

APPELLATE CIVIL.

Before Mr. Justice Russell and Mr. Justice Chandavarkar.

PANDURANG BHIWAJI, APPELLANT, v. GANGARAM GANU DEOKAR
AND OTHERS, RESPONDENTS.*

1911.

October 4.

*City of Bombay Improvement Act (Bombay Act IV of 1898)—Tribunal of Appeal—
Jurisdiction—Apportionment of compensation money—Questions of title of several
claimants.*

The Tribunal of Appeal constituted under the provisions of the City of Bombay Improvement Act (Bombay Act IV of 1898) has jurisdiction to decide questions relating to the apportionment of compensation money as between several claimants and also to decide questions of title.

APPEAL from the decision of the Tribunal of Appeal, constituted under the provisions of the City of Bombay Improvement Act (Bombay Act IV of 1898).

This was a reference made by the Special Collector to the Tribunal of Appeal for apportionment of compensation money which he awarded for the compulsory acquisition of a house and which was claimed by the several claimants before him.

The Tribunal of Appeal went into the question of title of each one of the claimants and apportioned the compensation money as between them.

One of the claimants appealed to the High Court:

Jayakar, with *M. W. Pradhan*, for the appellant.

Rangnekar, with *I. J. Samson*, for respondent No. 1.

T. A. Gandhi, for respondent No. 3.

V. S. Bhandarkar, with *Y. V. Bhandarkar*, for the added respondents.

RUSSELL, J. :—This was a reference for the apportionment of the sum of Rs. 7,142-14-6 awarded as compensation by the Special Collector in respect of a house acquired by the Bombay Improvement Trust.

The facts so far as they are material for this judgment are that one Ganu had three sons, Bhiva, Gangaram and Narayan.

* First Appeal No. 94 of 1910.

1911.

PANDURANG
BHIWAJI
v.
GANGARAM.

Gangaram was the step-brother to Bhiva and Narayan. The house in question was bought in 1869 for Rs. 700, the conveyance (Exhibit 1) being in the name of Bhiva who was then about nineteen years old and was working as a printer for about Rs. 30 a month. Gangaram was about two years the junior to Bhiva and two years senior to Narayan; and Narayan at the time of the purchase was about fifteen years of age working in a liquor-shop.

The Tribunal of Appeal held that the purchase money must have come from the father Ganu and (after making some necessary deductions immaterial for this case) that the balance available for apportionment amongst these three persons was Rs. 5,017-10-6, and they apportioned that sum between Gangaram and the descendants of Bhiva and Narayan in three equal parts respectively.

After the case had been argued by the appellant's counsel, Mr. Jayakar, at length, the question was raised whether this apportionment by the Tribunal of Appeal would oust the jurisdiction of the High Court in the matter. The point was raised by ground No. 18 of the grounds of appeal which is: "The Tribunal ought to have directed the parties to a regular suit, having regard to all the circumstances." This point involves a consideration of the position of the Tribunal of Appeal in such cases. But, as has been said, the point was not touched upon till the argument for the appellant was nearly concluded.

The Court of Tribunal of Appeal is appointed under section 48, clause (3), of the City of Bombay Improvement Act IV of 1898. We read clauses 1, 2, 3 and 10 of that section. In the Act there is no definition of "Court." By section 47 of the said Act certain portions of the Land Acquisition Act, I of 1894, are made to apply to the acquisition of land under Bombay Act IV of 1898. And schedule A of the City of Bombay Improvement Act sets out the portions of the Land Acquisition Act of 1894, regulating the acquisition of lands under the former Act.

In section 3 of the Land Acquisition Act, clause (d), "Court" is defined as meaning a principal Civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act. This clause expressly does not apply to the City of Bombay Improvement Act.

From this we infer that a "Special Judicial Officer" having been appointed by the Bombay Improvement Act he is vested with the power of "the Court" under the Land Acquisition Act, *i.e.*, a principal Court of civil jurisdiction. This mode of legislation is, in our opinion, very much to be deprecated. References to other Acts and the inclusion of them in subsequent Acts only lead to unnecessary confusion.

By Schedule A of the Bombay Improvement Act, Part IV of the Land Acquisition Act, which deals with the apportionment of compensation, does apply to the City of Bombay Improvement Act. The material section of Part IV in the Land Acquisition Act is section 30 which is as follows:—

"When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court."

In consequence of the decision of Sir Lawrence Jenkins in *Hari v. Secretary of State for India*⁽¹⁾, that the Tribunal of Appeal was not a Court of Justice and that the limited right of appeal under the City of Bombay Improvement Act did not come within either the extraordinary original, or the appellate and revisional civil jurisdiction of the High Court, because the local legislature had no power to control or affect by their Acts the jurisdiction or procedure of the High Court, as that power rested with the Imperial Parliament and with the Legislative Council of the Governor-General (see Statutes 24 and 25 Vict., c. 104), Act XIV of 1904 was passed by the Governor-General in Council, it having been considered advisable to legalize sub-section 11 of section 48 of the Bombay

1911.

PANDURANG
BHIWAJI
v.
GANGARAM.

(1) (1903) 27 Bom. 424.

1911.

PANDURANG
BHIWAJI
v.
GANGARAM.

Improvement Act by means of a short validating Act on the model of Act XII of 1888. Sections 1 and 2 of that Act enact as follows :—

1. The City of Bombay Improvement Act, 1898, shall, so far as regards the appellate jurisdiction conferred upon the High Court by section 48, sub-section (11), thereof, be as valid as if it had been passed by the Governor-General of India in Council at a meeting for the purpose of making Laws and Regulations.

2. Subject to the provisions of section 48, sub-section (11), of the said Act, the provisions of the Code of Civil Procedure with respect to appeals from original decrees shall, so far as they can be made applicable, apply to appeals under that sub-section, and orders passed therein by the High Court may, on application to the Chief Judge of the Small Cause Court, be executed by him as if they were decrees made by himself.

Section 3 prescribes for a period of limitation for such appeals.

It will, of course, be observed that this legislation does not get over the objection raised by Sir Lawrence Jenkins that the power to create Courts in India rests with the Imperial Parliament and with the Legislative Council of the Governor-General (see Statutes 24 and 25 Vict., c. 104). But for the purposes of this case it appears to us that sufficient jurisdiction has been conferred upon the Bombay Tribunal of Appeal to confer upon it the power to deal with and decide questions relating to the apportionment of the moneys directed by them to be paid in respect of compensation. Consequently in our opinion this objection fails. Whether any of the claimants in this case would be entitled to sue the other in the High Court and whether the latter would be entitled to plead *res judicata* in consequence of the decision of the Tribunal of Appeal on the question of title among the claimants is a question which it is unnecessary for us to consider, because it does not arise now. At present we are concerned with the bare question whether for the purposes of apportionment the Tribunal had power to go into and decide the question of title raised by the claimants *inter se*. That power it has, because without deciding it, it cannot apportion the amount of compensation. That it has power to determine the amount of compensation and apportion it is not denied. If it has the power so far, it follows it

has the power to decide the question of title also if that is necessary for the exercise of that power, for the two powers are in that case inter-dependent, and if the latter is denied, the former becomes ineffective and the Act unworkable. Whether the Legislature has taken away by the Act the remedy by way of a suit is another question not arising now.

But in our opinion, it would be highly desirable that these claims to apportionment involving questions of title should be decided by the High Court and not the Tribunal of Appeal, as it is obvious that very complicated questions may arise of law and fact upon which it would be more desirable to have the judgment of the High Court.

This appeal will accordingly be heard further.

[The appeal was heard further with the result that the decree passed by the lower Court was varied.]

Decree varied accordingly.

APPELLATE CIVIL.

Before Mr. Justice Russell and Mr. Justice Chandavarkar.

RUKHMINI KOM MAHADU LINGADE AND ANOTHER (ORIGINAL DEFENDANTS),
APPELLANTS, v. DHONDO MAHADU LINGADE (ORIGINAL PLAINTIFF),
RESPONDENT. *

1911.

October 16.

Civil Procedure Code (Act V of 1908), section 11—Res judicata—Co-plaintiff, res judicata as between—Civil Procedure Code (Act XIV of 1882), section 26—Joinder of parties.

The plaintiff D and his step-mother R (defendant) brought a suit against C to recover possession of certain ornaments which formed part of the estate of M, the father of D and husband of R. It was held by the Court of first instance that R was entitled to the ornaments, because they were her *stridhan*; but the appellate Court held that she was entitled to them not because they were her *stridhan*, but because she was the absolute owner of the property. D then sued R for a declaration that he, as son and heir to M, was entitled to hold the decree. The defendant in reply contended *inter alia* that the suit was barred by *res judicata* :—

Held, that the bar of *res judicata* did not apply, inasmuch as there was no final adjudication as between R and D, and in the first suit it was a matter of no

* Second Appeal No. 782 of 1911.