

## APPELLATE CIVIL.

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

1915

April 9.

SONU JANARDAN KULKARNI (ORIGINAL PLAINTIFF), APPLICANT, *v.*  
ARJUN WALAD BARKU KUNBI (ORIGINAL DEFENDANT) OPPONENT.<sup>9</sup>

*Bombay Mamlatdars' Courts Act (Bombay Act II of 1906), section 23 (a)—Possessory Suit—District Deputy Collector's authority to revise—Bombay General Clauses Act (Bombay Act I of 1904) section 3 (b)—The term "Collector" does not include "District Deputy Collector"—Land Revenue Code (Bombay Act V of 1879), section 10 (e).*

<sup>9</sup> Civil Extra Ordinary Application No. 273 of 1914.

(a) 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."

(b) The Bombay General Clauses Act (Bombay Act I of 1904), section 3, runs as follows :—

"3. (11) In this Act, and in all Bombay Acts made after the commencement of this Act, unless there is anything repugnant in the subject or context—"Collector" shall mean, in the City or Bombay, the Collector of Bombay and elsewhere the chief officer in charge of the revenue-administration of a district."

(c) 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.

The term "Collector" in section 23 of the Mamlatdars' Courts Act (Bom. Act II of 1906) does not include "District Deputy Collector" in view of the express definition of the term in section 3 of the Bombay General Clauses Act (Bom. Act I of 1904). A District Deputy Collector has, therefore, no authority to pass any order under the Mamlatdars' Courts Act (Bom. Act II of 1906).

*Keshav v. Jairam*<sup>(1)</sup> dissented from.

THIS was an application under section 115 of the Civil Procedure Code (Act V of 1908), to revise the order passed by G. V. Joglekar, District Deputy Collector, N. D. East Khandesh, reversing the order passed by S. G. Bhadbhade, Mamlatdar of Erandol.

The plaintiff filed a suit against the defendant under the provisions of the Mamlatdars' Courts Act (Bombay Act II of 1906) in the Court of the Mamlatdar of Erandol, praying for possession of certain fields. The Mamlatdar decided the suit in plaintiff's favour. The defendant preferred an application for revision to the District Deputy Collector who reversed the order of the Mamlatdar and directed that the property if already delivered into the possession of the plaintiff be restored to the defendant.

The plaintiff applied to the High Court.

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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."

(1) (1911) 36 Bom. 123

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*P. V. Kane* for applicant (plaintiff):—The District Deputy Collector had no jurisdiction to revise the order passed by the Mamlatdar under the Mamlatdars' Courts Act. Section 23 (2) of the Act authorises the Collector to revise the orders of the Mamlatdars. The word "Collector" is defined in the Bombay General Clauses Act (Bom. Act I of 1904), section 3 (11) to mean in the City of Bombay, the Collector of Bombay, and elsewhere the Chief Officer in charge of the Revenue Administration of a District. The District Deputy Collector is not the Chief Officer in charge of the Revenue Administration of a District. Jurisdiction can be conferred on the Deputy Collector only by importing section 10 of the Land Revenue Code into the Mamlatdars' Courts Act. But that cannot be done. The Mamlatdars' Courts Act is a complete enactment in itself so far as the powers of appeal and revision in proceedings under it are concerned. Section 10 authorises the Collector to place Assistant or Deputy Collectors in charge of the revenue administration of a Taluka or Talukas and to exercise all the powers of a Collector so far as those Talukas are concerned. Proceedings under the Mamlatdars' Courts Act are judicial and cannot be looked upon as part of the revenue administration of a District.

*P. B. Shingne* for opponent (defendant):—Section 10 of the Land Revenue Code (Bom. Act V of 1879) must be read alongside of the Mamlatdars' Courts Act. In *Keshav v. Jairam*<sup>(1)</sup> it was held by this Court that an Assistant Collector who is placed in charge of the revenue administration of portions of a District under section 10 of the Land Revenue Code has jurisdiction to revise the orders passed by a Mamlatdar under the Mamlatdars' Courts Act. Moreover, a civil Court would not have ordered delivery of possession in favour

<sup>(1)</sup> (1911) 36 Bom. 123.

of a landlord simply because the tenant failed to pay rent as stipulated.

*Kane* in reply :—If the provisions of the Land Revenue Code be imported into the Mamlatdars' Courts Act, anomalies would result. An appeal will lie against the order made by the Deputy Collector to the Collector under section 203 of the Land Revenue Code. This would be against the intention of the legislature as gathered from section 23 of the Mamlatdars' Courts Act.

SCOTT, C. J. :—This is a petition under section 115 of the Civil Procedure Code by the plaintiff in the Mamlatdar's Court at Erandol in East Khandesh who sued for possession of certain lands under the Mamlatdars' Courts Act. The Mamlatdar of Erandol after recording evidence ordered possession to be given to the applicant. An application was then preferred purporting to be in revision under section 23 of the Mamlatdars' Courts Act to the District Deputy Collector of East Khandesh who reversed the decision of the Mamlatdar of Erandol. The petitioner contends that the District Deputy Collector had no authority to act under the Mamlatdars' Courts Act. That Act is Bombay Act II of 1906. Section 23 provides : "There shall be no appeal from any order passed by a Mamlatdar under this Act. 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."

Now unless the term "Collector" includes "District Deputy Collector" in that section, the District Deputy Collector has no authority to act under the Mamlatdars' Courts Act. The expression "Collector" is not defined in the Act itself, but it is defined in the previous

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Bombay General Clauses Act (Bom. Act I of 1904), for the purpose of all Bombay Acts made after the 30th May 1904. Section 3 of that Act provides that: "In this Act, and in all Bombay Acts made after the commencement of this Act, unless there is anything repugnant in the subject or context, 'Collector' shall mean, in the City of Bombay, the Collector of Bombay, and elsewhere the chief officer in charge of the revenue-administration of a District." It is not contended that the District Deputy Collector is the chief officer in charge of the revenue-administration of the District of East Khandesh. But it is argued that by reason of certain powers having been delegated to the District Deputy Collector by the Collector under section 10 of the Land Revenue Code, the District Deputy Collector is, therefore, a Collector within the meaning of section 23 of the Mamlatdars' Courts Act of 1906. The Land Revenue Code, section 10, provides that: "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." The powers of a Deputy Collector would, therefore, not extend beyond the Taluka or Talukas of the District which shall have been placed specially in his charge, and he could not be the chief revenue officer in charge of the revenue-administration of a District. Chapter XIII, to which reference is made in section 10 provides that: "In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a Revenue-officer

under this Act or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not." If, therefore, the argument for the opponent is correct, and "any law for the time being in force," includes the Mamlatdars' Courts Act of 1906, an appeal would lie from the decision of the Deputy Collector under section 23 to the Collector, and from the Collector to the Commissioner, because there is no express provision to the contrary in the Act. The absurdity of this conclusion suggests that the words "any law for the time being in force" must relate to any law *ejusdem generis* with the Land Revenue Code and would not embrace the special law relating to Mamlatdars' Courts such as we have in the Act of 1906.

We have, however, been referred to a decision of a Bench of this Court in *Keshav v. Jairam*<sup>(1)</sup>, in which it was held that by virtue of the Land Revenue Code, section 10, an Assistant Collector in charge of portions of a District was entitled to exercise the revisional powers of the Collector under section 23 of the Mamlatdars' Courts Act. It is apparent from the report that the provisions of the Bombay General Clauses Act of 1904 were not brought to the notice of the Court, particularly the words "unless there is anything repugnant in the subject or context" of the Act to be construed, for Mr. Justice Beaman in his judgment states that, on a first view, it would appear that an Assistant Collector could not be authorised to exercise the revisional powers under section 23. In view of the express definition in section 3 of the General Clauses Act we feel bound to decide that the District Deputy Collector had no authority to pass any order under the Mamlatdars' Courts Act of 1906. He has, however,

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assumed to act judicially, and is, therefore, according to the ruling in *The Collector of Thanav. Bhaskar Mahadev Sheth*<sup>(1)</sup>, to be treated as a Court under the superintendence of the High Court whose proceedings can be revised under the extraordinary jurisdiction. The question then is what order should be passed under section 115. We declare that the order of the District Deputy Collector is a nullity as being without jurisdiction of any kind, and direct that the application of the defendant for revision under the Mamlatdars' Courts' Act be taken on the file of the Collector, and be disposed of by him according to law. Having regard to the decision in *Keshav v. Jairam*<sup>(2)</sup>, we think that there should be no order as to costs of this application.

*Order set aside.*

J. G. R.

(1) (1884) 8 Bom. 264 at p. 268.

(2) (1911) 36 Bom. 123.

## CRIMINAL REVISION.

1915.

April 30.

*Before Mr. Justice Beaman and Mr. Justice Macleod.*

EMPEROR v. A. GOODHEW.\*

*Merchant Seamen Act (I of 1859), section 33, clause 4—Merchant Shipping Act (57 and 58 Vic. C. 60), sections 114, clause 3, and 225, clauses (b) and (c)†—Wilful disobedience of lawful commands—Order given to transfer from one ship to another—Seaman disobeying the order—Clause about transfer in articles of agreement not ultra vires.*

\* Criminal Appeal No. 120 of 1915, subsequently turned into Revisional application.

† The material portions of the sections run as follows :—

SECTION 114, clause (3).—"The agreement with the crew shall be so framed as to admit of such stipulations, to be adopted at the will of the master and seamen in each case, whether respecting the advance and allotment of wages or otherwise, as are not contrary to law."