APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

1918.

February 26.

BHIMANGAUDA KONAPGAUDA PATIL (ORIGINAL DEFENDANT), APPELLANT *v.* HANMANT RUNGAPPA PATIL (ORIGINAL PLAINTIFF), RESPONDENT.*

Civil Procedure Code (Act V of 1908), section 54—Execution of Decree—Partition made by Collector—Jurisdiction of Civil Court to reopen partition.

The Civil Court has no jurisdiction to reopen a partition made by the Collector under section 54 of the Civil Procedure Code, 1908.

APPEAL from an order passed by S. R. Koppikar, First Class Subordinate Judge at Belgaum.

Execution proceedings.

The plaintiff obtained a decree for partition. A part of the property to be partitioned being lands, the execution proceedings of the decree were sent to the Collector for effecting partition. In due course, Collector effected partition of the lands by metes and bounds. The defendant was not satisfied with the division; and applied to the Collector to reopen the partition. On the Collector's declining to accede to his request, he applied to the Civil Court for the purpose. The Court, following *Shrinivas Hanmant* v. *Gurunath Shrinivas*[1], declined to interfere.

The defendant appealed to the High Court.

G. S. Rao, for the appellant:—The Court which sends execution proceedings to the Collector under section 54 of the Civil Procedure Code, 1908, has the power to examine the action of the Collector who is merely a ministerial officer. The person aggrieved can resort to the Court if the Collector has contravened the decretal

* First Appeal No. 99 of 1917.

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order of the Court. The case of *Shrinivas Hanmant* v. *Gurunath Shrinivas*[1] is no doubt against me but the more recent case of *Ramchandra Dinkar* v. *Krishnaji Sakharam*[2] supports my contention.

G. S. Mulgaonkar, for the respondent, was not called upon.

BEAMAN, J.:—The facts of this case are in my opinion substantially the same as those in the case of *Dev Gopal Savant* v. *Vasudev Vithal Savant*[3], and absolutely identical with those in the case of *Shrinivas Hanmant* v. *Gurunath Shrinivas*[1]. That being so, I should have thought it unnecessary to add a word, the case being covered by such high authority, but for the use made of other cases in argument by Dewan Bahadur Rao, for the appellant, one of these being a recent decision of this Court in the case of *Ramchandra Dinkar* v. *Krishnaji Sakharam*[2]. Such cases, whether in this Court or as in the case of *Chinna Seetayya* v. *Krishnavanamma*[4], in other High Courts, when reduced to the bare decision they give, appear to me to amount simply to saying that in every case there is an appeal from the Collector acting under section 54 to the Court under whose decree he has been making that partition. I think that that view is in direct conflict with the view taken in the cases I have first mentioned, but I am also sure that a very little examination of those in our High Court would show that the learned Judges responsible for them found grounds of distinction in the facts before them; else they would certainly have followed the earlier decisions of this Court. This was undoubtedly so in the latest case where the decision of the Court went upon the findings of the Courts below

(1) (1890) 15 Bom. 527.
(2) (1915) 40 Bom. 118.
(3) (1887) 12 Bom. 371.
(4) (1896) 19 Mad. 435.

that the terms of the decree had been contravened. As I understand section 54, its policy is plain. For all purposes of effecting partition of lands within its contemplation, the Legislature thought that the Collector would be better qualified than the Court to carry out such partitions. In other words that so far from being an inferior agency the work was now entrusted to a better qualified and superior agency. If that were really so, the policy of the section would at once be defeated by allowing an appeal back from a superior to an inferior tribunal. On this ground I myself should have gravely doubted the line of reasoning followed in several of the cases to which we have been referred and the use of the terminology which overlooks what I believe to be the plain and clear policy of section 54. However that may be and however the facts in cases in which the decisions went the other way are distinguishable, it is plain that the facts in the case before us cannot be distinguished in the minutest particular from the facts which were before the Court in *Shrinivas Hanmant* v. *Gurunath Shrinivas*[1]. I am content to decide the case upon that authority.

I would, therefore, dismiss this appeal with all costs.

HEATON, J.:—I concur.

Appeal dismissed.

R. R.

[1] (1890) 15 Bom. 527.