

## APPELLATE CIVIL.

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

1912.  
August 30.

PURSHOTTAM JANARDAN CHAPHEKAR (ORIGINAL PLAINTIFF), APPLICANT,  
v. MAHADU PANDU TURMALKAR (ORIGINAL DEFENDANT), OPPONENT.\*

*Civil Procedure Code (Act V of 1908), sections 3, 115—Mamlatdars' Courts Act (Bom. Act II of 1906)—Mamlatdar's decree—Reversal by the Collector on evidence—Collector's judicial function—Superintendence and control by the High Court—Courts subordinate to the High Court.*

The Mamlatdars' Courts Act (Bom. Act II of 1906) expressly constitutes the Collector (taking proceedings under that Act) a Court and when he exercises judicial functions, he is subject to the superintendence and control of the High Court under section 115 of the Civil Procedure Code (Act V of 1908).

The Collector has no authority to reverse the decision come to by the Mamlatdar upon the evidence.

Section 3 of the Civil Procedure Code (Act V of 1908), in which certain Courts are stated to be subordinate to the High Court, does not exclude all other Courts from the category of Courts subordinate to the High Court.

*The Collector of Thana v. Bhaskar Mahadev Sheth*(1), referred to.

APPLICATION under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) against the decision of J. K. N. Kabraji, Collector of Kolaba, reversing the decree of S. S. Deshapande, Mamlatdar of Panvel.

The plaintiff brought a suit under the Mamlatdars' Courts Act (Bom. Act II of 1906) against the defendant to recover possession of certain land alleging that he had let it out to defendant for a particular period and that on the expiry of the period the defendant refused to restore possession to the plaintiff though he was called to do so by a notice duly served.

The defendant answered that he had given up possession to the plaintiff.

The Mamlatdar found that the defendant was in possession of the land by a right derived from the plaintiff and that the lease to the defendant had determined. He, therefore, awarded the claim.

\* Civil application No. 70 of 1912 under the extraordinary jurisdiction.

(1) (1884) 8 Bom. 264.

The defendant applied to the Collector for revision of the Mamlatdar's decree under section 23 of the Mamlatdars' Courts Act (Bom. Act II of 1906) and the Collector reversed the decree and passed the following order:—"As defendant said he had given up possession the decree is reversed with costs."

The plaintiff applied to the High Court under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) urging *inter alia* that the Collector could not go into facts and upset the finding of fact arrived at by the Mamlatdar and that the Collector acted without jurisdiction. A *rule nisi* was issued calling upon the defendant to show cause why the decision of the Collector should not be set aside.

*P. B. Shingne* for the applicant (plaintiff) in support of the rule:—The Collector had no jurisdiction to interfere. He reversed the decree of the Mamlatdar on facts. This is opposed to the principle laid down in *Kashiram Mansing v. Rajaram*<sup>(1)</sup>.

*D. W. Pilgaumkar* for the opponent (defendant) to show cause:—The High Court has no jurisdiction to entertain the present application for revision. The Collector who decided the case was not subordinate to the High Court within the meaning of section 115 of the Civil Procedure Code. There is nothing in the Mamlatdars' Courts Act empowering the High Court to interfere in such cases.

SCOTT, C. J.:—This is an application under the extraordinary jurisdiction of this Court to set right an order by the Collector by which, upon the mere statement of the defendant before him, he took upon himself to reverse the decree of the Mamlatdar.

It has been objected on behalf of the opponent that this Court has no power under its extraordinary jurisdiction to interfere with the order of the Collector so made.

The Mamlatdars' Courts Act, however, expressly constitutes the Collector (taking proceedings under that Act) a Court, and it has been ruled in *The Collector of Thana v. Bhaskar*

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PURSHOTTAM  
JANARDAN  
v.  
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(1) (1911) 35 Bom. 487.

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PANDU.

*Mahadev Sheth*<sup>(1)</sup> that the Collector when exercising judicial functions is subject to the superintendence and control of the High Court.

Section 115 of the Civil Procedure Code authorizes the High Court to call for the record of any case which has been decided by any Court subordinate to such High Court and there can, we think, be no doubt that the Collector as a Court, under the Mamlatdars' Courts Act, is subordinate to the High Court.

Reference has been made to section 3 of the Civil Procedure Code in which certain Courts are stated to be subordinate to the High Court, but that does not exclude all other Courts from the category of Courts subordinate to the High Court.

We think that the Collector had no authority to reverse the decision come to by the Mamlatdar upon the evidence. We set aside his order and restore that of the Mamlatdar with costs.

*Order set aside.*

G. B. R.

(1) (1884) 8 Bom. 264 at pp. 267, 268.

## APPELLATE CIVIL.

*Before Mr. Justice Batcheloor and Mr. Justice Rao.*

HIRA NAIKIN (ORIGINAL DEFENDANT NO. 2), APPELLANT, v. RADHA NAIKIN AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT NO. 1), RESPONDENTS.\*

*Naikins—Adoption—Adoption of daughter by a Naikin—Adoption invalid—Will—Construction—Gift to the adopted daughter as persona designata.*

One Sundra, a Naikin (a professional prostitute), adopted her near relative Hira as her daughter. She next made a will whereby she bequeathed the bulk of her property to Hira. In the will, Hira was referred to at some places by her name, and at others as "adopted daughter." On Sundra's death, Hira claimed Sundra's property as her adopted daughter and also as *persona designata* under Sundra's will:—

*Held*, that Hira could not succeed as an adopted daughter, because Sundra, being a *Naikin*, could not validly adopt a daughter to herself.

\* Second Appeal No. 717 of 1911.

1912.  
September 10.