1897.

TULLOCK-CHAND v. GOKULBHOY.

be extended to ascertaining what the subject-matter of the agreement consisted in. If he can make the inquiry when there is no dispute, we cannot see why he should not be at liberty to make it when there is a dispute. Neither duty is imposed upon him by the Act. Sections 34 and 35 define and limit the extent of his duties. It does not seem to us that it makes any difference that the subject-matter of the agreement is another document, and that the agreement is to register it. The only connection between them is that the one is the subject-matter of the other. They are in no sense one document. We think, therefore, that the decree ought not to have directed that Exhibit A should be registered as an annexure to Exhibit B, and that to that extent it should be varied.

Decree varied.

Attorneys for the appellant:—Messrs. *Brown and Moir.*

Attorneys for respondents:—Messrs. *Bhaishankar and Kanga.*

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

1896.

February 18.

KASHINATH SAKHARAM KULKARNI (ORIGINAL PLAINTIFF), APPLICANT, *v.* NANA AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS.*

Civil Procedure Code (Act XIV of 1882), *Sec.* 622—*High Court, interference by—Mámlátdár—Jurisdiction.*

The plaintiff sued in a Mámlatdár's Court for possession of certain land, alleging that the defendants held them under a lease, the time of which had expired. The Mámlatdár found the execution of the lease proved, but held it to be colourable, and that the defendants did not hold under it. He, therefore, rejected the plaintiff's claim. The plaintiff applied to the High Court in its extraordinary jurisdiction and obtained a rule to set aside the order, contending that the Mámlatdár had no jurisdiction to decide that the lease was colourable, and that he ought not to have admitted evidence upon that point.

Held (discharging the rule) that the matter was not one for the extraordinary jurisdiction of the High Court under section 622 of the Civil Procedure Code (Act XIV of 1882). The Mámlatdár had not declined jurisdiction. He had considered the materials laid before him and had come to a conclusion. That conclusion, if erroneous, ought to be corrected in a regular suit and not by an application to the High Court under section 622 of the Civil Procedure Code (Act XIV of 1882).

* Application No. 209 of 1895, under the Extraordinary Jurisdiction.

1896.

KASHINATH v. NANA.

APPLICATION under the High Court's extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Sáheb Annaji Ganesh Tilak, Mámlatdár of Niphád.

The plaintiff sued the defendants in the Mámlatdár's Court to recover possession of certain land which (he alleged) the defendants held under a *lávni* kabuláyat (lease), the term of which had expired.

The Mámlatdár found the execution of the kabuláyat proved, but rejected the claim, holding that the kabuláyat was merely colourable, and that the defendants did not hold under it.

The plaintiff applied to the High Court under its extraordinary jurisdiction and obtained a *rule nisi* to set aside the order of the Mámlatdár on the grounds (*inter alia*) that the execution of the kabuláyat being admitted by the defendants, the Mámlatdár had no jurisdiction to try the question of its being colourable or otherwise; that he ought to have held that the defendants could not dispute the plaintiff's title, and that he should not have admitted any oral evidence to contradict or vary the terms of the kabuláyat.

Mahadeo B. Chavbal appeared for the applicant (plaintiff) in support of the rule:—The kabuláyat sued on being admitted, and held proved by the Mámlatdár, it was not open to him to go into other questions—*Patel Kilabhai* v. *Hargovan*[1], nor could the defendants impugn the kabuláyat as colourable. The Mámlatdár has considered points which can be determined only in a regular civil suit.

There was no appearance for the opponents (defendants).

FARRAN, C. J.:—In this case the Mámlatdár has come to the conclusion that the defendant is not in possession of the land under the *lavni* kabuláyat upon which the plaintiff relies as proving the defendants' tenancy and its termination within six months of suit. Upon this finding of the Mámlatdár, his decision that he cannot dispossess the defendant is correct.

It has been argued before us that the Mámlatdár has wrongly admitted evidence, and that upon the evidence and admissions

(1) I. L. R., 19 Bom., 133.

made before him he was bound to come to a different conclusion and to hold that the defendants did hold the land under the *lavni* kabuláyat or at all events that the defendant was estopped from saying that he did not. That is an argument which could properly be addressed to us, a Court of appeal, if an appeal lay to this Court; but we think that we ought not, when our extraordinary powers under section 622 are invoked, to exercise them in such a case. The Mámlatdár has not declined jurisdiction. He has considered the materials laid before him and has come to a conclusion adverse to the plaintiff's case. That conclusion, if erroneous, ought, we think, to be corrected in a regular suit and not by an application under section 622 and especially so when no substantial injustice appears to result from the Mámlatdár's decision. We discharge the rule.

Rule discharged.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Strachey.

YESU KOM KRISHNA SUTAR AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SITARAM, SON AND HEIR OF THE DECEASED GOVINDA SUTAR (ORIGINAL PLAINTIFF), RESPONDENT.*

1896. *February* 18.

Bombay Hereditary Offices Act (Bom. Act III of 1874), *Sec.* 4†—*Amending Act (Bom. Act V of* 1886)‡—*"Hereditary office"—Village sutár—Hindu law—Bombay Government Resolution No.* 512 *of* 1832§.

The duties with which section 4 of the Bombay Hereditary Offices Act (Bom. Act III of 1874) deals, are confined to duties in which Government a being responsible for the administration of the country is directly interested.

* Second Appeal, No. 126 of 1895.

† Section 4 of the Bombay Hereditary Offices Act (Bom. Act III of 1874) :—

(IV) In this Act, unless there be something repugnant in the subject or context,

"Watan property" means the moveable or immoveable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office;

It includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise;

It includes cash payments in addition to the original watan property made voluntarily by Government and subject periodically to modification or withdrawal.

"Hereditary office" means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue, or with the village police, or the settlement of boundaries or other matters of civil administration;

the expression includes such office even where the services originally appertaining to it have ceased to be demanded.

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