

## APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

LAKSHMAN BALAJI (ORIGINAL DEFENDANT), APPLICANT, v. RAM-  
CHANDRA PARASHRAM (ORIGINAL PLAINTIFF), OPPONENT.\*

1898.

July 11.

*Dekkhan Agriculturists' Relief Act (XVII of 1879), Secs. 3 (z), 53 and 73<sup>(1)</sup>—Agriculturist—Plaintiff proved or admitted to be an agriculturist—Appeal—Special Judge—Jurisdiction.*

The plaintiff alleging that she was an agriculturist sued for redemption under Chapter II of the Dekkhan Agriculturists' Relief Act (XVII 1879). The Subordinate Judge raised an issue as to her status, and on that issue found that she was not an agriculturist. He, however, proceeded with the trial of the case and on the merits dismissed her claim. She thereupon applied to the Special Judge, who took up the case in revision, reversed the decree of the lower Court, and passed a decree in the plaintiff's favour, holding that she was an agriculturist.

*Held*, that the Special Judge had no jurisdiction. The Subordinate Judge had found that the plaintiff was not an agriculturist. Having done so it must be deemed that he went on with the trial only in his ordinary jurisdiction, and the decree passed was one not under Chapter II of the Dekkhan Agriculturists' Relief Act, but under the general provisions of the Civil Procedure Code (Act XIV of 1882). By section 53 the Special Judge has jurisdiction only over decisions and orders passed by a Subordinate Judge under Chapter II.

\* Application No. 48 of 1898 under extraordinary jurisdiction.

(1) Sections 3 (z), 53 and 73 of the Dekkhan Agriculturists' Relief Act:—

3. The provisions of this chapter (II) shall apply to—

(z) Suits for the redemption of mortgaged property when the plaintiff, or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist.

53. The District Judge may for the purpose of satisfying himself of the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under Chapter II, Chapter IV or Chapter VI of this Act, and as to the regularity of proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit ;

and any Assistant Judge or Subordinate Judge appointed by the Local Government under section 52 may similarly, in any district for which he is appointed, call for and examine the record of any such suit or matter, and, if he see cause therefor, may refer the same, with his remarks thereon, to the District Judge, and the District Judge may pass such decree or order on the case as he thinks fit :

Provided that no decree or order shall be reversed or altered for any error or defect or otherwise, unless a failure of justice appears to have taken place.

73. The decision of any Court of first instance that any person is or is not an agriculturist, shall for the purposes of this Act, be final.

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*Per* PARSONS, J.:—It is only when the plaintiff is admitted and proved (not merely when he claims) to be an agriculturist that the Court has jurisdiction to try a suit under Chapter II of the Act. The question of status ought to be raised and decided as a preliminary issue.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Khán Bahádur Navroji Dorabji, Special Judge under the Dekkhan Agriculturists' Relief Act (XVII of 1879).

The plaintiff sued to redeem and recover possession of certain land, alleging that she was an agriculturist, and thus entitled to the benefit of Chapter II of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

The defendants denied the mortgage and contended (*inter alia*) that the plaintiff was not an agriculturist, and that the suit was barred by limitation.

The Subordinate Judge found that the plaintiff was not an agriculturist, and having done so he held, on the merits, that the plaintiff was not the owner of the equity of redemption and that the suit was barred. He, therefore, dismissed the suit.

The plaintiff applied for revision to the Special Judge, who reversed the decree and ordered that plaintiff should redeem and recover possession of the property on payment of ninety-nine rupees to the defendants within six months. In his judgment he stated that the plaintiff "must certainly be taken to be an agriculturist."

Against this order defendant No. 3 applied to the High Court in its extraordinary jurisdiction to set aside the decree of the Special Judge, contending that he had no jurisdiction in the case and that the plaintiff having been held by the first Court not to be an agriculturist, the provisions of Chapter II of the Dekkhan Agriculturists' Relief Act were not applicable. A rule *nisi* was granted and now came on for hearing.

*Mahadeo B. Chaubal* appeared for the applicant (defendant No. 3) in support of the rule:—The question is whether the Special Judge had jurisdiction in the matter. We contend that he had not. For the Subordinate Judge had found that the

plaintiff was not an agriculturist. Having done so, it must be taken that he decided the suit in his ordinary jurisdiction and not in the special jurisdiction vested in him under Chapter II of the Dekkhan Agriculturists' Relief Act. If he had held that the plaintiff was an agriculturist, and had decided the suit under Chapter II, then, no doubt, the Special Judge would have had jurisdiction to entertain the application for revision. Under the circumstances the plaintiff's remedy lay in appeal to the District Judge.

*Balaji A. Bhagavat* for the opponent (plaintiff) showed cause:—The Special Judge had jurisdiction to entertain our application for revision. In the plaint, the plaintiff clearly stated that she was an agriculturist. The Special Judge was justified in stating that the plaintiff was an agriculturist: she held land and maintained herself by agriculture. The decision of the first Court under the original Act (XVII of 1879) as to status was final, but under the amending Act (VI of 1895) the finding can be upset in appeal. As to the powers of the Special Judge see section 53.

PARSONS, J.:—In this case the plaintiff brought a suit for redemption under the provisions of Chapter II of the Dekkhan Agriculturists' Relief Act, alleging that she was an agriculturist entitled to the benefits of that Act. The defendant in his written statement disputed her status and, an issue being framed on the point, the Subordinate Judge decided that the plaintiff was not an agriculturist and could not avail herself of the Dekkhan Agriculturists' Relief Act. The Subordinate Judge, however, did not dispose of the case as he should have on this issue only, but he decided the other issues raised, and finding that plaintiff was not the owner of the equity of redemption and that her suit was time-barred, rejected the claim. The Special Judge took up the case on revision under section 53 of the Act, and passed a decree in favour of the plaintiff.

It is contended that the Special Judge had no jurisdiction, since the decree passed by the Subordinate Judge was not passed in a suit under Chapter II of the Act. I think the contention is a good one. Section 3 (z) of the Act has the words "when the plaintiff is an agriculturist." It is thus, not when the

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plaintiff claims to be an agriculturist, but when he is an agriculturist, that is to say, when he is admitted or proved to be an agriculturist, that the Court is given jurisdiction to entertain and try a suit under Chapter II of the Act. Directly the Court finds that he is not an agriculturist, (and this point, if at issue, ought to be raised and decided as a preliminary one), the Court has no jurisdiction to proceed under that chapter. If, as in the present case, the Court, after finding that the plaintiff is not an agriculturist, goes on with the trial of the suit, it must be deemed to do so only under its ordinary jurisdiction, and the decree passed would not be one passed under Chapter II of the Act, and, therefore, final, but would be appealable under the general provisions of the Civil Procedure Code. The Special Judge is, by section 53, given jurisdiction only over decrees or orders passed by a Subordinate Judge in a suit or matter under Chapter II.

If what I have above said is correct, it clearly cannot be said that a decree is passed in a suit under Chapter II when the Subordinate Judge has found in that suit that the plaintiff is not an agriculturist and is not entitled to bring a suit under that chapter. I think in these cases that the suit is governed, not by the description that the plaintiff gives of his status, but by his actual status as determined by the Court in which his suit is filed, and that the jurisdiction of the Special Judge to hear an application for revision of the decree or order passed in the suit must depend upon the same determination.

We make the rule absolute with costs. The application to the Special Judge is ordered to be returned to the applicant.

RANADE, J.:—The question of jurisdiction raised by the applicant in this case is one of some importance. It is not disputed that before the repeal of section 73 of Act XVII of 1879 by section 3 of Act VI of 1895, the decision of the question of status by a Court of first instance was final. The consequences of this finality are discussed in *Malhar v. Chinto*<sup>(1)</sup>, *Mahalingappa v. Nemchand*<sup>(2)</sup> and *Gyanmal v. Ramchandra*<sup>(3)</sup>. In the present case, the decision was that the respondent, original plaintiff, was

(1) P. J. for 1837, p. 38.

(2) P. J. for 1887, p. 77.

(3) P. J. for 1896, p. 312.

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not an agriculturist. This decision being final, the case was taken out of the description of suits falling under Chapter II of Act XVII of 1879, and the Special Judge had no jurisdiction to exercise his revisional powers in respect of it.

It was, however, contended that, by reason of the repeal of section 73, the finality of such decisions on the point of status of the Court of first instance was removed, and the Special Judge could exercise his revisional powers in all cases where he was satisfied that the decision of the question of status was incorrect, and that the mortgagor seeking redemption was an agriculturist. It is not, however, easy to see how the repeal of section 73 could confer a new jurisdiction on the Special Judge which he did not possess before. His jurisdiction in the matter of such suits is regulated by the provisions of section 3, clause (b), sub-clause (z), which the amending Act has left untouched. That clause gives him jurisdiction in cases when the mortgagor seeking redemption is an agriculturist, and the claim is valued at a certain figure and the property is situated within certain districts. These limitations must be strictly observed. The only effect of the repeal of section 73 is that, in cases where he has jurisdiction, he is not bound by the decision of the Court of first instance when it finds that the person seeking redemption is an agriculturist. If the Special Judge finds that this decision is not correct, he may revise it, and if he finds that the plaintiff is not an agriculturist, he must refer the applicant before him to the District Court. In the same manner, if the District Judge finds in an appeal before him that a certain person seeking redemption was an agriculturist, though held to be otherwise by the Court of first instance, he can, since the date of the repeal of section 73, reverse the decision of the Court below, and then return the appeal to be filed as an application before the Special Judge if the other limitations hold good in the particular case. This is the only change effected by the repeal. In the present case the decision of the Court of first instance that the respondent-plaintiff was not an agriculturist excluded the case from the description of suits falling under Chapter II, over which alone the Special Judge has jurisdiction. The only remedy open to the respondent-plaintiff was by way of appeal to the District Court.

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The decision in *Shidhu v. Bali*<sup>(1)</sup>, followed in *Usmanbhai v. Imratabai*<sup>(2)</sup>, no doubt recognizes the very large powers possessed by the Special Judge under the Dekkhan Agriculturists' Relief Act to interfere with decisions on questions of fact as well as of law, but this wide power cannot be held to cover cases where he acts without jurisdiction as in the case before us. The decision in *Kondaji v. Anau*<sup>(3)</sup> certainly went much further, but the ruling is expressly based on a *bonâ-fide* mistake of facts on the part of the first Court in applying Chapter II to a case which did not fall under it. The ruling has no application in the present case, as there is no allegation here of any such mistake. The same remark holds true of the ruling in *Bhagvant v. Rango*<sup>(4)</sup>, where this Court held that when the first Court had disposed of the case as falling under Chapter II, the Special Judge's jurisdiction was not ousted by reason of his finding that the mortgage was for a larger sum than the limitation laid down in section 3. The circumstances of the present case do not quite resemble those of the ruling in *Janardhan v. Ananta*<sup>(5)</sup>, where the effects of the repeal of section 73 are discussed in respect of the jurisdiction of District Judges, but the principle laid down there holds equally good in respect of the Special Judge. Just as the District Judge has no power to hear an appeal in a case falling within Chapter II, but is bound to return the appeal to be filed as an application before the Special Judge, the Special Judge in this case had no power to dispose of the application before him in the present case, but was bound to refer the applicant to his remedy by way of appeal.

We must, therefore, make the rule absolute, and set aside the decision of the Special Judge, and direct the respondent to seek his remedy in the District Court.

*Rule made absolute.*

(1) (1890) 15 Bom., 180.

(2) P. J. for 1893, p. 148.

(3) (1883) 7 Bom., 448.

(4) P. J. for 1884, p. 30.

(5) P. J. for 1896, p. 396.