APPELLATE CIVIL.

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

SHANKAR BABAJI KULKARNI (ORIGINAL PLAINTIFF) APPELLANT *v.* DATTATRAYA BHIWAJI AND ANOTHER (ORIGINAL DEFENDANTS) RESPONDENTS.* 1915. *July* 16.

Bombay Hereditary Offices Act (Bom. Act III of 1874) sections 25, 36—Suit for a declaration—Declaration that plaintiff is the nearest heir of a deceased representative Vatandar—Watan—Civil Court—Jurisdiction.

A suit for a declaration that the plaintiff is the nearest heir of a deceased representative Vatandar is within the jurisdiction of a Civil Court although a declaration that the plaintiff is entitled to have his name entered in Vatan Register is a matter beyond the jurisdiction of the Court.

Rahimkhan v. *Dadamiya*[1], followed.

SECOND appeal against the decision of G. K. Kanekar, First Class Subordinate Judge, Sholapur, confirming the decree passed by Sumitra Anant, Second Class Subordinate Judge at Pandharpur.

Suit for declaration.

Plaintiff alleged that he and the defendants belonged to the Kulkarni family of Bhalvani; that the Kulkarni Vatan stood in the name of Ramchandra Bhimaji. He died in 1908 and the name of defendant No. 1 was entered in his place in the Vatan Register. The Vatan was to continue to the senior branch. The plaintiff belonged to the senior branch but in consequence of the defendant's objection the plaintiff's name was not entered in the Vatan Register. He, therefore, sued for a declaration (*a*) that he, being of the senior branch of the family, was a nearer heir of Ramchandra than the defendant; and (*b*) that he had a right to have his name entered in the place of Ramchandra with respect to the Kulkarni Vatan at Bhalvani.

* Second Appeal No. 229 of 1914.

(1) (1909) 34 Bom. 101.

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The defendant No. 1 pleaded that the plaintiff was not the heir of deceased Ramchandra; that there was no custom in the Vatan that it was to descend to the senior branch; that the Court had no jurisdiction to try the suit.

The Subordinate Judge following the decision in *Raoji* v. *Genu*[1] held that the Court had no jurisdiction to entertain the suit and therefore dismissed it.

On appeal, the decree of the Subordinate Court was confirmed.

The plaintiff preferred a second appeal.

G. K. Parekh for the apellant:—The case is governed by section 36 of the Hereditary Offices Act, as amended by Act III of 1910 and not by section 25 of the Act. The principle laid down in *Rahimkhan* v. *Dadamiya*[2] governs the present case.

A. G. Sathaye for the respondent No. 1:—In the present case it is essential to analyse the nature of the suit and the relief asked. The plaintiff sued for a declaration that he was the nearest heir of the deceased Ramchandra Bhimaji inasmuch as he belonged to the senior branch and that, as such he had the right to have his name entered in the Collector's Vatan Register in place of Ramchandra. The relief claimed by the plaintiff is thus twofold: first, that he is the nearest heir and, secondly, his name should be entered in the Collector's books instead of that of defendant No. 1. The granting of the 1st relief necessitates an enquiry into the custom of the Vatan as to whether the Vatan passes according to the lineal primogeniture or the ordinary primogeniture; and I submit that such an enquiry being within the exclusive jurisdiction of the Collector according to the provisions of section 25 of

(1) (1896) 22 Bom. 344. (2) (1909) 34 Bom. 101.

the Bombay Hereditary Offices Act III of 1910, the Civil Courts are not competent to grant that relief. In *Shivaji Nilkanth* v. *Tirko Bhimaji Nodgir*[1] it is laid down that the Civil Courts have no jurisdiction in matters which are within exclusive jurisdiction of the Collector.

As regards the second relief, the suit being one substantially for having the Collector's Register corrected and amended, it is beyond the jurisdiction of the Civil Courts :—*Khando Narayan Kulkarni* v. *Apaji Sadashiv Kulkarni*[2]; *Vasudev Vithal Samant* v. *Ramchandra Gopal Samant*[3]; *Balkrishna Chimnaji* v. *Bâlaji Ramchandra*[4]; *Jivanbhai* v. *Narsidas*[5]; *Jivaji Sambhaji* v. *Fakir Sabaji*[6]. The case of *Rahimkhan* v. *Dadamiya*[7] was under the old section 36 of the Hereditary Offices Act. According to that section, it was obligatory upon the Collector to recognise a certificate of heirship or a decree of a competent Court as conclusive proof of the facts stated or determined in such certificate or decree. The amendment of section 36 by Act III of 1910 was made after this ruling and as according to the amended section 36 it is optional with the Collector to recognise or not a certificate of heirship or a decree or order of a competent Court, the above ruling has now lost all its force. A Civil Court should not pass a decree which will not have a binding effect.

SCOTT, C. J.:—In this case the plaint stating the death of a Vatandar named Ramchandra alleged "that the Kulkarni Vatan is to be continued in the eldest family; that the defendant No. 1 whose name was entered in the Register was not of the eldest family; and that the plaintiff was, and that in consequence of the

(1) (1885) P. J. p. 206.
(2) (1877) 2 Bom. 370.
(3) (1881) 6 Bom. 129.
(4) (1884) 9 Bom. 25.
(5) (1899) 1 Bom. L. R. 160.
(6) (1912) 36 Bom. 420.
(7) (1909) 34 Bom. 101.

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defendants objection the plaintiff's name was not entered in the Vatan Register. Therefore, the plaintiff brings this suit praying for a declaration (*a*) that he, the plaintiff, being of the eldest family is the nearer heir of Ramchandra than the defendant; and (*b*) that the plaintiff has a right to have his name entered in the place of Ramchandra with respect to the Kulkarni Vatan at Bhalvani, he being of the eldest branch."

The lower Courts have held on the authority of *Raoji* v. *Genu*[1] that they have no jurisdiction to entertain the suit, and it has therefore been dismissed. In our opinion their decision is not correct. *Raoji* v. *Genu*[1] related to section 25 of the Hereditary Offices Act (Bom. Act. III of 1874). On the other hand, *Rahimkhan* v. *Dadamiya*,[2] which was distinguished in the lower appellate Court, related to section 36 of the Bombay Hereditary Offices Act. In that case it was said:—

"The conclusive determination of the question whether the statutory condition of eldership or heirship is satisfied becomes therefore a matter of importance to a person claiming to be the eldest son, or nearest heir, and it is a question which is not by the words of the Act reserved for the exclusive determination of the Collector. This view of section 36 was taken by this Court in *Dalpat Jogidas* v. *Punja Zipa*[3] when upon review it was held that a suit for a declaration that the plaintiff was the nearest heir of a deceased representative Vatandar was maintainable notwithstanding that it was manifest that the declaration was sought for the purpose of establishing a fact which would enable the plaintiff to have his name entered in the Vatan Register."

Those decisions were passed upon section 36 of the Act before it was amended in 1910. Section 36 then provided that: "A certificate of heirship or a decree of a competent Court shall, until revoked or set aside, be conclusive proof of the facts stated or determined in such certificate or decree." Reference to "a certificate of heirship, or a decree or order of a competent Court" is no longer in the same language. Whether

(1) (1896) 22 Bom. 344. (2) (1909) 34 Bom. 101.
(3) (1904) 11 Bom. L. R. 1342 (*f. n.*)

or not the new reference has a different effect is a matter which we do not propose to determine. The amended Act provides that :—

"If at any time any person shall, by production of a certificate of heirship, or of a decree or order of a competent Court, satisfy the Collector that he is entitled to have his name registered as the nearest heir of such deceased Watandar in preference to the person whose name the Collector has ordered to be registered, the Collector may, subject to the foregoing provisoes, cause the entry in the Register to be amended accordingly."

Therefore, in connection with this question of heirship under the deceased Vatandar, the Act, as it stood before the amendment, and as it now stands since the amendment, recognises the possibility of the production of a decree of a competent Court upon the question of heirship affecting the entries in the Vatan Register.

It has been argued that the second part of the declaration prayed in the plaint, namely, a declaration that the plaintiff is entitled to have his name entered in the place of Ramchandra in the Register is clearly a matter which would be beyond the jurisdiction of the Court. Let that be granted, it does not prevent the plaintiff from getting relief under the first head to which upon the authorities he is entitled. We are not prepared to agree with the learned Judge of the appellate Court that a declaration under the first head, "as it would not be binding upon the Collector, would not serve any purpose whatever." As above stated, we do not propose to express any opinion as to the effect of the words of clause 3 of the proviso to the amended section. Being of opinion that the Court has jurisdiction to give the relief asked for in the first paragraph of the prayer, we set aside the decree of the lower appellate Court and remand the case for trial. Costs costs in the cause.

Decree reversed.

J. G. R.