

with full effect the duty assigned to him. In the present case we cannot discover that there has been, on the Collector's part, any wilful or reckless disregard of the law. His certificate, therefore, is decisive of the character of the property, and we only carry out the general purpose of the Legislature in a matter quite within its competence by cancelling the decree made by this Court in so far as it assigns to Bháskar possession of the land declared by the Collector to be *vatan* property. Costs on opponent.

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*Rule made absolute.*

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Nánábhá'i Hariddás.*

WISHWÁMBHAR PANDIT *ALIAS* NÁ'NA MA'HA'RA'J (ORIGINAL DEFENDANT), APPELLANT, *v.* PRABHA'KAR BHAT BIN JANA'RDAN BHAT (ORIGINAL PLAINTIFF), RESPONDENT.\*

January 28.

*Registration—Suit to compel registration—Necessary party—Jurisdiction—Appeal—Act III of 1877, Sec. 77.*

An appeal lies from a decree in a suit under section 77 of the Registration Act (No. III of 1877) to obtain registration of a document.

To such a suit the registering officer or the Government is not a necessary party, and the proper *forum* for it is the Court of the lowest competent jurisdiction.

THIS was an appeal from the decision of C. F. H. Shaw, directing registration of a document.

The plaintiff alleged that on the 3rd of April, 1878, the adoptive-mother of Wishwámbhar Pandit, *inámdár* of Kunur, executed at Kolhápur, beyond British India, a deed of gift in his favour; that on the death of the lady on the 27th of April, 1879, the said Wishwámbhar Pandit inherited all her property, and on the 9th of June, 1879, ratified the deed of gift; that on the 18th of August, 1880, this deed was brought into British territory, and on the 13th of December following,—that is, within four months of the arrival of the deed in British India,—the plaintiff presented it for registration to the Kárwár sub-registrar; but, in default of the appearance of Wishwámbhar Pandit to attend before him in time, the registration of it was refused on the 12th of September, 1881;

\* Regular Appeal, No. 114 of 1882.

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and that the plaintiff appealed to the district registrar against this order, but he confirmed it. The plaintiff thereupon instituted the present suit in the Court of the District Judge of Belgaum, making the Secretary of State for India and the said Wishwámbar Pandit parties to the suit, and prayed for a decree directing registration of the deed.

The Secretary of State for India did not appear.

Wishwámbar Pandit answered that the deed was not genuine, that he had not ratified it, and that it had arrived in British India more than four months before its presentation to the sub-registrar.

The District Judge directed the deed to be registered.

Wishwámbar Pandit appealed to the High Court.

*Ghanashám Nilkanth Nádkarni* for the appellant.

*Máneksháh Jehángirsháh Taleyárkhán* for the respondent.

*Máneksháh Jehángirsháh* urged a preliminary objection to the entertainment of the appeal. He contended that the policy of the law was not to give an appeal against the order to register a document—*Ex parte Dharamdás Bhavánidás*<sup>(1)</sup>. It is impossible to undo the registration of a document.

The Court overruled the objection.

*Ghanashám Nilkanth* on the merits.—The District Court had no jurisdiction to entertain the suit in the first instance, as neither the Secretary of State nor the registrar was a necessary party.

*Máneksháh Jehángirsháh, contra.*—The order of the Court must be addressed to the registering officer; he is, therefore, a necessary party. He should have an opportunity of saying that the proposed order is improper. If not made a party defendant, the registering officer in respect of the decree would stand in the position of a third party, when the decree could not bind.

The judgment of the Court was delivered by

WEST, J.—The decree of a Court in a suit is subject to appeal under section 540, Code of Civil Procedure, unless it is in any case otherwise expressly provided. It is not provided that no

(1) 3 Bom. H. C. Rep., 104, A, C. J.

appeal shall lie from a decree under section 77 of the Registration Act III of 1877. We must, therefore, entertain this appeal.

The section just referred to says that, when registration has been refused under section 72 of the Act, a suit may be brought in the Civil Court having original local jurisdiction where the registry office is situated to enforce the registration. The original jurisdiction depends on whether the registrar as an officer of Government or the Government (sued as the Secretary of State for India in Council) is, or is not, a necessary party defendant. If he is, then the suit must needs be brought in the District Court which thus has the only available original local jurisdiction. If he is not, then the Civil Court means the Court having ordinary jurisdiction, and that is the Court of the Subordinate Judge, which in this case is situated in the same town as the registry office. No doubt an officer refusing to perform a function cast on him by law can generally be forced to perform it by a suit properly framed for that purpose under the Specific Relief Act; but in a case of registration a registrar, who has made an inquiry in appeal from a sub-registrar, and determined that the right to registration does not exist, has done his duty, even though he may have arrived at an erroneous decision. He does not, either on his own behalf or on behalf of the Government, take any thing away from a subject, or keep him out of any property or enjoyment. He merely decides, as between *A* and *B*, that the former is not entitled to have a document registered by which the latter may be affected. He takes evidence, and provisionally adjudicates upon the right. This is obviously in its sphere the exercise of a judicial function analogous to that exercised by a *Mámlatdár* in dealing with a question of immediate possession. There is no reason, therefore, we think, why the registrar or the Government should be made a party to a suit under section 77 on the ground of an erroneous order. The order is made against one of the parties interested in the deed in favour of the other; and the former being dissatisfied naturally has for his adversary, not the officer who adjudged between them, but the opposite party in the earlier contention. The Government is in no way interested in the temporary, any more than in the final, adjudication.

As the registrar or the Government was not a necessary party,

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the proper *forum* for the present suit was the Subordinate Judge's Court at Chikodi. Every suit must be brought in the Court of the lowest competent jurisdiction. The District Court had not jurisdiction to entertain the suit. Its want of jurisdiction when manifest cannot be held to have been cured by any waiver, if there was a waiver, of the objection raised by the defendant, and we must annul its order with costs.

*Order for registration annulled.*

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Nanabhai Haridas.*

January 28.

ADARJI DORA'BJI (ORIGINAL PLAINTIFF), APPELLANT, v. ERAKSHA'H DHANJI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Partnership suit—Jurisdiction—District Court—Subordinate Court—Partnership—Dissolution—Wrong—Damages—Indian Contract Act No. IX of 1872, Sec. 265—Code of Civil Procedure, Act XIV of 1882, Sec. 213.*

A suit for winding up an expired partnership can be brought in the District Court under section 265 of the Contract Act (IX of 1872) and section 213 of the Civil Procedure Code Act (XIV of 1882).

But the jurisdiction of the ordinary Courts is not annulled by the special jurisdiction assigned to the District Court by section 265 of the Contract Act. Any one having a cause of action arising out of partnership transactions may sue the person liable in the ordinary Court. The jurisdiction of such Court, however, does not extend to the case of a winding up of an *expired* partnership. This jurisdiction is given to the District Court by section 265 of the Contract Act, and when, along with a new mode of relief, particular jurisdiction is constituted to administer it, the Court specified, and no other, is to be understood as vested with authority. Hence, though administration for the purpose may apparently be sought in the subordinate Courts, it can be obtained, in the case of an expired partnership, only in the District Court or the High Court. But the jurisdiction of the subordinate Courts in other respects is not extinguished. An apparent cause of action gives a right to sue in them for such relief as they can afford, though not for the particular kind of relief contemplated in section 265 of the Contract Act.

Where in a suit a cause of action appears which in itself is cognizable by an inferior Court, such a Court is not justified in rejecting the suit, merely because it is one in which the District Court might have jurisdiction under section 265 of the Contract Act.

\* Appeal, No. 26 of 1883, from order.