

## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.*

SOMCHAND BHIKHABHAI AND OTHERS (ORIGINAL DEFENDANTS),  
 APPLICANTS, *v.* CHHAGANLAL KHUPCHAND AND ANOTHER (ORIGINAL PLAINTIFFS), OPONENTS.\*

1911.

February 7.

*Civil Procedure Code (Act V of 1908), section 93—Duties imposed upon  
 Collectors—Duties not to be discharged by subordinate.*

Duties which are imposed upon Collectors by Government under section 93 of the Civil Procedure Code (Act V of 1908) are of a very special nature, the discharge of which often requires serious consideration and they may not be discharged by the Collector's subordinate.

The conclusion that because an Assistant Collector was discharging the functions of the Collector under the provisions of section 11 of the Land Revenue Code (Bom. Act V of 1879) in revenue matters, he was, therefore, entitled to discharge his functions with reference to suits filed under section 92 of the Civil Procedure Code (Act V of 1908), is erroneous.

APPLICATION under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) against the order of M. B. Tyabji, District Judge of Broach, in original suit No. 10 of 1910.

The plaintiffs filed the present suit in the District Court at Broach under section 92 of the Civil Procedure Code (Act V of 1908). The plaint contained the following endorsement:—

Permission is granted under section 92-3 of the Civil Procedure Code.

G. WILES,

10th September 1910.

For Collector.

One of the two preliminary objections raised to the plaint was that the certificate to file the suit was not given by the Collector of the District. The District Judge overruled the objection for the following reasons:—

Secondly, it has been contended that the certificate has in this case been given by Mr. Wiles, who was Assistant Collector, not Collector of this District. It is well known that on the date of the certificate, the Collector was too ill to attend to the duties of his post, and that Mr. Wiles was performing those duties. There is an affidavit to this effect. The word Collector is not defined in the Civil Procedure Code.

\* Application No: 222 of 1910 under extraordinary jurisdiction,

1911.

SOMCHAND  
 BUKHA BHAI  
 v.  
 CHHAGANLAL.

The suit relates to property in Broach. Mr. Wiles was holding charge of the Broach Taluka as Assistant Collector on the date on which he signed the certificate. He was, besides, carrying on the revenue administration in the circumstances mentioned above. As the Collector was disabled, Mr. Wiles, being the only Assistant Collector in the District, succeeded temporarily to his office, and was legally authorized by sections 10 and 11 of the Land Revenue Code to perform all the duties and exercise all the powers of the Collector, including the power of granting permission to file this suit, until the present Collector took charge, on the 6th last. I therefore overrule the objection and decide the preliminary issue in the plaintiffs' favour.

The defendants preferred an application under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908), urging that the Assistant Collector Mr. Wiles was not the Collector under the circumstances contemplated by section 93 of the Civil Procedure Code (Act V of 1908) and a *rule nisi* was issued requiring the plaintiffs to show cause why the order of the District Judge should not be set aside.

*G. K. Parekh* for the applicants (defendants) in support of the rule.

*L. A. Shah* for the opponents (plaintiffs) to show cause.

SCOTT, C. J.:—This suit was filed in the District Court of Broach ostensibly under the provisions of section 92 of the Civil Procedure Code by certain persons interested in a certain charity property situate within the jurisdiction of that Court. Being a suit in the mofussil the consent of the Advocate-General was not necessary, provided the consent of a Collector or other officer of the local Government authorized previously by the local Government had been obtained.

The plaint bears the endorsement: "Permission is granted under section 92-3 of the Civil Procedure Code. G. Wiles, for Collector."

Now the person authorized by Government Resolution to consent to the institution of suits in the District of Broach is the Collector; and Mr. Wiles who is the Assistant Collector appears to have made the endorsement on the assumption that the Collector being ill he was entitled to discharge all his functions.

The duties which are imposed upon Collectors by Government Resolution under section 93 of the Code are duties of a very special nature, the discharge of which often requires serious consideration, and we have not been referred to any authority to justify the argument that where these duties are imposed upon the Collector they may be discharged by his subordinate.

Objection was taken on behalf of the defendants to the suit as not having been authorized by the proper officer. The District Judge, however, came to the conclusion that because Mr. Wiles as Assistant Collector was discharging the functions of the Collector under the provisions of section 11 of the Land Revenue Code in revenue matters, he was, therefore, entitled to discharge his functions with reference to suits filed under section 92 of the Civil Procedure Code.

In our opinion this is an erroneous view, and the learned Judge, in entertaining the suit in face of the objection, acted illegally in the exercise of his jurisdiction. We accordingly order the Judge to reject the plaint under rule 11, order 7, of the Civil Procedure Code. The opponents must pay the costs of this application.

*Plaint ordered to be rejected.*

G. B. R.

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## APPELLATE CIVIL.

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*Before Mr. Justice Chandavarkar and Mr. Justice Heaton.*

BALKRISHNA WAMNAJI GAVANKAR (ORIGINAL DECREE-HOLDER),  
APPELLANT, *v.* SHIVA CHIMA MHATRA AND OTHERS (ORIGINAL  
JUDGMENT-DEBTORS), RESPONDENTS.\*

1911.

February 13.

*Decree—Execution—Successive applications to execute decree—First darkhast made during the pendency of the previous darkhast—Decision on the first darkhast does not operate as res judicata if a new darkhast filed within time of the disposal of the previous darkhast.*

A decree obtained in 1898 was, after three intermediate applications to execute it, sought to be executed in 1903. This application was ordered by

\* Second Appeal No. 962 of 1909.