

## APPELLATE CIVIL.

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

1910.  
August 16.

THE TALUKDARI SETTLEMENT OFFICER, GUJARAT (ORIGINAL DEFENDANT), APPELLANT, *v.* UMIASHANKAR NARSIRAM PANDYA (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Land Revenue Code (Bombay Act V of 1879), section 79A†—Gujarat Talukdari Act (Bombay Act VI of 1888)—Collector, powers of—Summary eviction—Persons in wrongful possession—Possession under a decree of Civil Court—Discretion of Collector—Jurisdiction of Civil Court to examine the order.*

The Talukdari Settlement Officer of Gujarat in exercise of his powers as Collector under section 79A of the Land Revenue Code (Bombay Act V of 1879) authorized the summary eviction of a person who was in possession of land under the decree of a Civil Court. In a suit brought to set aside the order :—

*Held*, that the powers given by section 79A of the Land Revenue Code, 1879, could only be exercised in cases of wrongful possession.

*Held*, also, that no finality was given to the Collector's decision by the Land Revenue Code or the Gujarat Talukdari Act; and the jurisdiction of the Civil Court to decide whether the person evicted was in rightful possession was not excluded.

APPEAL from the decree passed by Dayaram Gidumal, District Judge of Ahmedabad.

Suit for declaration and injunction.

\* First Appeal No. 120 of 1909.

† 79A. Any person unauthorizedly occupying, or wrongfully in possession of, any land—

(a) to the use and occupation of which he has ceased to be entitled under any of the provisions of this Act, or

(b) of which the occupancy right is not transferable without previous sanction under section 73A or by virtue of any condition lawfully annexed to the occupancy under the provisions of section 62, 67 or 68,

may be summarily evicted by the Collector,

The plaintiff Umiashankar Narsiram came into possession of the lands in dispute in execution of a decree of the Civil Court.

The judgment-debtor sued the plaintiff for a declaration that the lands in question were a talukdari estate which could not be sold without sanction of Government under section 31 of the Gujarat Talukdars' Act, 1888. It was held that the lands were not a talukdari estate.

Subsequently, the Talukdari Settlement Officer of Gujarat purporting to act under section 79A of the Land Revenue Code (Bombay Act V of 1879), gave a notice of summary ejectment to the plaintiff.

The plaintiff filed a suit against the Talukdari Settlement Officer, asking for a declaration that the defendant's order was bad in law and for an injunction restraining the latter from interfering with the plaintiff's possession of the lands.

The District Judge decreed the plaintiff's claim.

The defendant appealed to the High Court.

*G. S. Rao*, Government Pleader, for the appellant.

*L. A. Shah*, for the respondent.

CHANDAVARKAR, J.:—Section 79A of the Land Revenue Code, as amended by Act VI of 1888 (the Gujarat Talukdars' Act), confers on the Collector the power to evict summarily any person who is found in "wrongful possession" of a *talukdari* land or estate. It is only in cases of wrongful possession that the power can be exercised, and though for the exercise of the power the Collector has to form his own opinion and decide whether in any particular case the possession is wrongful, there is no provision in either the Land Revenue Code (Bombay Act V of 1879) or the Gujarat Talukdari Act (Bombay Act VI of 1888) which gives finality to the Collector's order of eviction so as to exclude the jurisdiction of a Civil Court to decide that the person evicted by that order was in rightful occupation. In the present case the respondent was put into possession by a competent Court of law after an adjudication that as against the *Talukdar* he (the respondent) was entitled to the land in dispute. If that adjudi-

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cation and the lawful possession had in consequence of it bound the *Talukdar* as *res judicata*, it is not open to any authority, in the absence of any express provision of law, to set aside the adjudication of a competent Court as a nullity and as not binding him merely because section 79A empowers him to evict a person "in wrongful possession". The possession here was not wrongful; and on that ground I am of opinion the decree in appeal ought to be confirmed with costs.

HEATON, J.:—Under cover of section 79A of the Land Revenue Code (Bombay Act V of 1879), the Talukdari Settlement Officer has assumed to himself the power to decide a point which had already been decided by a Court of competent jurisdiction; and further he has assumed to himself the power to decide that what the Court had declared to be right was wrong. The precise point he decided was whether the Talukdar or his vendor was entitled to possession of the particular land in suit. That was the identical point which had been decided by the Court. Section 79A of the Land Revenue Code contemplates a reasonable ground for proceeding on the part of the Collector before he summarily evicts under that section. In this case there was not a reasonable ground for proceeding. It is not reasonable, under our system of administering justice for an executive officer to set at naught the decision of a competent Court and to act directly contrary to it, in a matter solely affecting the rights of the parties whose dispute had been determined by the Court. I think that the Talukdari Settlement Officer was singularly ill-advised in acting as he did and I think that the injunction given by the Court below is perfectly correct.

*Decree confirmed.*

R. R.