

## APPELLATE CIVIL.

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

1915.

September 3.

WASAPPA BIN TIMAPPA SONAGAR (ORIGINAL PLAINTIFF), APPELLANT v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT.\*

*Right of suit—Civil Court—Jurisdiction—Order of forfeiture passed by Magistrate—Criminal Procedure Code (Act V of 1898), sections 523, 524—Disposal of property—Sale proceeds credited to Government—Suit to recover the amount.*

The plaintiff's house was searched in connection with a dacoity and certain property was attached on suspicion. On a proclamation being issued by the 2nd Class Magistrate under section 523 (2) of the Code of Criminal Procedure, 1898, the plaintiff appeared before the Magistrate to establish his claim to the property. The claim was disallowed and an order was passed under section 524 of the Criminal Procedure Code, for sale of the property. The sale proceeds having been credited to Government the plaintiff brought a suit for the recovery of the amount. The defendant pleaded that a Civil Court had no jurisdiction to entertain the suit. The Assistant Judge decided the suit in plaintiff's favour. The District Judge, on appeal, dismissed the suit holding that as under section 524 the property was at the disposal of Government, Government had an absolute right to it; and that the special provisions relating to investigation of claims to property mentioned in section 523 made the decision of the Magistrate final and deprived the person aggrieved of any right of action.

On appeal to the High Court :—

*Held*, reversing the decree, that the order of the Magistrate disposing of the property under section 524 of the Criminal Procedure Code was not final and that it did not deprive the plaintiff of his right to establish his claim in a Civil Court.

*Queen Empress v. Tribhovan Manekchand*,<sup>(1)</sup> followed.

*Secretary of State for India in Council v. Vakhatsangji Meghrajji*<sup>(2)</sup>, discussed.

SECOND appeal against the decision of E. H. Leggatt, District Judge, Dharwar, reversing the decree passed by A. W. Varley, Assistant Judge at Dharwar.

Suit to recover damages for trespass to goods and conversion.

\* Second Appeal No. 628 of 1913.

(1) (1884) 9 Bom. 131.

(2) (1894) 19 Bom. 668.

Plaintiff's house was searched on the 9th July 1909; by the police of Dharwar and of the Savanur State, in connection with a dacoity which had been committed in the Savanur State and certain property was attached on suspicion.

On the 30th September 1909, the Second Class Magistrate issued a proclamation under section 523 (2) of the Code of Criminal Procedure, requiring any person having a claim to the ornaments to appear before him and establish his claim within six months. On the 17th January 1910 the plaintiff appeared to support his claim to the ornaments. The claim was disallowed, and on the 13th June 1910, an order was passed by the Sub-Divisional Magistrate under section 524 of the Criminal Procedure Code for sale of the ornaments. The sale took place accordingly and the sale proceeds were credited to Government.

The plaintiff filed the present suit on the 13th June 1911, to recover the amount of the sale proceeds (Rs. 258-12-0) from Government.

The defendant contended that the Civil Court had no jurisdiction to entertain the suit; that the claim was barred under article 2 of Schedule I of the Indian Limitation Act (IX of 1908); and that, under the provisions of section 524 of the Code of Criminal Procedure, the ornaments were at the disposal of the Government, inasmuch as the plaintiff in whose possession they were found, was unable to show that they had been legally acquired by him.

The Assistant Judge decreed the plaintiff's claim holding that the suit was maintainable in Civil Court. His reasons were as follows :—

“As regards the first issue, it is argued by the defendant that, inasmuch as by sections 520 and 524 (2) of the Code of Criminal Procedure an appeal is

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provided against orders passed under sections 517, 518, 519 and 524 (1) of the Code of Criminal Procedure, and only in connection with section 522 of that Code is any reference made to a civil suit; therefore, by implication the right of initiating civil proceedings as regards orders passed under sections 517, 518, 519 and 524 (1) is taken away. So in the case of *Secretary of State for India in Council v. Vakhatsangji Meghraji* (I. L. R. 19 Bom., 668), it was said (at p. 672), though the Court refrained from deciding the point: 'As section 524 allowed an appeal, it is doubtful whether the law contemplates a remedy by suit.' But in that case the property in question had clearly been found under circumstances which created suspicion of the commission of an offence (see p. 671). And it may well be that no civil suit could lie, the object of which was purely the same as that which might have been attained by an appeal under section 524 (2). But the object of this suit is different. It challenges the jurisdiction of the Magistrate to make any order at all with reference to these ornaments, for it denies that the ornaments were discovered under suspicious circumstances (see paragraphs 1 and 2 of the plaint). It has not the same scope as an appeal under section 524 would have had. I cannot, therefore, think that the right of instituting such a suit as this is taken away by anything which could be implied from Chapter 43 of the Code.

Nor does the defendant's case as to the maintainability of this suit receive support from what is said in *Ramachandra v. The Secretary of State* (I. L. R. 12 Mad., 105 at p. 108) to be an established principle, namely, "that when by an act of the legislature, powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the jurisdiction of the ordinary Courts is ousted and in case of injury the party cannot proceed by action." That principle is traced to the English cases of *Stevens v. Jeacoke* (11 Q. B. 731) and *West v. Downman* (14 Ch. D. III). What was said in *Stevens v. Jeacoke* (Sir) was this: 'It was a rule of law that an action will not lie for the infringement of a right created by statute, where another specific remedy for infringement is provided by the same statute' (at p. 741); and in *West v. Downman* it was said by Jessel, M. R. (at p. 120): 'It is a settled rule that if a statute creates a new right and gives a particular remedy for enforcing it, there is no other remedy.' The present case has nothing to do with the rights created by statute. So that the principle has no application here. For these reasons, then, the first issue must be decided in the affirmative.

The District Judge, on appeal by the defendant, found that under section 524 of the Criminal Procedure Code, the property was at the disposal of the Government and that the special provisions relating to the investigation of claims to property mentioned in section 523 of

the Code made the decision of the Magistrate final and deprived the person aggrieved of his right of action.

He, therefore, reversed the decree and dismissed the plaintiff's suit.

The plaintiff preferred a second appeal to the High Court.

*V. R. Sirur*, for the appellant.—The lower Court was wrong in holding that the Civil Court had no jurisdiction. The decision in the case of *Secretary of State for India in Council v. Vakhatsangji Meghraji*<sup>(1)</sup> does not decide the point in question and in so far as it decides the case on the merits it is in our favour. The case of *Queen-Empress v. Tribhovan Manekchand*<sup>(2)</sup>, the only authority on section 524 of the Criminal Procedure Code, is in our favour and the distinction sought to be drawn in the case of *Secretary of State for India in Council v. Vakhatsangji Meghraji*<sup>(1)</sup> is unreal.

The words "at the disposal of Government" in section 524 of the Criminal Procedure Code do not vest a title in Government and consequently cannot take away the civil remedy: see sections 88, 89 and 524 of Criminal Procedure Code. Section 88, cl. (7), impliedly recognises the title of the real owner. Section 89 also supports the same view.

The authorities relied on in *Secretary of State for India in Council v. Vakhatsangji Meghraji*<sup>(1)</sup>, viz. *Bukhooree Singh v. The Government*<sup>(3)</sup>, and *The Government of Bengal v. Meer Surwar Jan*<sup>(4)</sup> are not conclusive. The cases of *Queen v. Chumroo Roy*<sup>(5)</sup> and *In re Chunder Bhon Singh*<sup>(6)</sup> are in our favour and have

(1) (1894) 19 Bom. 668.

(2) (1884) 9 Bom. 131.

(3) (1867) 8 W. R. 207 (Civ. Rul.).

(4) (1872) 18 W. R. 33 (Cri. Rul.)

(5) (1867) 7 W. R. 35 (Cri. Rul.)

(6) (1872) 17 W. R. 10 (Cri. Rul.)

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been followed in the cases of *Queen-Empress v. Sheodihal Rai*<sup>(1)</sup> and *Queen-Empress v. Kandappa Goundan*<sup>(2)</sup>.

The special remedy given under section 524, Criminal Procedure Code, is cumulative as it confirms a pre-existing common law right; *Lingappa Goundan v. Esudasan*<sup>(3)</sup>; *Beckford v. Hood*<sup>(4)</sup>; *Mayor of Lichfield v. Simpson*<sup>(5)</sup>; and *Great Northern Fishing Co. v. Edgehill*<sup>(6)</sup>.

Further when a subject has been deprived of his common law remedy he is placed in a better position than he was under the common law. Applying this test we find under section 524 that—

(1) The remedy is summary.

(2) The claim is often tried by a Second Class Magistrate and only one appeal is allowed.

(3) No pecuniary limit placed upon his jurisdiction.

The remedy is, therefore, cumulative.

The fact that we did not appeal from the Magistrate's order under section 524 does not deprive us of the common law remedy by suit: *Pran Nath Roy v. Mohesh Chandra Moitra*<sup>(7)</sup> (upheld by the Privy Council in the case of *Radha Raman Shaha v. Pran Nath Roy*<sup>(8)</sup>).

The case of *Ramachandra v. The Secretary of State*<sup>(9)</sup> relied upon by the lower appellate Court, does not apply.

*S. S. Patkar*, Government Pleader, for the respondent.—The cases of *Queen v. Chumroo Roy*<sup>(10)</sup> and *In re Chunder Bhon Singh*<sup>(11)</sup>, relied upon for the appellant, do not apply, as they deal with the claim of third parties.

(1) (1884) 6 All. 487.

(2) (1896) 20 Mad. 88.

(3) (1903) 27 Mad. 13.

(4) (1798) 7 T. R. 620 at pp. 627, 628.

(5) (1845) 8 Q. B. 65.

(6) (1883) 11 Q. B. D. 225.

(7) (1897) 24 Cal. 546.

(8) (1901) 28 Cal. 475.

(9) (1888) 12 Mad. 105.

(10) (1867) 7 W. R. 35 (Cri. Rnt.)

(11) (1872) 17 W. R. 10 (Cri. Bul.)

The case of *Queen-Empress v. Tribhovan Manek-Chand*<sup>(1)</sup> refers to section 523 and the distinction drawn in the case of *Secretary of State for India in Council v. Vakhatsangji Meghrajji*<sup>(2)</sup> is correct.

The words "at the disposal of Government" do vest an absolute title in Government: see sections 517 to 524 of Criminal Procedure Code. It is only section 522 which refers to a civil suit.

The Magistrate has full discretion to pass an order under section 524 and it cannot be challenged in a civil suit. We rely upon the case of *Ramachandra v. The Secretary of State*<sup>(3)</sup>.

SCOTT, C. J.:—On the 9th of July 1909 the house of the plaintiff was searched by the police of Dharwar and of the Savanur State in connection with a dacoity which had been committed in that State, and certain property including ornaments specified in the plaint was attached on suspicion. On the 30th September 1909, the Second Class Magistrate issued a proclamation under section 523 (2) of the Code of Criminal Procedure, requiring any person having a claim to the ornaments to appear and establish his claim within six months. On the 17th January 1910 the plaintiff appeared to support his claim to the ornaments. The claim was disallowed, and, on the 13th June 1910, an order was issued by the Sub-Divisional Magistrate under section 524 of the Code of Criminal Procedure for sale of the ornaments. The sale proceeds were credited to the Government.

The plaintiff brings this suit alleging that the ornaments are his property and were illegally attached, and prays that the amount realised by the sale may be awarded to him with interest. The suit was decided in the

<sup>(1)</sup> (1884) 9 Bom. 131.

<sup>(2)</sup> (1894) 19 Bom. 668.

<sup>(3)</sup> (1888) 12 Mad. 105.

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plaintiff's favour, and a decree for Rs. 258-12-0 was passed by Mr. Varley, the Assistant Judge.

The defendant, Secretary of State, appealed to the District Court which held that as under section 524 of the Criminal Procedure Code the property was at the disposal of Government, Government could do what it liked with it, and had an absolute right to it, and that the special provisions relating to investigation of claims to property mentioned in section 523 made the decision of the Magistrate final, and deprived the person aggrieved from any right of action. We are of opinion that this decision cannot be supported. The case referred to by the learned District Judge, viz., *Secretary of State for India in Council v. Vakhatsangji Meghrajji* <sup>(1)</sup> did not decide or purport to decide the point. In the judgment reference was made to a decision in which the point was decided, namely, *Queen Empress v. Tribhovan Manekchand* <sup>(2)</sup>. It appears to us that the distinction between a case under section 523 and one under section 524, suggested by the Judges in *Secretary of State for India in Council v. Vakhatsangji Meghrajji*, <sup>(1)</sup> has no substance, for the order upon the claim is made under section 523, and thereafter if the claim is rejected section 524 provides that the property shall be at the disposal of Government, and then as a consequence, Magistrates are empowered to make discretionary orders for sales of such property. Now in *Queen Empress v. Tribhovan Manekchand* <sup>(2)</sup>, the Court held that although the claim by two accused persons to property seized on suspicion had been decided against them under section 523, that did not deprive them of the right of suit to establish their claim.

The learned District Judge relied in support of his decision upon *Ramachandra v. The Secretary of State* <sup>(3)</sup>.

<sup>(1)</sup> (1894) 19 Bom. 668.

<sup>(2)</sup> (1884) 9 Bom. 131.

<sup>(3)</sup> (1888) 12 Mad. 105.

But that case was properly distinguished by the learned Assistant Judge, who pointed out that the present case has nothing to do with rights created by statute, for the enforcement of which a special remedy is given. We set aside the decision of the District Judge, and remand the case for disposal upon the other issues. The respondent must pay the appellant's costs of this appeal.

*Decree reversed and case remanded.*

J. G. R.

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### APPELLATE CIVIL.

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

JHAVER JIJIBHAI (ORIGINAL DEFENDANT 2), APPELLANT *v.* HARIBHAI HANSJI (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Bhagdari Act (Bom. Act V of 1862), section 3—Will—Whether devise by will amounts to an alienation—Alienation not expressly limited to transactions inter vivos—“Alienation,” meaning of.*

\* The devise by will of an unrecognised sub-division of a *bhag* is an alienation contravening the provisions of the Bhagdari Act.

SECOND appeal against the decision of Mohanrai D., First Class Subordinate Judge, A. P., at Broach, confirming the decree passed by B. H. Desai, Subordinate Judge at Broach.

Suit to recover possession.

The properties in suit belonged to the *bhag* of one Bai Ganga after whose death they were inherited by Haridas Hansraj (plaintiff) and Shanker Sakhidas, the father of Bai Dahi (defendant No. 1). Shanker having died, the plaintiff alleged that he was entitled to succeed to his share in preference to his daughter Dahi, who

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\* Second Appeal No. 443 of 1914.