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with by more than two successive Magistrates was contemplated. On principle if a second Magistrate can act on the evidence recorded wholly or partly by his predecessor and partly by himself there seems to be no reason why a third Magistrate should not act on evidence recorded by his predecessors.

However that may be, as this is a petition in revision, the High Court is not bound to interfere since the accused were not prejudiced and there has been no failure of justice. They did not ask for a *de novo* trial and the point was not taken in the appeal.

There is no force in the other grounds urged for revision. I agree that the petition must be dismissed.

D.A.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Devadoss.

BURLA APPANNA AND OTHERS (PETITIONERS),
PETITIONERS—PETITIONERS,

v.

ANALA LATCHAYYA AND OTHERS (COUNTER-
PETITIONERS), RESPONDENT — RESPONDENTS *

Civil Procedure Code (V of 1908), section 115—Order of Board of Revenue dismissing appeal under section 171 of the Madras Estates Land Act—Revision—Madras Estates Land Act (I of 1908), sections 166 (1), 168, 171 and 215—Order of Revenue Officer preparing preliminary Record of Rights—Appeal to Board of Revenue dismissed without hearing appellant or his vakil—Board of Revenue, whether a subordinate Civil Court—Jurisdiction of High Court to revise order of Revenue Board—Order under section 171, whether a proper case for revision by High Court.

Where an appeal, preferred to the Board of Revenue under section 171 of the Madras Estates Land Act against an order of a Revenue Officer passed under section 169 of the Act dismissing an objection petition filed against the preliminary Record of

Rights prepared under Chapter XI of the Act, was dismissed by the Board without hearing the appellant or his vakil, and the appellant filed a Civil Revision Petition to the High Court under section 115 of the Civil Procedure Code to revise the order of dismissal of the Board of Revenue.

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Held that the High Court should decline to interfere in revision with the order of the Board of Revenue in this case because section 173 of the Act provides a separate remedy by suit in a Civil Court, and in such cases the High Court as a rule does not interfere in revision: *Ittiachan v. Velappan*, (1885) I.L.R., 8 Mad., 484 (F.B.), relied on.

Held further (by SPENCER, J.) that the High Court should decline to interfere, because the Board of Revenue's order is not a judicial proceeding of a Court subordinate to the High Court, and also because the powers vested in the Board of Revenue to revise orders of Revenue Officers are powers of a revisional character as may be seen from section 172 and from the head-note to section 171 of the Act, and the exercise of revisional powers by two independent authorities would lead to inconvenient conflicts of jurisdictions; *Ramaswami Naicker v. Subbarayulu Naicker*, (1916) 3 L.W., 158.

Held by DEVADOSS, J., that the Board of Revenue, being a Civil Court when it acts judicially under section 171 or 172 or any other section of the Act, is subject to the revisional jurisdiction of the High Court.

PETITION under section 115 of the Civil Procedure Code, filed in the High Court to revise the order of the Board of Revenue in Miscellaneous Case No. 1936, passed on the proceedings of the Revenue Officer of Ganjam in O.P. No. 48 of 1921.

The petitioners, who were the Inamdars of certain lands which were alleged to constitute a minor inam in Haripuram village in Mandasa Estate, filed an objection petition under section 166 (1) of the Madras Estates Land Act against the preliminary Record of Rights prepared by the Revenue Settlement Officer under Chapter XI of the Act. The petitioners contended that the lands forming the inam did not form part of the Mandasa Estate, that the Revenue Officer had no jurisdiction to Make a survey and prepare a Record of Rights under the

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Act, and that the Record of Rights was incorrect in stating that the tenants had occupancy rights in their holdings. The Revenue Officer overruled their contentions and dismissed their objection petition. The petitioners preferred an appeal against this order to the Board of Revenue under section 171 of the Act. The Board dismissed the appeal, after perusing the petition of appeal which had been submitted by a vakil and apparently without hearing the petitioners or their vakil. The order of the Board was as follows:—"The Board considers that no case has been made out for a revision of the record. The petition is accordingly dismissed." Against this order the petitioners preferred this Civil Revision Petition to the High Court under section 115 of the Civil Procedure Code.

B. Jagannadha Doss for petitioners.

Respondents were not represented.

JUDGMENT.

SPENCER, J.—This is an application to the High Court to revise under section 115, Civil Procedure Code, the proceedings of the Board of Revenue acting in the exercise of the powers vested in it by rule 21 of the rules made by the Local Government under section 215 of the Madras Estates Land Act, whereby the Board was constituted an appellate authority under section 171 for the purpose of hearing appeals from decisions of Revenue Officers passed under section 169 in the chapter relating to Record of Rights in Act I of 1908. It is alleged that the Board of Revenue acted illegally in the exercise of its jurisdiction by dismissing the petitioner's appeal without hearing him in person or by vakil.

It is a question whether the High Court can and should in the circumstances of this case exercise its

revisional powers under the Civil Procedure Code. At the hearing of this petition the respondents were not represented. We have not therefore had the advantage of hearing arguments on both sides of this difficult question.

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Under the Rent Recovery Law in force in Madras before Madras Act I of 1908 became law, judgments and orders of Revenue Courts were specially exempted from revision by any higher authority (vide section 76 of Act VIII of 1865) and *Velli Periya Mira v. Moidin Padsha* (1), *Appandai v. Srihari Joishi*(2) and *Venkatanarasimha Naidu v. Suranna*(3).

By section 192 of the Madras Estates Land Act, section 622 of the Code of Civil Procedure of 1882 (corresponding to section 115 of the Code of 1908) has been made applicable to all suits, appeals and other proceedings of the Madras Estates Land Act, and under section 115 the High Court has power to revise the decision of any Court subordinate to it when no right of appeal is provided. The question thus arises whether the Board of Revenue is a Court subordinate to the High Court for the purpose of this section. Section 3 of the Civil Procedure Code defines what subordination of Courts means. The Board of Revenue is not included in this definition. Neither does it answer the test of subordination in section 195 (7) of the Criminal Procedure Code, as appeals do not ordinarily lie to the High Court from its decisions. Nor is the Board of Revenue one of the Civil Courts over which the High Court exercises control by virtue of section 27 of the Madras Civil Courts Act. It is evident that, when Civil Courts are mentioned in sections 172, 173, 179 and 189 of the Estates Land Act, Courts which have

(1) (1886) I.L.R., 9 Mad., 332.

(2) (1893) I.L.R., 16 Mad., 451.

(3) (1894) I.L.R., 17 Mad., 298.

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power to try all sorts of civil suits are designated, as distinguished from Revenue Courts which only have jurisdiction over the suits and applications detailed in the schedule to the Act. But the Privy Council has held in *Nilmoni Singh Deo v. Taranath Mukerjee*(1) that Rent Courts passing decrees for rent under the Bengal Rent Act are Civil Courts for the purpose of the Civil Procedure Code of 1859; and under clause 16 of the Letters Patent all the Civil Courts in the Presidency have been subordinated to the High Court. Following this ruling the Calcutta High Court interfered in revision with the order of a Deputy Collector passed in execution of a decree under the Rent Act, see *Chaitan Patgosi Mahapatra v. Kunja Behari Patnaik*(2).

From this it follows that Collectors and other Revenue Officers trying suits enumerated under 21 heads in Part A of the schedule or disposing of applications described in Part B are Revenue Courts in all cases where an appeal is provided to the District Court, and are also inferior Civil Courts within the meaning of section 3 of the Civil Procedure Code, because the High Court hears Second Appeals from the decrees of the District Court passed in appeals from such Courts' decisions and can revise the District Courts' proceedings in cases where no Second Appeal is provided. It has already been held in this Court in *Paramaswamy Aiyangar v. Alameh Natchiar Ammal*(3) that the High Court can revise an order made by a Revenue Court in the course of trying a suit for rent. Further, these Courts are subject to the superintendence of the High Court by virtue of the Letters Patent.

It does not however follow that the Board of Revenue when discharging the functions vested in it by the

(1) (1888) I.L.R., 9 Calo., 295 (P.C.). (2) (1911) I.L.R., 38 Calo., 832.

(3) (1919) I.L.R., 42 Mad., 76.

Government notification No. 159 of April 5th, 1910, is a Court exercising Judicial functions.

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As an example it could not be contended for a moment that decisions of the Board of Revenue under sections 18 and 23 of Madras Act III of 1895, on appeal from orders made by Collectors upon claims to hereditary village offices, are open to revision by the High Court under section 115, Civil Procedure Code, even if there were no specific provision in these sections as to the finality of the decisions. Section 21 of that Act like section 189 of Act I of 1908, bars the original jurisdiction of Civil Courts. Again, we have been shown no authority for the theory that the Board of Revenue, when proceeding under sections 171, 172 and 205 of the Madras Estates Land Act, is subordinate to the High Court. As an instance of the limitation of the High Court's powers of interference under section 115, I would cite the ruling in *Manavala Goundan v. Kumarappa Reddy*(1), that the High Court cannot interfere in revision with the proceedings of a District Registrar. *Chatterjee v. Tribedi*(2) is distinguishable by the fact that, under the rules framed under the Calcutta Rent Act, a Rent Controller has been constituted a Court of civil jurisdiction. I am of opinion that we should decline to interfere with the order of the Board of Revenue in this case for three reasons. First because the Board of Revenue's order is not a judicial proceeding of a Court subordinate to the High Court; secondly because the powers vested in the Board of Revenue to revise settlement orders of Revenue Officers are powers of a revisional character, as may be seen from section 172 and from the head note to section 171 and the exercise of revisional powers by two independent

(1) (1907) I.L.R., 30 Mad., 326.

(2) (1921) 26 C.W.N., 78.

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SPENCER, J. authorities would lead to inconvenient conflicts of jurisdictions (vide *Ramaswami Naicker v. Subbarayulu Naicker* (1)); thirdly, because section 173 provides a separate remedy by suit in a Civil Court and because this Court has held in *Ittiachan v. Velappan*(2), that where that is the case there is no power of revision.

The petition is for these reasons dismissed without costs.

DEVADOSS J. DEVADOSS, J.—This is an application under section 115, Civil Procedure Code, to revise the order of the Board of Revenue, Madras, passed on a petition of appeal presented by the petitioner against the proceedings of the Revenue Officer who prepared a Record of Rights for Hariipuram village in the Mandasa Estate, Ganjām district, under section 166 (1) of the Madras Estates Land Act, 1908. The petitioner appealed to the Board of Revenue, Madras, under section 171 of the said Act, and his petition of appeal was dismissed by the Board of Revenue without hearing him. It is this order of dismissal that is sought to be revised. Though the respondents are not represented here, it is but fair to observe that Mr. Jagannatha Doss who appears for the petitioner has brought to our notice all the cases *pro* and *con* which bear on the points raised by him.

Before considering whether this is a fit case for exercising revisional powers it is necessary to see whether there is revisional jurisdiction in the High Court over orders passed by the Board of Revenue under chapter XI of the Madras Estates Land Act. Mr. Jagannatha Doss puts forward three contentions, (1) the Letters Patent of the High Court classify all Courts into criminal and civil, and therefore, a Revenue Court is included in the expression Civil Court and the High Court has, therefore, jurisdiction over the Revenue

(1) (1916) 3 L. W., 158.

(2) (1885) I.L.R., 8 Mad. 484 (F.B.).

Courts, (2) the Board of Revenue in exercising jurisdiction under Chapter XI of the Estates Land Act, is a Civil Court and therefore, is subject to the revisional jurisdiction of the High Court, and (3) section 192 of the Madras Estates Land Act makes the Civil Procedure Code applicable to proceedings under the Act and, therefore, the High Court has appellate jurisdiction over the decision of the Board of Revenue.

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The first point is not supportable on any authority. It is a fallacy to say that because the Letters Patent do not specifically refer to Revenue Courts, therefore they are included in the expression Civil Court. To use the term "Court" with regard to Revenue Officers is a misnomer, but where they exercise judicial functions by virtue of the provisions of any enactment, they may be termed Courts. The appellate and revisional powers of the High Court may be sought in section 15 of 24 and 25 Vic., Ch. 104, now section 107 of 5 and 6 Geo. V, Ch. 61 and section 16 of the Letters Patent. It cannot be successfully contended that the Board of Revenue as such is a Court exercising judicial functions subject to the appellate jurisdiction of the High Court.

The next point is that the Board of Revenue exercises judicial functions when it decides appeals under section 171 of the Madras Estates Land Act, and therefore, is subject to the revisional jurisdiction of the High Court. Under Chapter XI of the Estates Land Act, a survey may be made and a Record of Rights may be prepared by a Revenue Officer in respect of an estate or a portion of an estate in certain cases specified in section 164 and an appeal is provided against a record of such rights; and section 172 gives power to the Board of Revenue to direct the revision of any Record of Rights or any portion of a Record of Rights. Does the Board of Revenue

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become a Civil Court by reason of its hearing an appeal from the order of the Revenue Officer? Section 192 of the Act makes the Civil Procedure Code except certain sections applicable to proceedings under the Act. The Board of Revenue, being governed in its proceeding under the Madras Estates Land Act by the Civil Procedure Code becomes a Civil Court for the purposes of the Act. It is urged, that by section 16 of the Letters Patent, all Civil Courts in the Presidency are subject to the superintendence of the High Court and the Board of Revenue being a Civil Court when it acts under the Madras Estates Land Act, is subject to its revisional jurisdiction. If the Board of Revenue is a Civil Court for any purpose, however limited, so far as that purpose is concerned, it is subject to the jurisdiction of the High Court. The Estates Land Act does not give a right of appeal to the High Court from the orders of the Board of Revenue. The cases relied on by Mr. Jagannatha Doss do not help him materially. In *Paramaswamy Aiyangar v. Alamelu Natchiar Ammal*(1), it was held that the High Court was competent to revise the order of the Revenue Court under section 115, Civil Procedure Code, which is made applicable to proceedings in Revenue Courts by section 192 of the Madras Estates Land Act. In another case, *Ramasami Goundan v. Kali Goundan*(2) reported in the same volume, the same Bench which decided the case of *Paramaswamy Aiyangar v. Alamelu Natchiar Ammal* (1), held that the revision petition to the High Court was competent, because section 192 of the Madras Estates Land Act rendered section 115 of the Civil Procedure Code applicable to all suits, appeals and other proceedings under the Act even though section 205 thereof gave a power of

(1) (1919) I.L.R., 42 Mad., 76.

(2) (1919) I.L.R., 42 Mad., 310.

revision to the Board of Revenue and the District Collector; but where the petitioner had previously applied to the revenue authorities and failed, the High Court would decline to exercise its discretionary power in revision, unless it was imperatively called upon to do so to prevent miscarriage of justice. In *Nilmoni Singh Deo v. Taranath Mukerjee* (1), the High Court interfered in revision with the orders of the Deputy Commissioner transferring a decree for rent made by one Court to another. The learned Judges observe at page 297 "If the orders complained of are passed without jurisdiction, we think we have the power to interfere under section 15 of the Act of Parliament constituting this Court." Their Lordships of the Privy Council entirely agree with the view taken by the High Court of their own jurisdiction (vide also *Chaitan Patgosi Mahapatra v. Kunja Behari Patnaik*(2)). The Madras cases lay down that the High Court could interfere in revision with the orders of the Collector under the Madras Estates Land Act, and the cases decided by the Calcutta High Court recognize the jurisdiction of the High Court to interfere in revision with orders passed by the Revenue Courts under the Bengal Rent Recovery Act X of 1859. It was uniformly held under the Madras Rent Recovery Act, VIII of 1865, that the High Court had no jurisdiction to revise the order of Revenue Court under section 622 of the old Code, now section 115 of the present Code (vide *Velli Periya Mira v. Moidin Padsha*(3), *Appandai v. Srihari Joishi*(4), and *Venkatarasimha Naidu v. Suranna* (5)). The present Estates Land Act has removed the bar placed upon the revisional jurisdiction of the High Court by section 76 of Act VIII

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(1) (1883) I.L.R., 9 Calc., 295 (P.C.). (2) (1911) I.L.R., 38 Calc., 832.

(3) (1886) I.L.R., 9 Mad., 332. (4) (1898) I.L.R., 16 Mad., 451.

(5) (1894) I.L.R., 17 Mad., 298.

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of 1865 (vide *Ramaswami Naicker v. Subbarayulu Naicker* (1).) Section 205 of the Madras Estates Land Act gives revisional powers to the Board of Revenue and Collectors, and it cannot be said that it has denied the same to the High Court. The Act specifically provides for appeals to the District Court in certain cases from the decisions of Collectors and it follows that under section 100, Civil Procedure Code, a second appeal will lie in proper cases, and the provisions of section 115 will, therefore, apply to cases where an appeal would be incompetent. In *Chatterjee v. Tribedi*(2), the Calcutta High Court held that it had jurisdiction to interfere with the order of the Rent Collector's Court under section 107 of the Government of India Act on the ground that the rules framed by the Local Government under section 23 of the Calcutta Rent Act, lay down that in all proceedings before them under the Act, the Collector and the President of the Tribunal shall have all the powers possessed by a Civil Court for the trial of suits. See also Rule 4 which says that in making inquiries under the Act, the Controller or the President of the Tribunal shall follow, as nearly as may be, the procedure laid down in the Code of Civil Procedure for the regular trial of suits, the substance only of the evidence being recorded as in appealable cases. The question that is not free from difficulty is this. Is the Board of Revenue when it exercises jurisdiction under the Madras Estates Land Act, a Court from which appeals lie to the High Court or a Court subject to its superintendence? The subordination of Courts is determined, according to the Criminal Procedure Code, section 195, by the fact that appeals ordinarily lie from one Court to another. So far as I am aware, in no case does an appeal lie to the High Court

(1) (1916) 3 L.W., 158.

(2) (1921) 26 C.W.N., 78.

from the decision of the Board of Revenue. Section 15 of 24 and 25 Vic., Ch. 104 and Article 16 of the Letters Patent have been construed as giving jurisdiction to the High Court over all the Civil Courts of the Presidency. If that construction is correct it necessarily follows that the Board of Revenue, being a Civil Court when it acts judicially under section 171 or 172 or any other section of the Madras Estates Land Act, is subject to the revisional jurisdiction of the High Court.

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It is unnecessary to consider the third point in the view that I have expressed on the second point. Section 173 of the Madras Estates Land Act gives a remedy to a person, aggrieved by an entry in a settlement record prepared under sections 168 to 171 or by omission to settle a rent, by way of suit in a Court. As a rule, the High Court does not interfere in revision with decrees or orders of subordinate Courts when the party aggrieved has another remedy by way of appeal, suit or otherwise. On this ground the petition fails and is dismissed.

K.R.