APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

1887. *November* 24.

NA'RO PA'NDURANG AND OTHERS, (ORIGINAL DEFENDANTS), APPLICANTS, *v.* MAHA'DEV PURSHOTAM, (ORIGINAL PLAINTIFF), OPPONENT.*

Jurisdiction—Civil Court's jurisdiction over suits in respect of an injury caused by exclusion from an hereditary office—Bombay Hereditary Offices' Act (III of 1874), *Sec.* 40—*Election of an officiator—Free election—Agreement in restraint of free election—Act X of* 1876, *Sec.* 4—*Its application to suits between private persons.*

The plaintiff and his co-sharers in a *kulkarni vatan* entered into an agreement in 1869 for the performance of the duties of the *vatan* by the several sharers in turn. The agreement provided that if any of the sharers prevented the nomination of a sharer to officiate in his turn, he should pay Rs. 100 as damages to the person thus excluded from office. The plaintiff alleged that in 1883 it was his turn to officiate, that the defendants, instead of electing him in accordance with the agreement, nominated another person, who was confirmed in the appointment by the Collector. The plaintiff, therefore, sued the defendants to recover Rs. 100 as damages for breach of the agreement of 1869.

Held, that the agreement could not be enforced by a civil suit, as it was opposed to the policy of section 40 of Bombay Act III of 1874, which contemplates a free election of an officiator by the whole body of registered representative *vatandárs* to whom the Collector issues his notice—an election unfettered by any promises made beforehand by any of the sharers.

Held, also, that a suit in respect of any injury caused by exclusion from office or service is barred by the second paragraph of clause (*a*) of section 4 of Act X of 1876. Having regard to the wording of the several clauses of section 4, the bar therein provided is not limited to suits against Government.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The plaintiff sued to recover Rs. 100 as damages for breach of an agreement dated the 30th December, 1869. He alleged that the defendants were his co-sharers in the *kulkarni vatan* of Gopálpur; that in 1869, when the *vatan* register was prepared, all the co-sharers in the *vatan* entered into an agreement to the effect that the duties of the *vatan* should be performed in turn by the several sharers, and that if any sharer prevented the nomination of any co-sharer to officiate in his turn, he was to pay Rs. 100 as damages to the person thus excluded from office. The plaintiff further alleged that in 1883 it was his turn to officiate; that the defend-

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ants objected to his nomination, and induced the Collector to appoint another person, thereby acting in direct violation of the agreement of 1869. Hence the present suit.

The defendants contended *(inter alia)* that the agreement in question was illegal under Bombay Act III of 1874, and could not be enforced by a Civil Court.

The Subordinate Judge held, on the authority of *Sitárám Vináyak* v. *Rámchandra Bábáji*[1], that the agreement was legal, and that he had jurisdiction to entertain the suit. He passed a decree in favour of the plaintiff, and his decree was confirmed on appeal.

The defendants thereupon applied to the High Court under its revisional jurisdiction to set aside the lower Court's decision, on the ground that the suit was not cognizable by a Civil Court.

A rule *nisi* was granted, calling upon the plaintiff to show cause why the decree should not be set aside.

Ganesh Rámchandra Kirloskar, for the plaintiff, showed cause :—The question in this case is not one which the Collector has to determine. The question of the right to officiate is not at issue in this case. Under section 40 of Bombay Act III of 1874, the *vatandárs* are free to make an election of an officiator or deputy. They are, therefore, at liberty to make any arrangement among themselves for the election or appointment of an officiator. Such an arrangement would be perfectly legal and enforceable in a Civil Court. The case of *Sitárám Vináyek* v. *Rámchandra Bábáji*[1] is analogous to the present. The Civil Court has, therefore, jurisdiction to entertain the present suit.

Ghanashám Nilkanth, contra :—The ruling in *Sitárám Vináyak* v. *Rámchandra Bábáji*[1] has no application to the present case. Section 4 of Act X of 1876 ousts the jurisdiction of the Civil Courts in cases of this kind.

BIRDWOOD, J. :—The decision in *Sitárám Vináyak* v. *Rámchandra Bábáji*[1] does not govern the present case. All that was really decided in that case was that the assignment of the income of the

(1) Printed Judgments for 1885, p. 24.

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village of Govardhan was not in contravention of section 5 of Bombay Act III of 1874. Nor are the cases of *Vásudev Vithal Samant* v. *Rámchandra Gopál Samant*(1) and *Shiváji Nilkanth* v. *Tirko Bhimáji Nádgir*(2) exactly in point. In the present case, the plaintiff and the defendants were co-sharers in a *kulkarni vatan* and entered into an agreement, in 1869, for the performance of the duties of the *vatan* by the several sharers in turn. If any of the sharers prevented the nomination of a sharer to officiate in his turn, he was to pay Rs. 100 as damages to the person thus excluded from office or service. Damages are claimed in the present case in respect of the plaintiff's exclusion from office in the year 1883, when it became his turn to officiate. The Collector issued a notice to the sharers, under section 40 of Bombay Act III of 1874, calling upon them to appear before him to elect an officiator for that year. It is alleged that, instead of electing the plaintiff, in accordance with the agreement of 1869, the defendants nominated another person, not a representative *vatandár*, who was accordingly confirmed in the appointment by the Collector, and deemed to be a deputy under clause 3 of section 40. We think that the agreement of 1869 cannot be enforced by a civil suit, not only because it is opposed to the policy of section 40 of the Act, which clearly contemplates a free election of an officiator by the whole body of registered representative *vatandárs* to whom the Collector issues his notice—an election unfettered by any promises made beforehand by any of the sharers—but also because a suit in respect of any injury caused by exclusion from office or service is expressly barred by the second paragraph of clause (*a*) of section 4 of Act X of 1876.

With reference to the doubt suggested in the judgment in *Vásudev Vithal Samant* v. *Rámchandra Gopál Samant*(3), we are of opinion, having regard to the wording of the several clauses of section 4, that the bar therein provided is not limited to suits against Government. The section is fully in force in the Sholápur District, where the present suit has arisen, being unaffected, as regards that district, by Act XVI of 1877. We find, therefore,

(1) I. L. R., 6 Bom., 129. (2) Printed Judgments for 1885, p. 206.
(3) I. L. R., 6 Bom., 129.

that the Courts below had no jurisdiction to hear the present case.

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We reverse the decisions of both Courts, and reject the claim, with costs throughout.

Decree reversed and rule made absolute.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

1887. *November* 28.

VENKUBA'I, WIDOW OF VENKA'JI ANA'JI POTDA'R, (ORIGINAL PLAINTIFF), APPLICANT, *v.* LAKSHMAN VENKOBA KHOT, (ORIGINAL DEFENDANT), OPPONENT.*

Limitation—High Court's revisional powers—Civil Procedure Code (XIV of 1882), Sec. 622—Material irregularity.

On the 29th November, 1886, this suit was filed on a bond dated 29th November, 1881, payable in two years.

The Subordinate Judge dismissed it as time-barred, being of opinion that the cause of action had accrued on the 28th November, 1883.

Against this decision the plaintiff applied to the High Court under section 622 of the Code of Civil Procedure (Act XIV of 1882).

Held, reversing the decision of the Subordinate Judge, that the suit was not barred by time, the cause of action having accrued on the 29th November, 1883, —that is, the day of the month corresponding with the day on which the bond was dated.

Held, further, that the decision of the Subordinate Judge being palpably wrong and illegal, the High Court had jurisdiction to exercise its revisional powers under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The Privy Council ruling in *Amir Hassan Khán* v. *Sheo Baksh Singh*(1) explained.

Where a Court, with a full and correct apprehension of the questions which it is necessary for it to decide in any case, errs, in law or in fact, in its decision of any such questions with which it has jurisdiction to deal, its errors can only be corrected in due course of appeal; and where no appeal is permissible there is no remedy under section 622 of the Code or under the provisions of section 15 of Statute 24 & 25 Vic., c. 104, whatever remedy there may be, in the Bombay Presidency, under clause 2 of section 5 of Regulation II of 1827. But it is otherwise in any case where the Court, having a mistaken and wrong apprehension of the questions at issue, proceeds to determine an issue which does not really arise in the case, and bases its decision of the case on its determination of that issue. If it does so, it acts with material irregularity in the exercise of its jurisdiction.

* Application under extraordinary jurisdiction, No. 65 of 1887.

(1) I. L. R., 11 Calc., 6.