

conclusion is in accordance with the list given by the late Rao Saheb Mandlik in his Hindu Law, p. 372.

The decree is, therefore, confirmed with costs.

Decree confirmed.

R. R.

1911.

TRIKAM
PURSHOTAM
v.
NATHA
DAJI.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

KESHAV BIN DHONDI SINDE AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS,
v. JAIRAM BIN GANGARAM PAWAR AND ANOTHER (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1911.

August 24.

Bombay Mamlatdars' Courts Act (Bombay Act II of 1906), section 23 †—Possessory suit—Collector's powers to revise—The powers can be exercised by Assistant Collector in charge of the district—Land Revenue Code (Bombay Act V of 1879), section 10. ‡

* Civil Extraordinary Application No. 99 of 1911.

† The Bombay Mamlatdars' Courts Act (II of 1906), section 23, runs 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.

(3) Where the Collector takes any proceedings under this Act he shall be deemed to be a Court under this Act.”

‡ The Bombay Land Revenue Code (Bombay Act V of 1879), section 10, runs as follows:—

10. Subject to the general orders of Government, a Collector may place any of his assistants or deputies in charge of the revenue-administration of one or more of the talukas in his district, or may himself retain charge thereof.

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of chapter XIII, perform all the duties and exercise all the powers conferred upon a Collector by this Act or any other law at the time being in force, so far as regards the taluka or talukas in his charge.

Provided that the Collector may, whenever he may deem fit, direct any such assistant or deputy not to perform certain duties or exercise certain powers, and may reserve the same to himself or assign them to any other assistant or deputy subordinate to him.

To such Assistant or Deputy Collector as it may not be possible or expedient to place in charge of talukas the Collector shall, under the general orders of Government, assign such particular duties and powers as he may from time to time see fit.

1911.

KESHAV
v.
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An Assistant Collector, who is placed in charge of portions of a district under section 10 of the Bombay Land Revenue Code (Bombay Act V of 1879), has the power to exercise all the powers conferred upon the Collector by section 23 of the Bombay Mamlatdars' Courts Act (Bombay Act II of 1906).

THIS was an application under section 115 of the Civil Procedure Code (Act V of 1908), to revise the order passed by N. J. Wadia, Assistant Collector of Sholapur, reversing the order passed by J. R. Gaikwad, Mamlatdar of Karmala.

Keshav and his brother filed a suit under the provisions of the Bombay Mamlatdars' Courts Act (Bombay Act II of 1906) in the Court of Mamlatdar of Kamala, praying for an injunction restraining the defendants from disturbing them (the plaintiffs) in their possession of certain lands. The Mamlatdar decided the suit in the plaintiffs' favour. The defendants preferred an application for revision to the Collector. It was heard by the Assistant Collector who was placed in charge of portions of the district under the provisions of section 10 of the Bombay Land Revenue Code (Bombay Act V of 1879). In view of certain documents that were produced before him, the Assistant Collector revised the order passed by the Mamlatdar and dismissed the suit.

The plaintiffs applied to the High Court.

Branson, with *N. V. Gokhale*, for the applicants.

K. H. Kelkar, for the opponents.

BEAMAN, J. :—This rule was issued calling upon the opponent to show cause, why an order passed by Mr. Wadia, Assistant Collector of Sholapur, purporting to revise the decree of a Mamlatdar's Court, should not be set aside, as being in the first place a nullity, or failing that, as having been made without jurisdiction or in excess of the jurisdiction vested in that Officer.

The principal point to which our attention has been invited is whether an Assistant Collector, merely in virtue of being placed in revenue charge of certain portions of a district, is thereby empowered to exercise all the powers conferred upon the Collector of the district by section 23 of the Mamlatdars' Courts Act (Bombay Act II of 1906),

On a first view, it would appear that an Assistant Collector could not be so authorized; but in opening his case Mr. Branson very candidly, and very rightly, I think, drew our attention to section 10 of the Land Revenue Code; and after having given that section our very best and most careful attention, with special reference to the arguments which Mr. Branson has used against its applicability here, we feel unable to escape from the force of the direct language used. If language is ever to mean anything, when it is perfectly plain and unambiguous, the language of this section, we think, must be taken in its natural sense. That section enacts that after certain conditions precedent have been fulfilled, an Assistant Collector thus placed in charge of portions of a district is empowered to exercise all the powers conferred upon the Collector by this Act or any other law at the time being in force within the local limits of that portion of the district, of which he has been placed in charge. It has been very strenuously contended that the words "or any other law at the time being in force" having regard to the general structure of the section and to its place in the Land Revenue Code, ought to be restricted to laws or Acts *ejusdem generis*: but we think that that would be stretching interpretation too far; and had we had any doubt of what Government intended when this Land Revenue Code was passed, a Resolution, (which of course is no binding authority upon us, but serves to throw useful light upon this question, cited in a footnote to section 10 in Sathe's Edition of the Land Revenue Code), goes far to dispel that doubt.

We were referred in the course of the argument to an unreported decision of Jenkins, C. J., and Batchelor, J., upon what appears to have been a very similar point. There the Rule was made absolute, but no reasons were given. I have consulted my Brother Batchelor and he assures me that so far as his memory goes section 10 was never referred to in that argument or brought to the notice of that Bench.

The recent case of *Somchand Bhikhabhai v. Chhaganlal*⁽¹⁾, decided by Scott, C. J., and Batchelor, J., under section 11 of

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the Land Revenue Code, plainly turned upon a different point and is governed by quite different principles.

Here, we think, we must give its natural effect to the language of section 10 and hold that an Assistant Collector put in charge of any portion of a district is within that portion of the district clothed with all the authority and powers of a Collector conferred by the Land Revenue Code or by any other law at the time being in force. The Mamlâtdars' Courts Act is such a law and it confers upon the Collector powers of revision, which within his territorial limits, the Assistant Collector was, we think, empowered to exercise. It cannot, therefore, be said that the order complained of was in law a nullity for this reason.

It was then contended that even if the Assistant Collector had power to revise the proceedings of the Mamlâtdar's Court, he exceeded his jurisdiction by admitting fresh documentary evidence; and in that connection we have been referred to another decision of Scott, C.J., and Rao, J., in *Kashiram Mansing v. Rajaram*⁽¹⁾, in which those learned Judges have certainly held that the Collector who, while revising the Mamlâtdar's decree admits evidence, thereby exceeds his jurisdiction, and that is a sufficient ground to warrant the interference of the High Court in the exercise of its superintending power. Doubtless this is a similar case; but the exercise of this extraordinary power, vested in the High Court, is always a matter of discretion; and having regard to the facts which have been stated here, particularly that litigation is actually in progress and may soon be expected to settle the matters in dispute between the parties we do not feel called upon now to interfere with the revisional order passed by the Assistant Collector. We do not think it necessary to do so to avert any material and otherwise irreparable injustice.

For these reasons we think that the Rule must be discharged with costs.

Rule discharged.

R. R.

(1) (1911) 35 Bom. 487.