sion that the accident and the consequent injury were due entirely to negligence on the part of the plaintiff.

I dismiss the suit, and I must do so with costs.

Attorneys for the plaintiff: Messrs. *Kanga* and *Sayani*.

Attorneys for the defendants: Messrs. *Craigie, Blunt* and *Caroe*.

Suit dismissed.

B. N. L.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Rao.

KASHIRAM MANSING (ORIGINAL DEFENDANT 1), APPLICANT, *v.* RAJARAM WALAD DAYARAM PATIL (ORIGINAL PLAINTIFF), OPPONENT.*

1911. *July* 13.

Mamlatdars' Courts Act (Bom. Act II of 1906), sections 19, 23 (1), (2)(1)—Civil Procedure Code (Act V of 1908), section 115—Possessory suit—Decree of the Mamlatdar dismissing the suit—Application to the Collector—Revision—Non-interference with legal and regular findings of fact—Entry in Revenue Record.

A Collector acting under section 23 of the Mamlatdars' Courts Act (Bom. Act II of 1906) is not authorized to interfere with the findings of fact of the Mamlatdar in a possessory suit, the findings being on their face legal and regular and arrived after a consideration of the evidence on record.

The provisions of clause (2) of section 23 of the Act, which empower the Collector to interfere by way of revision when he considers any proceeding, finding or order in a suit to be improper, must be harmonized with the provision in clause (1) that there shall be no appeal from any order passed by a Mamlatdar.

* Application No. 87 of 1911 under extraordinary jurisdiction.

(1) Section 23 (1), (2) of the Mamlatdars' Courts Act (Bom. Act II of 1906) is as follows:—

23. (1) There shall be no appeal from any order passed by a Mamlatdar under this Act.

(2) But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.

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Semble: the word 'improper' in clause (2) of section 23 of the Mamlatdars' Courts Act (Bom. Act II of 1906) has no different meaning from the word 'irregular' occurring in the expression 'irregularity' in section 115 of the Civil Procedure Code (Act V of 1908).

The entry of a person's name as owner or occupier in the books of Revenue Authorities is not in itself conclusive evidence either of title or possession.

Fatma kom Nubi Saheb v. *Darya Saheb*(1) and *Bhagoji* v. *Bapuji*(2), referred to.

APPLICATION under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) against the order of A. H. A. Simcox, Collector of East Khandesh, reversing the decree of L. K. Kulkarni, Mamlatdar of Chopda, in possessory suit, No. 17 of 1910.

The plaintiff brought a possessory suit against the defendants in the Court of the Mamlatdar of Chopda, alleging that the land in dispute originally belonged to one Purushottam Chunilal, that the plaintiff acquired it under two purchase deeds dated the 6th October 1905 and 2nd February 1909, that he had been all along in possession and that the defendants had dispossessed him otherwise than by due course of law.

The defendants contended that they had never relinquished possession, that they had monetary transactions with Purushottam Chunilal, the plaintiff's alleged vendor, and that the sale to plaintiff was *benami* on their behalf.

Upon the said pleadings the Mamlatdar referred the parties to a Civil Court.

The plaintiff applied in revision to the Collector, who sent back the case to the Mamlatdar for a re-hearing. On the remand the Mamlatdar recorded all the evidence, oral as well as documentary, and found on the issues that the plaintiff was not in possession within six months before the suit was filed and that the defendants had not obtained possession otherwise than by due course of law. He, therefore, dismissed the suit.

(1) (1873) 10 Bom. H. C. R. 187 at p. 189. (2) (1888) 13 Bom. 75.

The plaintiff applied in revision to the Collector, who reversed the Mamlatdar's decree and ordered that possession be given to the plaintiff on the following grounds:—

I think the Mamlatdar was radically wrong. He considered the oral evidence and weighed it, but he did not consider the enormous weight of evidence of Government records in favour of plaintiff.

1. Plaintiff has got the khata of the land changed from defendants' names to his own at defendants' consent.

2. Plaintiff is the recognized owner in the Record of Rights.

3. Plaintiff has been recognized as the man from whom fees should be taken for sub-dividing the survey numbers.

4. Plaintiff pays the land revenue.

5. Plaintiff has a finding in his favour from the Mamlatdar himself (as Magistrate) in a trespass case relating to this land.

I cannot see how all this evidence can be neglected, or can fail to prove plaintiff's possession.

Defendant 1 preferred an application under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908), urging *inter alia* that all the documents referred to by the Collector in his judgment would be no evidence of possession and that the Collector acted irregularly and beyond the jurisdiction vested in him by law. A *rule nisi* was issued calling upon the plaintiff to show cause why the order of the Collector should not be set aside.

Branson, with *J. R. Gharpure*, for the applicant (defendant 1) in support of the rule.

Shortt, with *S. V. Bhandarkar*, for the opponent (plaintiff) to show cause.

SCOTT, C. J.:—This is an application to us to exercise our revisional powers under section 115 of the Civil Procedure Code with reference to an order passed by the Collector of East Khandesh purporting to be made under the revisional powers conferred upon him by section 23 (2) of the Mamlatdars' Courts Act (Bombay Act II of 1906).

The applicant was the defendant in a suit instituted in the Court of the Mamlatdar by the opponent. The Court has power under the Mamlatdars' Courts Act to give immediate possession of

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lands used for agriculture to any person dispossessed or deprived thereof otherwise than by due course of law provided that the suit is brought within six months from the date on which the cause of action arose, the cause of action being deemed to have arisen on the date of the dispossession.

It is provided in section 19 that if the plaintiff avers that he has been unlawfully dispossessed of any property the Mamlatdar shall proceed to hear all the evidence that is then and there before him and try the following issues:—

(1) Whether the plaintiff or any person on his behalf or through whom he claims was in possession or enjoyment of the property or use claimed up to any time within six months before the suit was filed, and (2) whether the defendant is in possession at the time of the suit, and, if so, whether he obtained possession otherwise than by due course of law.

When the case came first before the Mamlatdar, that officer, being of opinion that the dispute between the parties was of a complicated nature fit to be decided in the Civil Court, referred the parties to a Civil Court and came to no finding upon the statutory issues.

There was an application under section 23 (2) of the Mamlatdars' Courts Act to the Collector that the Mamlatdar's order should be set aside and that he should be directed to hear the case. The Collector on that application set aside the order and directed the Mamlatdar to hear the case. The Mamlatdar then heard the case and recorded evidence, both oral and documentary, and decided the statutory issues in favour of the defendant. Accordingly the suit was dismissed with costs.

An application was then made to the Collector to set aside the order of the Mamlatdar, and the Collector has set aside the order upon the ground that although the Mamlatdar has considered the oral evidence and weighed it, he has not considered the enormous weight of evidence of Government records in favour of the plaintiff, namely, (first), the plaintiff has got the *khata* of the land changed from the defendants' names to his own at the defendants' consent, (secondly), the plaintiff is the recognized owner in the Record of Rights, (thirdly), the plaintiff has been

recognized as the man from whom fees should be taken for sub-dividing the survey numbers, (fourthly), the plaintiff pays the land revenue, and (fifthly), the plaintiff has a finding in his favour from the Mamlatdar himself as a Magistrate in a trespass case relating to this land. The Collector then said he could not see how all this evidence could be neglected or could fail to prove the plaintiff's possession.

Now it has long been recognized that the fact that a person's name is entered as owner or occupier in the books of the Revenue Authorities is not in itself conclusive evidence either of title or possession: see the remarks of Sir Michael Westropp in *Fatma kom Nubi Saheb* v. *Darya Saheb*(1), and of Parsons, J., in *Bhagoji* v. *Bapuji*(2).

The last piece of evidence which the Collector mentions, namely, that the plaintiff has a finding in his favour from the Mamlatdar himself as Magistrate in a trespass case relating to this land, apparently refers to a statement of the impression left upon the mind of the Magistrate in a criminal case to which the plaintiff was not a party on the record with reference to possession of the land. The case was decided not upon the evidence before the Mamlatdar in the present suit.

It appears to us that the Collector, in weighing the evidence which was before the Mamlatdar and coming to a different conclusion of fact with reference to the plaintiff's possession upon the evidence upon the record, has assumed the powers of a Court of appeal and not of a Court of revision.

The provisions of clause (2) of section 23 which give the Collector power to interfere by way of revision when he considers any proceeding, finding or order in a suit to be improper must be harmonized with the provision in clause (1), that there shall be no appeal from any order passed by a Mamlatdar.

We, therefore, think that the word 'improper' must have reference to some proceeding, finding or order on the face of it tainted with some impropriety akin to illegality. The legislature which negatived the right of appeal cannot have intended that

(1) (1873) 10 Bom. H. C. R. 187 at p. 189. (2) (1888) 13 Bom. 75.

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the Collector should be free to act simply upon a difference of opinion between himself and the Mamlatdar as to the value or probative effect of parts of the evidence recorded by the Mamlatdar. We are not prepared, as at present advised, to hold that the word 'improper' has any different meaning from the word 'irregular' as occurring in the expression 'irregularity' in section 622 of the Code of 1882, or section 115 of the present Code. We are, therefore, of opinion that the Collector was not authorised by section 23 to interfere with the findings of fact of the Mamlatdar which were on their face legal and regular and arrived at after a consideration of the evidence recorded.

For these reasons we set aside the order of the Collector and restore that of the Mamlatdar with costs throughout.

The Rs. 100, deposited with the Collector, should be refunded to the applicant.

Order set aside.

G. B. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Rao.

1911. *July* 19.

THE MUNICIPALITY OF HUBLI (ORIGINAL DEFENDANT), APPELLANT, *v.* LUCUS EUSTRATIO RALLI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

District Municipal Act (Bom. Act III of 1901), sections 50 and 54—Hubli Municipality—Reclamation of the bed of a tank for Municipal Cotton Market—Damage caused to plaintiffs' goods by sudden and extraordinary heavy rain—Suit for damages against Municipality—Burden of proof as to negligence in the reclamation work—Suit not maintainable—Vis major.

The Hubli Municipality, a body corporate under the District Municipal Act (Bom. Act III of 1901) took steps to provide a Municipal Cotton Market and they selected for that purpose a site of a large and ancient tank which had largely silted up. The southern boundary of the tank was an embankment. In reclaiming the bed of the tank, the Municipality utilized a part of the embankment and made provision to prevent the flow of water. In the month

* First Appeal No. 194 of 1909.