now owned by the Punt Suchiv, the respondent has acquired the right in that territory to levy a certain rate or cess on all imports into and exports from it. It goes by the name of the Tipnis Pansare right.

It is admitted before me that the cause of action arose in foreign territory but it is contended that the suit lies in our Courts because the defendant resides in British jurisdiction. What the respondent claims, however, is an allowance granted by the Peshwa in permanence, and such an allowance, whether secured on land or not, being, according to Hindu law, *nibandha*, has been held to be immoveable property: *The Collector of Thana* v. *Hari Sitaram*[1]. This immoveable property is situate, in the eye of law, in a foreign State, because, on the facts found, the right to levy the toll which the respondent claims is found to arise in the territory of the Punt Suchiv. To this state of facts the principle of the decision of this Court in *Keshav* v. *Vinayak*[2] applies. It was held there that a Court in British India has no jurisdiction to try a suit for the determination of a right to or interest in immoveable property situated outside British India, where the right is denied. In the present case

(1) (1882) 6 Bom. 546 at p. 559. (2) (1897) 23 Bom. 22.

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the respondent's claim has been contested by the appellant, and, though the suit is for a money claim, it is in reality a claim to immoveable property situate outside British territory.

Our Courts, no doubt, have jurisdiction to try actions relating to such property where the persons against whom relief is sought are living within the jurisdiction but that is "upon the ground of a contract or some equity subsisting between the parties respecting immoveables situated out of the jurisdiction." See the notes to *Penn* v. *Lord Baltimore*[1]. There is no contract or equity here. On the other hand, what the respondent claims and what is found on the evidence is that the ruling power of a foreign State has assigned to the respondent the right of that power to levy toll on certain articles in that territory. "The action is in the nature of an action for a penalty or to recover a tax; it is analogous to an action brought in one country to enforce the revenue laws of another. In such cases it has always been held that an action will not lie outside the confines of the last-mentioned State." *Sydney Municipal Council* v. *Bull*[2].

For these reasons the decree of the Court below must be reversed and the claim rejected with costs throughout on the respondent.

Decree reversed.

R. R.

(1) 1 Wh. & Tu. L. Cas. p. 768 (7th edn.). (2) [1909] 1 K. B. 7 at p. 12.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1909. *March 15.*

CHUNILAL HARICHAND GUJAR (ORIGINAL PLAINTIFF), APPELLANT, *v.* VINAYAK ANANDRAO (ORIGINAL DEFENDANT), RESPONDENT.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), sec. 2—"Agriculturist"—Interpretation—"Earns his livelihood"—Sources of income.

In ascertaining whether a man who has two or more sources of income of which the income from agriculture is one, occupies the status of agriculturist as defined in the Dekkhan Agriculturists' Relief Act (XVII of 1879), the Court

* Appeal No. 44 of 1908, from order.