

sion that the accident and the consequent injury were due entirely to negligence on the part of the plaintiff.

I dismiss the suit, and I must do so with costs.

Attorneys for the plaintiff: Messrs. *Kanga and Sayani*.

Attorneys for the defendants: Messrs. *Craigie, Blunt and Caroe*.

Suit dismissed.

B. N. L.

1911.

TEMULJI
JAMSETJI
v.
BOMBAY
ELECTRIC
SUPPLY
AND
TRAMWAYS
COMPANY,
LIMITED.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Rao.

KASHIRAM MANSING (ORIGINAL DEFENDANT 1), APPLICANT, v. RAJARAM WALAB DAYARAM PATIL (ORIGINAL PLAINTIFF), OPPONENT.*

1911.

July 13.

Mamlatdars' Courts Act (Bom. Act II of 1906), sections 19, 23 (1), (2)⁽¹⁾—Civil Procedure Code (Act V of 1908), section 115—Possessory suit—Decree of the Mamlatdar dismissing the suit—Application to the Collector—Revision—Non-interference with legal and regular findings of fact—Entry in Revenue Record.

A Collector acting under section 23 of the Mamlatdars' Courts Act (Bom. Act II of 1906) is not authorized to interfere with the findings of fact of the Mamlatdar in a possessory suit, the findings being on their face legal and regular and arrived after a consideration of the evidence on record.

The provisions of clause (2) of section 23 of the Act, which empower the Collector to interfere by way of revision when he considers any proceeding, finding or order in a suit to be improper, must be harmonized with the provision in clause (1) that there shall be no appeal from any order passed by a Mamlatdar.

* Application No. 87 of 1911 under extraordinary jurisdiction.

(1) Section 23 (1), (2) of the Mamlatdars' Courts Act (Bom. Act II of 1906) is as follows:—

23. (1) There shall be no appeal from any order passed by a Mamlatdar under this Act.

(2) But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.

1911.

KASHTRAM
MANSING
vs.
RAJARAM.

Semble : the word 'improper' in clause (2) of section 23 of the Mamlatdars' Courts Act (Bom. Act II of 1906) has no different meaning from the word 'irregular' occurring in the expression 'irregularity' in section 115 of the Civil Procedure Code (Act V of 1908).

The entry of a person's name as owner or occupier in the books of Revenue Authorities is not in itself conclusive evidence either of title or possession.

Fatma kom Nubi Sahib v. Darya Sahib⁽¹⁾ and *Bhagoji v. Bapuji*⁽²⁾, referred to.

APPLICATION under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) against the order of A. H. A. Simcox, Collector of East Khandesh, reversing the decree of L. K. Kulkarni, Mamlatdar of Chopda, in possessory suit, No. 17 of 1910.

The plaintiff brought a possessory suit against the defendants in the Court of the Mamlatdar of Chopda, alleging that the land in dispute originally belonged to one Purushottam Chunilal, that the plaintiff acquired it under two purchase deeds dated the 6th October 1905 and 2nd February 1909, that he had been all along in possession and that the defendants had dispossessed him otherwise than by due course of law.

The defendants contended that they had never relinquished possession, that they had monetary transactions with Purushottam Chunilal, the plaintiff's alleged vendor, and that the sale to plaintiff was *benami* on their behalf.

Upon the said pleadings the Mamlatdar referred the parties to a Civil Court.

The plaintiff applied in revision to the Collector, who sent back the case to the Mamlatdar for a re-hearing. On the remand the Mamlatdar recorded all the evidence, oral as well as documentary, and found on the issues that the plaintiff was not in possession within six months before the suit was filed and that the defendants had not obtained possession otherwise than by due course of law. He, therefore, dismissed the suit.

⁽¹⁾ (1873) 10 Bom. H. C. R. 137 at p. 139.

⁽²⁾ (1888) 13 Bom. 75.

The plaintiff applied in revision to the Collector, who reversed the Mamlatdar's decree and ordered that possession be given to the plaintiff on the following grounds :—

1911.

 KASHIRAM
 MANRING
 v.
 RAJARAM.

I think the Mamlatdar was radically wrong. He considered the oral evidence and weighed it, but he did not consider the enormous weight of evidence of Government records in favour of plaintiff.

1. Plaintiff has got the khata of the land changed from defendants' names to his own at defendants' consent.
2. Plaintiff is the recognized owner in the Record of Rights.
3. Plaintiff has been recognized as the man from whom fees should be taken for sub-dividing the survey numbers.
4. Plaintiff pays the land revenue.
5. Plaintiff has a finding in his favour from the Mamlatdar himself (as Magistrate) in a trespass case relating to this land.

I cannot see how all this evidence can be neglected, or can fail to prove plaintiff's possession.

Defendant 1 preferred an application under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908), urging *inter alia* that all the documents referred to by the Collector in his judgment would be no evidence of possession and that the Collector acted irregularly and beyond the jurisdiction vested in him by law. A *rule nisi* was issued calling upon the plaintiff to show cause why the order of the Collector should not be set aside.

Branson, with *J. R. Gharpure*, for the applicant (defendant 1) in support of the rule.

Shortt, with *S. V. Bhandarkar*, for the opponent (plaintiff) to show cause.

SCOTT, C. J. :—This is an application to us to exercise our revisional powers under section 115 of the Civil Procedure Code with reference to an order passed by the Collector of East Khandesh purporting to be made under the revisional powers conferred upon him by section 23 (2) of the Mamlatdars' Courts Act (Bombay Act II of 1906).

The applicant was the defendant in a suit instituted in the Court of the Mamlatdar by the opponent. The Court has power under the Mamlatdars' Courts Act to give immediate possession of

1911.

KASHIRAM
MANSING
v.
RAJARAM.

the Collector should be free to act simply upon a difference of opinion between himself and the Mamlatdar as to the value or probative effect of parts of the evidence recorded by the Mamlatdar. We are not prepared, as at present advised, to hold that the word 'improper' has any different meaning from the word 'irregular' as occurring in the expression 'irregularity' in section 622 of the Code of 1882, or section 115 of the present Code. We are, therefore, of opinion that the Collector was not authorised by section 23 to interfere with the findings of fact of the Mamlatdar which were on their face legal and regular and arrived at after a consideration of the evidence recorded.

For these reasons we set aside the order of the Collector and restore that of the Mamlatdar with costs throughout.

The Rs. 100, deposited with the Collector, should be refunded to the applicant.

Order set aside.

G. B. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Rao.

1911.

July 19.

THE MUNICIPALITY OF HUBLI (ORIGINAL DEFENDANT), APPELLANT,
v. LUCAS EUSTRATIO RALLI AND ANOTHER (ORIGINAL PLAINTIFFS),
RESPONDENTS.*

District Municipal Act (Bom. Act III of 1901), sections 50 and 51—Hubli Municipality—Reclamation of the bed of a tank for Municipal Cotton Market—Damage caused to plaintiffs' goods by sudden and extraordinary heavy rain—Suit for damages against Municipality—Burden of proof as to negligence in the reclamation work—Suit not maintainable—Vis major.

The Hubli Municipality, a body corporate under the District Municipal Act (Bom. Act III of 1901) took steps to provide a Municipal Cotton Market and they selected for that purpose a site of a large and ancient tank which had largely silted up. The southern boundary of the tank was an embankment. In reclaiming the bed of the tank, the Municipality utilized a part of the embankment and made provision to prevent the flow of water. In the month

* First Appeal No. 194 of 1909.