

## APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Crump.

GANESH BALKRISHNA BHIDE, INAMDAR (ORIGINAL DEFENDANT No. 2), APPELLANT v. VITHAL TRIMBAK BHIDE, INAMDAR AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 1), OPPONENTS. 1921.  
March 11.

*Review—Extract from Record of Rights not produced in the trial Court—Point regarding the omission of extract abandoned in appeal—Non-production of the extract not a sufficient ground for review—Bombay Land Revenue Code (Bom. Act V of 1879), section 135 H, sub-section 2. †*

An application for a review of a decision of the High Court was made on the ground that a certified copy of the relevant extract from the Record of Rights was not produced in the case as required by section 135 H of the Bombay Land Revenue Code, that therefore the plaint should have been rejected, and that all the subsequent proceedings taken in the absence of such certified copy should be treated as having been taken without jurisdiction. In the memorandum of appeal no point with reference to the omission to file the certified copy had been taken while at the hearing of the appeal, although mentioned in the course of the arguments, it had ultimately been abandoned. |

*Held*, on the facts, that the plaintiff should be allowed to cure the defect by putting in the required certified copy, and that the previous non-production thereof was no sufficient ground for reviewing the decision.

Per SHAH, J. :—"Though I fully recognise that the consequence of the omission on the part of the plaintiff to put in the necessary certified copy is as laid down in sub-section (2) of section 135 H, I do not think that the consequence must necessarily be given effect to at any stage of the litigation."

Per CRUMP, J. :—"As I read section 135 H, para. 2 of the Bombay Land Revenue Code, it appears to me that this Court has the power, which the original

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° Civil Application No. 582 of 1920.

† Section 135 H (2). If the plaintiff or applicant fails so to do for any cause which the Court or conciliator deems sufficient, he shall produce such certified copy within a reasonable time to be fixed by the Court or conciliator, and if such certified copy is not so annexed or produced the plaint or application shall be rejected; but the rejection thereof shall not of its own force preclude the presentation of a fresh plaint in respect of the same cause of action or of a fresh application in respect of the same subject-matter, with a certified copy annexed.

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Court possessed, to allow a reasonable time for the production of the extract, if it has not been produced, and what is or is not reasonable time is a matter entirely within our discretion."

CIVIL application for review of the decision of the High Court in First Appeal No. 57 of 1918.

The plaintiff filed a suit against the Secretary of State for India in Council (defendant No. 1) and Ganesh Balkrishna (defendant No. 2) to recover possession of land on the ground that it was a mirasi land of plaintiff and that the resumption of it by Government under Saranjam Rules was improper. The plaintiff failed to produce along with the plaint an extract from the Record of Rights as required by section 135 H of the Bombay Land Revenue Code.

The trial Court allowed the plaintiff's claim for possession.

In appeal before the High Court, in the course of arguments it was mentioned that the plaint should have been rejected for failure to produce the extract from the Record of Rights but the point was ultimately abandoned. The appeal was dismissed by Shah and Crump JJ.

Defendant No. 2 applied for a review of the decision on the ground that a certified copy of the relevant extract from the Record of Rights was not produced with the plaint in the case as required by section 135 H of the Bombay Land Revenue Code, that therefore the plaint should have been rejected, and that all subsequent proceedings taken in the absence of such certified copy must be treated as having been taken without jurisdiction.

*A. G. Sathaye*, for the applicant.

*P. B. Shingne*, for the opponent No. 1.

*Government Pleader*, for opponent No. 3.

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SHAH, J :—This is an application for a review of our judgment delivered on the 9th January 1920 in First Appeal No. 57 of 1918. The application is based on the ground that a certified copy of the relevant extract from the Record of Rights was not produced with the plaint in the case as required by section 135 H of the Bombay Land Revenue Code, that therefore the plaint should have been rejected, and that all the subsequent proceedings taken in the absence of such certified copy must be treated as having been taken without jurisdiction. It may be mentioned that in the trial Court apparently this omission was not noted until the arguments were heard. At that stage, time was allowed to the plaintiff to put in the necessary certified copy. It is not clear as to what happened after that ; but for one reason or another no copy was put in, and the trial Court proceeded to decide the case. In the memorandum of appeal here no point with reference to the omission to file the certified copy was taken ; but at the hearing of the appeal in the course of the arguments it was mentioned, but ultimately abandoned. Though there is no record of it, apparently it was dropped as certain facts with regard to the production of the revenue records before the trial Court were pointed out by the pleader for the plaintiff. We did not refer to this point in the judgment probably because it was abandoned. Whatever the reason for the point not having been pressed at the hearing of the appeal may be, and whether in fact it was abandoned or not, what we have now to consider is whether the review based on this ground should be allowed.

After a careful consideration of the provisions of section 135 H of the Bombay Land Revenue Code and the history of the litigation, I am clearly of opinion that it

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is not necessary in the interests of justice to grant this application, and that there is really no sufficient reason for reviewing our decision. Whatever the merits of the point may be, it could have been and should have been taken at the trial. It was not effectively taken at the trial or at the hearing of the appeal. Though I fully recognize that the consequence of the omission on the part of the plaintiff to put in the necessary certified copy is as laid down in sub-section (2) of section 135 H, I do not think that the consequence must necessarily be given effect to at any stage of the litigation. Having regard to the stage of the litigation which is now reached, I do not think that it is obligatory upon this Court to allow a review of the decree on the ground of non-compliance with the provisions of section 135 H. Even assuming that it is necessary to see that the omission is made good, when our attention is drawn to it, we can allow Mr. Shingne to cure the defect by letting him put in a certified copy of the extract. Mr. Shingne is ready to do so; and as the production of the certified copy is insisted upon by defendant No. 2, we allow the plaintiff to do so. I quite admit that if the omission is brought to the notice of the Court at the proper time, the plaint ought to be rejected unless the Court sees reason to give the plaintiff time to produce it. But I am unable to accept the contention now urged on behalf of the applicant that because this copy was not put in at the proper time, the necessary consequence of it must be that the plaint should be rejected and that the litigation should start afresh. That is a contention, which, unless it is expressly or by necessary implication demanded by the provisions of the section, I am wholly unwilling to allow. The whole object of this section is to see that the trial shall not proceed in the absence of the necessary extracts from the Record of Rights, so that the

Courts may be in a position to know what the entry in the Record of Rights is and to see how far its correctness can be successfully impugned by the party concerned. But there is no reason to hold that the proceedings taken in the absence of this extract are null and void. The very fact that the omission was not minded by any party shows that in the circumstances of the case, the omission was more formal than substantial. Whatever the true view about the consequence of the non-compliance with the requirements of section 135 H, sub-section (1), may be, it is clear on the facts of this case, that there is no substance or merit whatever in the application, and that it is merely an attempt based on a technical ground to get rid of the result of the litigation, which has practically ended against the present applicant.

I would discharge the rule with costs. Two sets of costs are allowed.

CRUMP, J:—It is, I think, unfortunate that the present application for review is made by a pleader other than the pleader who argued the appeal; for we are left in some doubt as to what took place when the appeal was heard. My own impression is that the absence of the extract from the Record of Rights was brought to our notice at the hearing and that the point for some reason which is now obscure was not pressed before us, and it was for this reason that there was no reference to it in our judgment. However that may be, the absence of the extract in question would, I think, have been a ground apparent on the face of the record sufficient to support the application for review, were it not for the fact that the extract in question has now been produced. As I read section 135 H, para. 2, of the Bombay Land Revenue Code, it appears to me that this Court has the power, which the original Court possessed, to allow a reasonable

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time for the production of the extract, if it has not been produced, and what is or is not a reasonable time is a matter entirely within our discretion. In the circumstances of the present case, having regard to the fact that the point has hitherto not been pressed, I am of opinion that the defect, if any, is cured by the production of the necessary extract at the present stage. For my own part, I am unable to distinguish the present case from those cases where a certificate required by section 4 of the Pensions Act (XXIII of 1871) has not been produced. The Legislature has laid down that no civil Court shall entertain any suit, where such a certificate is necessary, without the production of that certificate. The language is not widely different from that used in the Bombay Land Revenue Code except that the Pensions Act is more general in its terms while the Bombay Land Revenue Code prescribes the result of the non-production of the certificate. As regards the Pensions Act it has been held by this Court in *Antaji v. Vinayak*<sup>(1)</sup> that time may be given for the production of the requisite certificate even in Second Appeal. I see no reason why the same interpretation should not be placed upon the language used in section 135H, para. 2, of the Bombay Land Revenue Code. To allow time is not inconsistent with the object of the Legislature in enacting this section, that is to say, the maintenance of the Record of Rights and its correction where any correction becomes necessary by virtue of the decree of the Court. Therefore, in my opinion, the technical objection fails and the application should be dismissed with costs. Two separate sets of costs.

*Rule discharged.*

J. G. R.

<sup>(1)</sup> (1914) 17 Bom. L. R. 153.