APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice Birdwood.

KA'MBHA'I AJUBHA'I AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* HIMATSANGJI JORA'VARSANGJI, DESÁI OF PA'TADI (ORIGINAL DEFENDANT), RESPONDENT.*

1884 *May* 9.

Jurisdiction—Ruling chief—Code of Civil Procedure (XIV of 1882), Secs. 432 and 433.

The Desái of Pátadi, a *tálukdár* of the fifth class in the province of Káthiáwár, in virtue of his being the proprietor of seven villages within the British Political Agency of Káthiáwár, is a ruling chief within the meaning of sections 432 and 433 of the Code of Civil Procedure (XIV of 1882), and can only be sued with the consent of the Government in a competent Court not subordinate to the District Court.

THIS was an appeal from the order of Ráv Bahádur Mukundrái Manirái, Subordinate Judge (First Class) at Ahmedabad, returning the plaintiffs' plaint for the purpose of being presented in the proper Court.

The plaintiffs alleged that they were the *gámtis* of the village of Savlána in the Viramgám Táluka of the Ahmedabad District; that the said village had formerly been granted to the plaintiffs' ancestors by the Darbár of Dhrángadra; that the plaintiffs were thus the proprietors of the village, and originally enjoyed complete proprietary rights; that subsequently the defendant's ancestors were admitted to participate in certain rights pertaining to the village, and it was arranged that the plaintiffs should be proprietors of one-fourth and the defendant the proprietor of three-fourths of the village. The plaintiffs further alleged that the defendant in the year 1882 interfered with the plaintiffs in the collection of a cess, and prayed for a partition of a three-fourth share, and for an injunction restraining the defendant from future interference.

The above plaint was presented to the First Class Subordinate Judge on the 8th of October, 1883. On the 12th October, 1883, the Subordinate Judge made the following order:—

"The Desái of Pátadi is the defendant, and I think that he is a ruling chief within the meaning of section 433 of the Civil

* Appeal, No. 42 of 1883, from order.

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Procedure Code. I cannot, therefore, take, under that section, cognizance of this suit. The plaintiffs appear to have applied to Government to obtain the requisite sanction to institute this suit; but the Government seems to have, after referring the question to several officers, arrived at a conclusion which is by no means decisive. They say that they do not regard the Desái of Pátadi as a ruling chief, but, in case he should be so held to be, the Government give their consent to the suit. The Remembrancer of Legal Affairs expressed his opinion that, '*primâ facie*, a *desái* is not a ruling chief, but the *desái* in question may have possessions in Káthiáwár in virtue of which he is entitled to be so considered.'

"The Political Agent in Káthiáwár reported that 'the Desái of Pátadi is a *tálukdár* of the fifth class in Káthiáwár in virtue of his being the proprietor of seven villages under the jurisdiction of the Agency.'

"The *desái* rules over those seven villages, and is consequently a ruling chief. Section 433 does not require that the chief should be living beyond the British territories in India. I, therefore, hold that the *desái* is a ruling chief, and no suit can, under the above section, be filed against him in this Court.

"I, therefore, return the plaint with accompaniments to the plaintiffs' *vakil* for the purpose of being presented in the proper Court."

The plaint was accordingly returned to the plaintiffs, who presented it to the District Court at Ahmedabad.

On the plaint being presented to the District Court, Mr. Crawford declined to receive it. He was of opinion that the defendant, as a fifth class chief of Káthiáwár, did not exercise plenary rule over his subjects, and, unlike the first and second class chiefs who did exercise plenary rule, was not a ruling chief.

The plaintiffs, therefore, appealed to the High Court against the order of the Subordinate Judge.

Ganpat Sadáshiv Ráv for the appellants.—The only question is, whether the defendant, who is the Desái of Pátadi, is a ruling

chief. Until 1863 the internal government of the Káthiáwár chiefs was uncontrolled, but in 1863 they were deprived of their independence, and were vested by the Paramount Power with restricted rights and limited jurisdiction. In this year the defendant was made a fifth class chief. For the history of the chiefs of Káthiáwár I refer to *Dámodar Gordhan* v. *Deorám Kánji*(1). A sovereign prince is one who obeys no determinate superior. The defendant is not such. He has no power of life and death, and cannot decide a suit over Rs. 5,000.

Ráv Sáheb *Vásudev Jagannáth Kirtikar* for the respondent.—Pátadi is in the same category as Bhávnagar or Limbdi. The question is, whether all the chiefs of Káthiáwár are ruling chiefs. Colonel Walker considers all of them independent chiefs—Government Selections, No. 39, pages 64, 72 and 106. Engagements were made with the Chief of Patadi as with other chiefs—Government Selections, No. 37, p. 503. The Code of Civil Procedure makes no distinction between ruling chiefs. The letter of the Secretary of State for India in the case of *Ládkuvarbái* v. *Ghoel Shri Sarsangji Partábsangji*, known as the Pálitána case(2), shows that the province of Káthiáwár is not British, but foreign territory, and that the British Government has only interfered with their independence for the preservation of peace and maintenance of order. It also shows that the arrangement of judicial business has been made so as to ensure co-operation of the chiefs, not to undertake their internal administration. The policy of the British Government has always been to respect the integrity of the chiefs. The Subordinate Judge was, therefore, right in holding that the Desái of Pátadi is a ruling chief.

The judgment of the Court was delivered by

KEMBALL, J.—The question for consideration is, whether the defendant in this suit, the Desái of Pátadi, is a "ruling chief" within the meaning of sections 432, 433 of the Civil Procedure Code. The dispute relates to some immoveable property situated in the Ahmedabad District, and when the suit was brought in the

(1) I. L. R., 1 Bom., 367; see p. 452 *et seq.*
(2) 7 Bom. H. C. Rep., 150, O. C. J., at p. 170.

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Court of the First Class Subordinate Judge, within whose jurisdiction the land was, that Court held that the defendant was a "ruling chief", and, therefore, that it had no jurisdiction over him. The plaintiffs then applied to the Government for its consent, as required by section 433 of the Civil Procedure Code, to the institution of the suit. This consent the Government gave, though, at the same time, they expressed their doubts as to whether the *desái* was such a chief; but, when the suit was instituted in the District Court, the Acting District Judge, in an elaborate judgment, held that the defendant was not a "ruling chief", and returned the plaint for presentation in the proper Court. The plaintiffs now appeal against the order of the First Class Subordinate Judge, and ask that they may be allowed to institute their suit in his Court. They contend that the *desái* is not a "chief", but merely a landholder or *tálukdár*, and that, even if he is a chief, he is not a "ruling" chief.

The term "chief" is not defined, so far as we are informed, in any legislative enactment. Taking the word, therefore, in its ordinary sense of a chieftain, or principal person of a tribe, family, or congregation, it seems to us that to say, as has been insisted upon in argument, that the *desái* is a mere "*tálukdár* of the fifth class", is, without more, to admit that he is a chief of that class. That he was, so far back as A. D. 1807, spoken of and treated as one of the chiefs of Káthiáwár, is abundantly proved from the Government records.

We have, then, to consider whether the *desái* is a "ruling" chief. The meaning of that word may, of course, be open to argument, but we are unable to see what foundation in principle there is for the very fanciful line drawn by the Acting District Judge between chiefs of the first and second classes and those of the inferior grades. Mr. Crawford says that the first and second class chiefs undoubtedly come under the denomination of "ruling chiefs", "since they bear plenary rule over their own subjects. The distinction between them and the others is that the latter do not bear plenary rule, but only such parts of it as Government allows them. A ruling chief is a chief who rules over one territory; there cannot be two rulers, and when the ultimate and, as in the present case, the principal

rule or jurisdiction is with Government, the chief of the territory is not a ruling chief." And he, further on, expresses his opinion that even a first class chief "only exercises a jurisdiction delegated to him by Government." So that the test which he applies to the expression "ruling chief" is the degree of criminal and civil jurisdiction which the Paramount Power is pleased to confer on, or continue to, any particular chief. No matter, then, whether a chief has exercised dominion in his own territory long before A. D. 1807, and whether at the time of Colonel Walker's settlement in that year engagements, offensive and defensive, were entered into with him, and notwithstanding the clear declaration of Her Majesty's Secretary of State for India in his despatch No. 54, Political, dated 31st August, 1864, (an extract from which is to be found in *Ládkuvarbái* v. *Gohel Shri Sarsangji Partábsangji*(1)) as to the authority and independence of the chiefs of Káthiáwár in the internal administration of their respective territories, a chief's political status as a "ruler" is to be made to depend on the extent of judicial powers he is allowed to exercise. That is not the view taken in *Ládkuvarbái* v. *Gohel Shri Sarsangji Partábsangji*(2) referred to above, and that apparently was not the intention of the Legislature when introducing the Civil Procedure Code of 1877. In the fourth para. of section 17, Act VIII of 1859, with which section 432, Act X of 1877, corresponded, the descriptive words used were "any sovereign prince or independent chief", and these were altered in the later enactment to "any sovereign prince or ruling chief", followed by the words "whether in subordinate alliance with the British Government or otherwise;" and we find the following remarks made by the Legal Member in presenting the further report of the Select Committee on the Civil Procedure Bill on the 21st September, 1876 (3) :—

"In section 433 we have attempted to deal with the rather delicate subject of a foreign potentate suing in our Courts. In that term I mean to include the native chiefs of India who are our feudatories. With regard to them the question is apt to

(1) 7 Bom. H. C. Rep., O. C. J., pp. 170 and 171.

(2) 7 Bom. H. C. Rep., O. C. J., pp. 150.

(3) See Abstract of the Proceedings of the Council of the Governor General of India, Vol. XV, p. 245.

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arise much more frequently than with regard to those potentates who are foreign to all intents and purposes. The matter is one of some difficulty, and the difficulty has been recently illustrated by the case of the Raja of Nahan, who keeps a shop in Ambala, and was sued there by his own agent. We have had the advantage of seeing the principles applicable to this case discussed in a very clear and instructive judgment by the Chief Court of Lahore, who disallowed the suit. What we think is that if a foreign chief become a suitor, or a trader, or a land-holder, in our territories, he may fairly be subjected to the incidents of the position he has chosen to assume. But, in order to protect the dignity of such personages, and to avoid complications which are sometimes very awkward, we have thought it better to provide that, in such cases, suits shall not be instituted, nor decrees executed, without the consent of the Government. Those provisions we have embodied in section 433 of Bill No. IV."

It is not very clear in what sense the learned member used the term "our feudatories", but we think we may fairly assume that he intended to include tributaries,—that is, those who in former years never were in any sense military feudatories, but who, though they acknowledged a sovereign and paid him a real or nominal tribute, yet retained the internal administration of their territory, yielding different degrees of obedience according to circumstances: and this, in our opinion, disposes of Mr. Crawford's argument, that "the line between land-holders who are and those who are not ruling chiefs must be drawn somewhere, and it can only with reason and consistency be drawn where plenary jurisdiction ends and limited jurisdiction begins." He concludes his jugdment with this proposition—"with the ruling chiefs the Political Agents' duties are mainly diplomatic, and with the others they are chiefly administrative." We are inclined to think that this is wholly incorrect in principle, if not in practice. We have been shown no authority for it: it is opposed to the views of the Secretary of State referred to above, and, so far as we can learn, the distinction between the chiefs exercising plenary jurisdiction and those whose judicial powers are circumscribed, is mainly that the residuary jurisdiction in the latter

case is vested in certain British officers, each superintending a group of states. As Dr. Hunter in the Imperial Gazetteer Vol. 5, p. 308, says: "The Political Agent controls the whole. As a rule, no appeal lies from the decision of a chief, but, on presumption of maladministration, his proceedings may be called for and reviewed."

We think the interpretation put upon the words "ruling chief" by the First Class Subordinate Judge was correct, and we confirm his order with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Nánábhái Haridás.

RANCHHOD VARAJBHAI, PLAINTIFF, *v.* THE MUNICIPALITY OF DA'KOR, DEFENDANT.*

May 8.

Notice—Municipality—Nature of action—Municipal Act (Bombay) VI of 1873, *Sec.* 86.

A person suing a municipality constituted by Bombay Act VI of 1873 for the refund of money illegally levied from him as house-tax is bound to serve a previous notice on the said municipality as required by section 86 of the Act.

The object of that provision would appear to be to give municipal bodies or officers, who in the *boná-fide* discharge of their public duties may have committed illegal acts not justified by their powers, an opportunity of tendering sufficient amends for such acts before being harrassed with an action.

Section 86 of the Act is not confined to an action of damages, but is applicable to every claim of a pecuniary character arising out of the acts of municipal bodies or officers, who in the *boná-fide* discharge of their public duties may have committed illegalities not justified by their powers.

THIS was a reference, under section 617 of the Code of Civil Procedure (XIV of 1882), made by Ráv Sáheb Ranchhorlál K. Desái, Subordinate Judge (Second Class) of Umreth, who stated the case as follows:—

"The question is, whether a plaintiff suing a municipality for the refund of the money levied from him as the house-tax for his house, on the ground that the said tax was illegally imposed,

* Civil Reference, No. 11 of 1884.