

APPELLATE CIVIL.

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

1913.
March 12.

GANGARAM HATIRAM GUJAR (ORIGINAL PLAINTIFF), APPELLANT, v.
DINKAR GANESH PATVARDHAN (ORIGINAL DEFENDANT), RESPONDENT.*

*Revenue Jurisdiction Act, Bombay (X of 1876), sections 4 (c), 5 and 6(a)—
Bombay Land Revenue Code (Bom. Act V of 1879), section 140(2)—
Realization of land revenue—Attachment of goods by Mamlatdar—Suit
against Mamlatdar for recovery of damages—No denial of the allegation that
the goods belonged to plaintiff—Jurisdiction of Civil Courts—Delegation of
the powers by the Collector for his own district.*

* First Appeal No. 31 of 1912.

(1) Sections 4 (c), 5 and 6 of the Revenue Jurisdiction Act, Bombay (X of 1876) are as follows :—

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters :—

- (a) * * * * * *
- (b) * * * * * *

(c) Claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance by Government or any officer duly authorized in that behalf to superior holders or occupants for the recovery of their dues from inferior holders or tenants ;

Claims to set aside, on account of irregularity, mistake or any other ground, except fraud, sales for arrears of land-revenue.

5. Nothing in section 4 shall be held to prevent the Civil Courts from entertaining the following suits :—

(a) Suits against Government to contest the amount claimed, or paid under protest, or recovered, as land-revenue, on the ground that such amount is in excess of the amount authorized in that behalf by Government, or that such amount had, previous to such claim, payment or recovery, been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount ;

(b) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of a revenue-survey or settlement or in any village-papers ;

(c) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter ;

1913.

GANGARAM
HATIRAM
v.
DINKAR
GANESH.

Section 4 (c) of the Revenue Jurisdiction Act, Bombay (X of 1876), is not a bar to a suit in which there is a claim arising out of the alleged illegality of the proceedings taken for the realization of land revenue. Where the legality of the proceedings initiated by a revenue officer is in question the Court has to

and nothing in section 4, clause (g), shall be held to prevent the Civil Courts from entertaining suits, other than suits against Government, for possession of any land being a whole survey number or a recognized share of a survey number ;

and nothing in section 4 shall be held to prevent the Civil Courts in the districts mentioned in the second schedule hereto annexed from exercising such jurisdiction as, according to the terms of any law in force on the twenty-eighth day of March 1876, they could have exercised over claims against Government—

(a) relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874, or any other law for time being in force, or of any other village officer or servant ;

(b) to hold land wholly or partially free from payment of land revenue ;

(c) to receive payments charged on, or payable out of, the land revenue.

6. Revenue officers shall not be liable to be sued for damages in any Civil Court for any act *bonâ fide* done or ordered to be done by them as such in pursuance of the provisions of any law for the time being in force.

If any Revenue officer absconds or does not attend when called on by his official superior, and if the Collector of the District proceeds against him or his sureties for public money, papers or property according to the provisions of any law for the time being in force, such Collector shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties, although it appears that a part only, or no part whatever, of the sum demanded was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him.

(2) Section 140 of the Land Revenue Code (Bom. Act V of 1879) is as follows :—

140. When the crop of any land or any portion of the same is sold, mortgaged or otherwise disposed of, whether by order of a Civil Court or other public authority or by private agreement, the Collector may prevent its being removed from the land until the current year's revenue of the said land has been paid, whether the date fixed for the payment of the same, under the provisions hereinafter contained, has yet arrived or not. But in no case shall a crop, or any portion of the same, which has been sold, mortgaged, or otherwise disposed of, be detained on account of more than one year's revenue.

1913.

GANGARAM
HATIRAM
v.
DINKAR
GANESH.

inquire under section 6 of the Act whether the Act complained of was done *bonâ fide* by the officer in pursuance of the provisions of any law.

The Mamlatdar in order to justify his acts under section 140 of the Land Revenue Code (Bom. Act V of 1879) must show that the Collector of the District in which he is the Mamlatdar had delegated his powers. The Mamlatdar can only exercise delegated powers in the taluka in which the delegation occurred. The delegation by the Collector of any other District would not justify his act.

FIRST appeal against the decision of E. Clements, District Judge of Satara, in original Suit No. 1 of 1911.

Suit against a Mamlatdar to recover damages.

The plaintiff sued to recover from the defendant Rs. 235-4-0 as damages alleging that the defendant, as Mamlatdar of Khanapur Taluka, attached without any authority five carts and the goods contained therein, namely, 100 pieces of jaggery belonging to the plaintiff on the 8th April 1910, that the plaintiff, thereupon, petitioned the Collector of Satara in the matter on the 16th April 1910 and the goods with five pieces of jaggery damaged were returned to him and that the plaintiff having suffered loss owing to the action taken unauthorisedly by the defendant, he brought the present suit. The cause of action was alleged to have accrued on the 16th April 1910. Notices of suit, as required by section 80 of the Civil Procedure Code (Act V of 1908) were served, one on the defendant personally and the other through the Collector of Satara.

The defendant in his written statement made the following allegations :—

In April 1910 the defendant was Mamlatdar of Khanapur.

On the 8th April 1910 when the defendant was encamped at Kadepur he noticed that five cart-loads containing 100 pieces of jaggery were being taken by the

plaintiff's son from Kadepur towards Kadegaum. On inquiry he learnt that the jaggery was from the fields of one Daji Rudraji who owed arrears of land revenue to Government and had to satisfy two decrees in assistance cases. The defendant accordingly ordered that unless the plaintiff paid off the dues of Daji Rudraji, which, after deducting Rs. 65 paid on the spot by Daji's son Vithu, amounted to Rs. 98, forty pieces of jaggery should be attached. The plaintiff was asked to take away the carts and the remaining jaggery but he did not do so. The bullocks were taken away by the cartman. The defendant then ordered detention of the jaggery and the carts and caused a *panchanama* to be made. Subsequently on the 12th April 1910, under orders from the Collector of Satara, the defendant ordered the village officers to remove the attachment.

On the said statement of facts the defendant contended that the jurisdiction of the Court to entertain the suit was barred under section 4 (c) of the Revenue Jurisdiction Act (X of 1876), that the suit was barred under section 6 of the same Act, that the attachment was not otherwise than proper and legal and was authorized under the provisions of the Land Revenue Code (Bom. Act V. of 1879), that the defendant acted *bonâ fide* and in pursuance of the provisions of law relating to the recovery of land revenue and the arrears in assistance cases, that the defendant did not admit that the plaintiff suffered any loss or damage as stated in the plaint or that it was caused by the defendant's act, that the defendant was not liable to the plaintiff in damages and in any event the amount claimed by the plaintiff was excessive and that at the most the plaintiff could not recover more than the cost price of the five pieces of damaged jaggery and even that was recoverable from Government to whom the sale proceeds were credited.

1913

GANGARAM
HATIRAM
?.
DINKAR
GANESH.

1913.

GANGARAM
HATIRAM
v.
DINKAR
GANESH.

The District Judge found that the suit was barred under section 4 (c) of the Revenue Jurisdiction Act, that the defendant was acting under section 154 of the Land Revenue Code and the action taken by him was *bonâ fide* and that the suit was barred by section 6 of the Revenue Jurisdiction Act. He, therefore, dismissed the suit.

The plaintiff appealed.

Jayakar, with *P. D. Bhide*, for the appellant (plaintiff) :—Section 4 (c) of the Revenue Jurisdiction Act is not applicable where a stranger is wrongly proceeded against for arrears of land revenue: *Balvant G. Oze v. Secretary of State for India*⁽¹⁾. Section 6 of the Act also cannot apply as the action of the Mamlatdar was manifestly illegal and *ultra vires*. The Mamlatdar made no inquiries and it can hardly be said that he acted *bonâ fide*. The burden of proving *bonâ fides* and the legality of his action lay on the Mamlatdar who had exceeded his authority. Sections 138 and 140 of the Land Revenue Code have no application. The resolution which was produced in the case empowered the Mamlatdar while he was in Khandesh; and it could not serve as a protection to him in Satara. Section 154 of the Land Revenue Code cannot apply because (1) it was not pleaded, (2) no authority or delegation was proved under the section, (3) no revenue was due by us to Government so as to justify attachment, (4) the jaggery cannot be said to be crop or produce of the field and (5) the jaggery was attached not on the fields but on the road-side in carts. Thus in any case the Mamlatdar acted illegally and without jurisdiction. Mere pleading of *bonâ fides* was not sufficient to protect him. (Sections 8—13 and 137—154 of the Land Revenue Code were discussed and the following rulings were cited in arguments). *Spooner v. Juddow*⁽²⁾, *Dhondu Daydu v.*

(1) (1896) 22 Bom. 377 at p. 382.

(2) (1850) 4 Moo. I. A. 353 at p. 379.

1913.

GANGARAM
HATIRAM
v.
DINKAR
GANESH.

Secretary of State for India⁽¹⁾, *Sheo Surun Sahai v. Mohomed Fazil Khan*⁽²⁾, *Sinclair v. Broughton*⁽³⁾, *Vithoba Malhari v. A. K. Corfield*⁽⁴⁾, *Emperor v. Abdool Wadood*⁽⁵⁾, *Budho v. Keso*⁽⁶⁾, *Tarucknath Mookerjee v. The Collector of Hooghly*⁽⁷⁾, *Acworth v. Shavaksha Dhunjibhai*⁽⁸⁾, *Owners of Steamship "Mediana" v. Owners, Master and Crew of Lightship "Comet"*⁽⁹⁾.

The Mamlatdar could not in any case attach goods of a person who was not a defaulter. The burden of proving that the Mamlatdar acted beyond jurisdiction and exceeded his authority was wrongly thrown on us. Proper opportunity was not given to us to lead our evidence. (The pleadings and the evidence in the case were referred to and discussed).

L. A. Shah (Government Pleader) for the respondent (defendant):—The Mamlatdar acted honestly and *bona fide* in the discharge of his duties. It was his duty to collect the arrears of revenue due to Government. It was incumbent upon the plaintiff to prove *mala fides* on the defendant's part. The Court has no jurisdiction in such cases unless *mala fides* are proved. (The following cases were referred to in arguments). *Narasimha v. Imam*⁽¹⁰⁾, *Chunilal v. Kirpashankar*⁽¹¹⁾, *Spooner v. Juddow*⁽¹²⁾, *Dhondu Dagdu v. Secretary of State for India*⁽¹³⁾, *Girjashankar v. Gopalji*⁽¹⁴⁾, *Ranchhod Varajbhai v. The Municipality of Dakore*⁽¹⁵⁾, *Acworth v. Shavaksha Dhunjibhai*⁽⁸⁾, *Owners of Steamship*

(1) (1912) 37 Bom. 101 at p. 106.

(2) (1868) 10 W. R. (Cri. R.) 20.

(3) (1882) 9 Cal. 341.

(4) (1855) 3 Bom. H. C. R., Appx. 1
at p. 27.

(5) (1907) 31 Bom. 293.

(6) (1896) 21 Bom. 773.

(7) (1870) 13 W. R. 13.

(8) (1894) 19 Bom. 485.

(9) [1900] A. C. 113 at p. 116.

(10) (1903) 27 Bom. 590.

(11) (1906) 31 Bom. 37.

(12) (1850) 4 Moo. I. A. 353 at p. 379.

(13) (1912) 37 Bom. 101.

(14) (1905) 30 Bom. 241.

(15) (1884) 8 Bom. 421.

1913.

“*Mediana*” v. *Owners, Master and Crew of Lightship
“Comet,”*⁽¹⁾.

GANGARAM
HATIRAM
v.
DINKAR
GANESH.

Section 4 (c) of the Revenue Jurisdiction Act protects the Mamlatdar in addition to section 6 of the same Act. The Mamlatdar acted under sections 140 and 154 of the Land Revenue Code and the authority produced under section 140 gave him sufficient power to act in the way he did. No notice was necessary under section 153 of the Land Revenue Code.

SCOTT, C. J. :—This suit was brought by Gangaram Hatiram to recover damages from the defendant on the allegation that the latter when Mamlatdar of Khanapur attached without authority 5 carts containing 100 pieces of jaggery belonging to the plaintiff on the Karad-Nagar Road on the 8th of April 1910.

In his written statement the defendant pleads that on the 8th of April being Mamlatdar of Khanapur he was encamped at Kadepur and noticed 5 carts containing 100 pieces of jaggery were being taken by the plaintiff's son from Kadepur towards Kadegaum. On enquiry he learnt that the jaggery was from the fields of Daji Rudraji who owed arrears of land revenue to Government and had to satisfy two decrees in assistance cases. The defendant accordingly ordered that unless the plaintiff paid off the dues of Daji Rudraji, which after deducting Rs. 65 paid on the spot by Daji's son Vithu amounted to Rs. 98, forty pieces of jaggery should be attached.

The defendant pleaded on the above allegations: (a) that the jurisdiction of the Court to entertain the suit was barred under section 4 (c) of the Bombay Revenue Jurisdiction Act, 1876, (b) that the suit was barred under section 6 of the same Act as he was acting *bonâ fide* and in pursuance of the provisions of the law

⁽¹⁾ [1900] A. C. 113 at p. 116.

for the time being in force relating to the recovery of the land revenue and arrears in assistance cases.

The defendant nowhere in the written statement denies the plaintiff's allegation in the plaint that the goods attached belonged to him.

Five issues were raised on the 16th of September 1911, three relating to the jurisdiction of the Court and two to the question of damages but no issue was raised as to the plaintiff's ownership of the goods.

At the hearing which commenced on the 21st of October it was decided with the consent of the parties at the hearing to treat the issues as to jurisdiction as preliminary issues.

They were :—

1. Whether the Court has jurisdiction to entertain the suit under section 4 (c) of Act X of 1876.

2. Whether the defendant's action was not *bonâ fide* and in pursuance of the provisions of sections 138 and 140 of the Bombay Land Revenue Code.

3. If so, whether the suit is not barred by section 6 of Act X of 1876.

The learned Judge without giving any reasons decided the first issue in the negative.

On the second and third issues he held that the defendant was acting *bonâ fide* but did not hold that he was acting in pursuance of the provisions of section 140 of the Bombay Land Revenue Code mentioned in the issue. He held, however, that the defendant was authorised to distrain the property under the provisions of section 154 of the Code, being of opinion that it was not necessary to require proof of the delegation of the powers of the Collector under that section to the defendant and that it lay on the plaintiff to show that the defendant had exceeded his authority by proof that the

1913.

GANGARAM
HATIRAM
v.
DINKAR
GANESH.

1913.

GANGARAM
HATIRAM

v.

DINKAR
GANESH.

goods distrained were not the property of Vithu which the plaintiff had failed to do. The suit was dismissed with costs with interest thereon at 6 per cent.

We are of opinion that section 4 (c) would not be a bar to a suit in which there is a claim arising out of the alleged illegality of the proceedings taken for the realization of land revenue. Where the legality of the proceedings initiated by a revenue officer is in question the Court has to inquire under section 6 whether the act complained of was done *bonâ fide* by the officer in pursuance of the provisions of any law.

The recognition by civil Courts of claims against Government in respect of certain illegal levies is expressly provided for by section 5 of the Act. The Government Pleader who appeared for the defendant did not contend that the section 4 (c) applied to claims in respect of the current year's revenue but argued that it would apply to two sums recoverable in respect of arrears in assistance cases in respect of which an order for attachment of Daji's moveable property had been issued. That order has not been produced. We think that the proceedings mentioned in section 4 (c) must be in their inception legal.

The second issue involves the inquiry whether the proceedings were legal. As has been pointed out the allegation that the goods seized were the property of the plaintiff is neither denied specifically or by necessary implication or stated to be not admitted in the pleadings of the defendant or questioned in the issues. According to the terms of Order VIII, Rule 5, the Court was therefore bound to take it as admitted. For this reason presumably the defendant referred to section 140 as the justifying provision of the Land Revenue Code. That section is one of the group of sections authorising precautionary measures to prevent the removal from land of a crop which has been sold, mortgaged or other-

wise disposed of, until the current year's revenue has been paid.

The powers contained in those sections do not authorise the detention of anything but the crop of the land or the seizure of the crop or any other goods after removal from the lands. The officer expressly authorised by the sections to exercise the powers is the Collector but section 12 enabled the Collector to delegate his powers to the Mamlatdar. The section is in the following terms :—

The chief officer entrusted with the local revenue-administration of a taluka shall be called a Mamlatdar. He shall be appointed by the Commissioner of the division in which his taluka is situated.

His duties and powers shall be such as may be expressly imposed or conferred upon him by this Act, or by any other law for the time being in force, or as may be imposed upon, or delegated to, him by the Collector under the general or special orders of Government.

Under section 8 the Collector is the Collector of the District, the Mamlatdar being entrusted with the local revenue-administration of the smaller unit known as the taluka. It follows that the Collector can only delegate powers for his own district and the Mamlatdar can only exercise delegated powers in the talukas of the district in which the delegation occurred.

The defendant, however, produces in justification of his supposed action under section 140 a document issued by the Collector of Khandesh under the authority of a Government Resolution conferring on the defendant authority to exercise the powers contained in sections 140—143. No authority or delegation from the Collector of Satara, the district in which Khanapur is situate, is produced or alleged to exist. The defendant, therefore, has not shown that he is within the ambit of the law propounded by section 140 of the Code. The law relating to revenue-administration so far as the Mamlatdar-defendant was concerned did not include section 140.

1913.

GANGARAM
HATIRAM
v.
DINKAR
GANESH.

1913.

GANGARAM
HATIRAM
v.
DINKAR
GANESIL.

How then can it be contended that he honestly intended to put that law in motion, to apply the test suggested in *Hermann v. Seneschal*⁽¹⁾ cited in *Dhondu Dagdu v. Secretary of State for India*⁽²⁾. The Government Pleader feeling the difficulty argued that the defendant could justify under section 154 of the Land Revenue Code. But the first condition of the application of that section, assuming the existence of arrears, is that the property distrained should be the moveable property of the defaulter. Doubtless if it were established that the defendant believed the property to be that of the defaulter he might fairly contend that he was entitled to protection on the authority of *Spooner v. Juddow*⁽³⁾ and section 6 of the Revenue Jurisdiction Act. The pleadings in this case, however, do not permit us to hold that the defendant believed the carts of the plaintiff contained the moveable property of the defaulter. The learned Judge was in error in holding that it lay on the plaintiff to show that the defendant exceeded his authority by proof that the goods distrained were not the property of the defaulter.

If it were necessary we should accede to the application of the plaintiff's counsel for a remand in order that the evidence of the plaintiff's vendor Amerchand might be recorded. Having regard to the pleadings and issues however this course is unnecessary.

We reverse the decree of the lower Court and remand the case for an inquiry as to the damages suffered owing to the illegal seizure of the plaintiff's property by the defendant. The costs of this appeal will be costs in the cause.

Decree reversed.

G. B. R.

(1) (1862) 32 L. J. C. P. 43.

(2) (1912) 37 Bom. 101 at p. 106.

(3) (1850) 4 Moo. I. A. 353 at p. 379.