attachable, and saleable as "saleable property," under section 266. With respect to the adjustment of the decree, relied on by the appellant, between Govind Náná and himself in 1888, as it was subsequent to the notice given on 30th December, 1886, to the Násik Court, as directed by section 273, the Court of Násik had no power to sanction it, it being expressly forbidden by that section from proceeding further with the execution of the decree, and the adjustment cannot, therefore, be now recognized by the Court. We must, therefore, confirm the order of the Court below with costs.

Order confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

KA'SHIM VALAD KAMA'L NA'IK, (ORIGINAL PLAINTIFF), APPELLANT, *v.* AMINBI KOM GAVASUMIYA AND THE COLLECTOR OF BELGAUM, (ORIGINAL DEFENDANTS), RESPONDENTS.*

1891, *July 22.*

Land Acquisition Act (X of 1870), Parts III and IV, Secs. 3, 14, 15, 38 and 39 —Reference by the Collector to the District Judge—Questions of conflicting claims to title—Persons claiming interest in the compensation—"Apportionment," construction of the term—District Judge's order—Appeal.

A Collector having acquired land under the provisions of the Land Acquisition Act (X of 1870), and a question having arisen as to the right to the compensation—each of two rival claimants claiming exclusive title to the whole of the compensation awarded—the Collector referred the question to the decision of the District Judge under section 15 of the Act. The District Judge having decided the question in favour of one of the claimants, the other appealed to the High Court. In appeal, it was contended that as the provisions of the Land Acquisition Act apply only to cases in which there is a dispute as to the apportionment of compensation, and as in this case each of the claimants laid claim to the entire amount of the compensation, the order passed by the District Judge was not appealable under the provisions of the Act, as there was no question of apportionment to be determined.

Held, that looking to the language of section 15 of the Land Acquisition Act (X of 1870), which clearly contemplates the reference of such a dispute as this being provided for in a subsequent part of the Act, and as there is no other provision in the Act made for it, the term "apportionment" in Part IV should be given a liberal construction, as including the case where the Court has to decide between rival claimants to the entire compensation. The order of the District Judge was, therefore, appealable.

* Appeal No. 30 of 1891.

1891.

KASHIM
v.
AMINBI
AND THE
COLLECTOR
OF BELGAUM.

THIS was an appeal from the decision of Dr. A. D. Pollen, District Judge of Belgaum.

The Collector of Belgaum having taken up certain land under the provisions of the Land Acquisition Act (X of 1870), a dispute arose between the appellant Káshim valad Kamál Náik, Inámdár, and the respondent Aminbi kom Gavasumiya, who put in rival claims to the entire amount of the compensation given on account of the land. The Collector, thereupon, referred the dispute to the District Judge, under section 15 of the Act. The Judge remarked that the case was one that could be disposed of on the admissions of the claimants, and decided it without going into the question of title, and without taking any evidence. He held that the respondent, Aminbi, was entitled to receive the compensation from the Collector.

Against the decree of the District Judge, Káshim appealed to the High Court.

Jardine (with *Ghanashám Nilkanth Nádkarni*) for the appellant :—The Judge has decided the case with undue celerity. The proper decision in the case depends upon a question of title, which the Court has not investigated.

Inverarity (with *Mánekshâh Jehângirsháh Taleyárkhán*) for the respondent :—In the first place, we contend that the Judge's order is not appealable. Section 39 of the Land Acquisition Act provides for an appeal when *there is a dispute as to the apportionment* of compensation settled by the Court ; while in the present case the question of apportionment does not arise at all, because each of the claimants seeks to recover the whole amount of the compensation, about which there is no dispute. Section 38 contemplates reference by the Collector to the Judge when the dispute relates to the apportionment of the compensation settled under section 14 of the Act. But in the present case the reference was made under section 15, which relates to conflicting claims of the competitors. Section 38 applies to cases in which the dispute relates to the apportionment and not to title, and section 15 refers to conflicting claims. These two sections contemplate different kinds of cases. There is no provision in the Land Acquisition Act

1891.

KASHIM v. AMINBI AND THE COLLECTOR OF BELGAUM.

empowering a Judge to decide questions of title, and the lower Court was, therefore, right in not going into that question.

Jardine:—An appeal would lie under section 39 of the Act. The lower Court did not go into the merits of the case, and, therefore, it is impossible to say, whether or not it involves the question of apportionment. That question may arise if the case be tried on the merits. Supposing that we cannot appeal under section 39 of the Act, still we can fall back on section 647 of the Civil Procedure Code (Act XIV of 1882), and maintain our appeal. The ruling in *Atribái* v. *Arnopoornábái*[1] shows that an appeal will lie.

Inverarity in reply:—*Atribái* v. *Arnopoornábái*[1] cannot be relied upon. The question in that case was whether a second appeal would lie. The facts of the case are not fully stated in the report, and consequently it does not appear that the question, whether an appeal would lie or not, was considered in that case. The Land Acquisition Act has, under section 36, incorporated certain sections of the Civil Procedure Code, and therein section 647 is not mentioned; besides, that section applies to proceedings in Civil Courts other than suits and appeals.

SARGENT, C. J.:—The preliminary question raised in this case is whether an appeal lies from the decision of the District Judge. Under section 15 of Act X of 1870 a Collector is empowered to refer, among other things, questions of conflicting claims to the title to the land, or to any rights thereto, or interests therein, to the District Court "in the manner hereinafter appearing." Part III deals with references as to the amount of compensation. Part IV deals with the apportionment of the compensation in cases where there are several "persons interested"—*i. e.*, as defined by section 3, persons claiming an interest in the compensation; and by section 38, where the amount of the compensation has been settled under section 14, as was the case here, if there is any dispute as to the apportionment of the compensation, the Collector shall refer it to the decision of the Court, from which an appeal is given by section 39. Here each claimant asserts an exclusive right to the whole—and it is contended that there is, therefore, no question of apportion-

(1) I. L. R., 9 Calc., 838.

1891.

KÁSHIM v. AMINBI AND THE COLLECTOR OF BELGAUM.

ment to be determined. But looking to the language of section 15, which clearly contemplates the reference of such a dispute being provided for in the subsequent part of the Act, we think that—as there is no other provision made for it—we should give the term "apportionment," in Part IV, a liberal construction as including the case where the Court has to decide between rival claimants of the entire compensation. It is to be further remarked that all such disputes may end in an apportionment of the compensation. An appeal will, therefore, in our opinion, lie in this case. The District Judge was wrong in supposing that the claimants had made any admissions on which the case could be rightly disposed of. He ought to have given the parties an opportunity of adducing their evidence. We, therefore, reverse the decision of the District Judge, and remand the case for re-hearing. Costs to abide the result.

Decree reversed and case remanded.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1891. *August* 12.

DATTA'TRAYA VITHAL, (ORIGINAL PLAINTIFF), APPELLANT, v. MAHA'DA'JI PARASHRA'M AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

"Sheri" lands—Lease by Government for a certain number of years—Partition—Section 265 *of the Civil Procedure Code (Act XIV of* 1882*)—General rule of Hindu law as to partition.*

Under section 265 of the Civil Procedure Code (Act XIV of 1882) a Civil Court cannot effect partition of lands paying revenue to Government. The Collector alone is empowered under that section to do so.

The general Hindu law as to partition, which lays down that, except in certain special cases determined by family custom or usage, partition of all family property can be made, is applicable to *sheri* lands leased by Government for a certain number of years; there is no Act of Legislature which excludes lands leased by Government from its operation.

THIS was a second appeal from the decision of Khán Bahádur M. N. Nánávati, First Class Subordinate Judge of Ratnágiri, with appellate powers.

Suit for partition.

*Second Appeal, No. 559 of 1889.