

case the applicant offered to maintain the complainant on condition that she lived with him. She refused that offer, because in the present proceedings the applicant denied the validity of the marriage ceremony that took place between him and the complainant twenty-five years ago. Such a ground of refusal is not, in my opinion, sufficient to justify the Magistrate in making an order under section 488 notwithstanding the offer.

1891.

IN RE
GULÁBDÁS
BHÁIDÁS.

Order quashed.

APPELLATE CIVIL.

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

THE FIRST ASSISTANT COLLECTOR OF PRANT BASSEIN,

APPELLANT, v. ARDESIR FRAMJI MOOS, RESPONDENT.*

1891.

July 6.

Jurisdiction—Cases referred by District Judge to Assistant Judge for trial—The Bombay Civil Courts' Act (XIV of 1869), Sec. 16—"Miscellaneous applications"—Land Acquisition Act (X of 1870)—Reference to District Court by the Collector—Act VII of 1889—Act VIII of 1890—Applications under special Acts.

Although the expression "miscellaneous applications" in section 16 of the Bombay Civil Courts' Act (XIV of 1869) may be large enough to include references by the Collector under the Land Acquisition Act (X of 1870), the latter part of section 16, as it stood before that section was amended by Acts VII of 1889 and VIII of 1890, indicates that it was not the intention of the Legislature to empower a District Judge to refer to an Assistant Judge applications under special Acts for disposal.

THIS was a reference made by C. E. G. Crawford, District Judge of Thána, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The circumstances under which the reference was made were as follows :—

The Municipality of Bombay being in need of certain land situate at the village of Páspoli and forming part of the Pavai estate in Sálsette in the Thána District, the First Assistant Collector of Bassein instituted proceedings under the Land Acquisition Act (X of 1870) to acquire the land for the Municipality. In the course of such proceedings he made a reference to the District

* Civil Reference, No. 5 of 1891.

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Court of Thána, under section 15 of the Act, to determine the amount of compensation to be allowed to the Receiver of the Pavai estate for the land. The District Judge referred it to the Assistant Judge, under section 16⁽¹⁾ of the Bombay Civil Courts Act (XIV of 1869), for disposal. The Assistant Judge thereupon inquired into the matter and made his award. Both the Collector and the Receiver, being dissatisfied with the award, appealed therefrom to the District Judge (E. T. Candy), who in admitting the appeal recorded the following remark:—

“ I admit this appeal subject to the question whether an appeal lies. For if the District Judge had no authority to refer to the Assistant Judge, then the proceedings before the Assistant Judge have been without authority.”

When the appeal came on for hearing before the District Judge (C. E. G. Crawford) the parties having sought for no issue pending the decision of the Court upon the point of jurisdiction, that point only was argued before the Court by the counsel for the parties.

In submitting the point for the consideration of the High Court the District Judge made the following observations:—

“ The point for decision practically comes to this : can a District Judge refer a reference to his Court made under section 15 of the Land Acquisition Act X of 1870 to the Assistant Judge for disposal ?

“ The words of section 15 of Act X of 1870 are:—‘ The Collector shall refer the matter to the determination of the Court.’ The expression ‘ Court’ is defined by section 3 as meaning, so far as this Presidency is concerned, ‘ a principal Civil Court of original jurisdiction.’ As to what is a principal Civil Court of

(1) “ 16. The District Judge may refer to any Assistant Judge, subordinate to him, original suits of which the subject-matter does not amount to ten thousand rupees in amount or value, and miscellaneous applications not being of the nature of appeals. The Assistant Judge shall have jurisdiction to try such suits and to dispose of such applications. Where the Assistant Judge’s decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds five thousand rupees.”

original jurisdiction, reference was made to clause (12) of section 2 of the General Clauses Act I of 1868, which says: 'District Judge shall mean the Judge of a principal Civil Court of original jurisdiction.' But apart from this, which is a definition of the expression 'District Judge,' not of that now in question, there can be no doubt that in each district of the Presidency of Bombay, excluding Sind, the District Court as constituted by the Bombay Civil Courts' Act (XIV of 1869), is the principal Civil Court of original jurisdiction in that district.

"It was argued that under the Bombay Civil Courts' Act (XIV of 1869) an Assistant Judge, where one has been appointed, is a member of the District Court, holding a position towards the District Judge analogous to that of a *puisne* in a High Court to the Chief Justice; and that, therefore, section 16 of the Act does not destroy the jurisdiction given to each member of the Court by Act X of 1870, even if a reference under the latter Act be an improper procedure.

"Now, no doubt the Assistant Judge is part of the District Court. This is shown, if not otherwise, by the provision of section 20 of the Act that he shall use the seal of the District Judge; whereas Subordinate Judges are by section 29 to use seals of their own. But in other respects the argument above summarized is not on all fours with the history of this case. The case to which it would exactly apply would be that of a reference made by the Collector under section 15 of Act X of 1870 to the Assistant Judge. But in this case the reference by the Collector was made to the District Judge, and was by the latter referred to the Assistant Judge for disposal. The question, therefore, is whether the District Judge had authority thus to transfer the reference, and in order to decide this, we are shut up within the provisions of section 16 of the Bombay Civil Courts' Act XIV of 1869, which is the sole law dealing with the reference of original cases by the District Judge to the Assistant Judge.

"A comparison of section 16 with section 12 of the Act shows that it is not all 'civil business' which can be referred to an Assistant Judge. A Joint Judge under section 12 has 'co-extensive powers and a concurrent jurisdiction with the District

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Judge' for 'such civil business only as he may receive from the District Judge.' But references to an Assistant Judge are by section 16 confined to 'original suits of' a certain valuation and 'miscellaneous applications not being of the nature of appeals.'

"The question, therefore, is whether a reference under Act X of 1870 is either a 'suit' or a 'miscellaneous application.' It must be borne in mind that the Bombay Civil Courts' Act XIV of 1869 is prior in date to the present Land Acquisition Act X of 1870, and that the Act of which the latter took place, Act VI of 1857, did not provide for the intervention of any Court in the matters which it regulated. In these circumstances I am of opinion that the expression 'miscellaneous application' in section 16 of the Bombay Civil Courts' Act XIV of 1869 is wide enough to include references under the Land Acquisition Act X of 1870. The reference is an application to the Court by the Collector to adjudicate in the matter referred. It is not an appeal from the Collector's decision as a subordinate Court, but a reference or application made by him invoking the assistance of the Court to settle for him with parties with whom he is unable to settle himself. He is one of the contending parties throughout; he appoints one of the two assessors (section 19), and he and 'the person interested' are looked upon as the two parties who may appeal in certain cases (section 35).

"I have not referred in this connection to the provisions of section 35 as to appeals lying to the Court of the District Judge, 'unless the Judge whose decision is appealed from is the District Judge,' because these words appear to have reference only to the case contemplated in section 3 of a 'judicial officer' appointed 'to perform the functions of a Judge under this Act.'

"I am of opinion, therefore, that my finding upon the point for my determination should be in the affirmative,—that is, in favour of the jurisdiction of the lower Court.

"But as the decree which the District Judge would pass would be final, and as he entertained a doubt as to the correctness of his opinion and considered the matter to be of general importance, he submitted the following question for an authoritative decision of the High Court :—

“Can a reference by the Collector under section 15 of the Land Acquisition Act X of 1870 to the District Court be referred to, and disposed of by, the Assistant Judge?”

Vásudeo Gopál Bhandárkar (amicus curiæ) in support of the District Judge's opinion.

SARGENT, C. J.—We think that, although the expression “miscellaneous applications” in section 16 of Act XIV of 1869 may be large enough to include references by the Collector under Act X of 1870, the latter part of section 16, as it stood before that section was amended by Acts VII of 1889 and VIII of 1890, indicates that it was not the intention of the Legislature to empower a District Judge to refer to an Assistant Judge applications under special Acts for disposal.

Order accordingly.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Parsons.

GURSA'NGA'YA, (ORIGINAL PLAINTIFF), APPELLANT, v. TAMANA,
(ORIGINAL DEFENDANT), RESPONDENT.*

1891.
July 8.

Jurisdiction—Suit in which the right to an office and to its emoluments is in dispute—Civil Court's jurisdiction over such a suit.

A suit in which the only question for decision was, whether or not the plaintiff was the *ayá* of a certain *math*, and entitled as such to receive certain fees on the occasion of marriages, is a suit of a civil nature in which the right to an office and thereby to certain fees is in contest. Such a suit is cognizable by a Civil Court. Its decision in no way involves any interference in a caste question.

SECOND appeal from the decision of C. H. Jopp, Assistant Judge of Sholápur-Bijápur, in Appeal No. 13 of 1889.

The plaintiff sued for a declaration that he was the *híramath ayá* of the village of Tarnal, and that as such he was entitled to receive fees on the occasion of marriages in the Lingáyat caste in that village. The defendant having failed to invite him to his (*i. e.* defendant's) sister's marriage, and to pay him the fees, the plaintiff sought also to recover Rs. 1-0-9 as his fees for that occasion.

* Second Appeal, No. 310 of 1890.