

## APPELLATE CIVIL.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*

1891.  
*January 28.*

BA'BA'JI DIN PA'TLOJI, (ORIGINAL PLAINTIFF), APPLICANT, v. BA'BA'JI  
BIN MA'HA'DU, (ORIGINAL DEFENDANT), OPPONENT.\*

*Dekkan Agriculturists' Relief Act (XVII of 1879), Sec. 53—Special Judge—  
His power to review his own order—Review.*

The Code of Civil Procedure is not applicable to proceedings before the Special Judge under the Dekkan Agriculturists' Relief Act (XVII of 1879).

The Special Judge has, therefore, no jurisdiction to grant a review of a decree or order once made by him on the ground of the discovery of new evidence.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The opponent's father, Bábáji, purchased certain property in execution of a decree against one Sakháram.

Thereupon Sakháram's son, Māruti, brought a suit, No. 19 of 1885, to recover his half share of the lands purchased at the Court sale by Bábáji. The Subordinate Judge decided this suit in Māruti's favour; but as the lands had been mortgaged by Sakháram, and as Bábáji had paid off the mortgage-debt, Māruti was directed to file a redemption suit.

In 1885 the plaintiff, as assignee of Māruti's rights, filed a redemption suit (No. 493 of 1885) against Bábáji, and obtained a decree. Bábáji made an application, No. 199 of 1887, to the Special Judge for a revision of the decree under section 53 of the Dekkan Agriculturists' Relief Act (XVII of 1879). But his application was rejected in November, 1887.

In the meantime Bábáji had appealed to the District Judge against the decree passed in Māruti's favour in Suit No. 19 of 1885. The District Judge reversed this decree on the 15th December, 1888, on the ground that Māruti's share had passed at the execution sale to Bábáji, the auction-purchaser, and that he had, therefore, no right to the property in dispute.

Thereupon Bábáji applied to the Special Judge for a review of the order rejecting his application, No. 199 of 1887. He urged that as the District Judge had found that Māruti had no right to

\* Application, No. 139 of 1890.

the property in dispute, the decree passed in favour of his assignee, the plaintiff, in the redemption suit should be set aside.

The Special Judge granted the review applied for, and reversed the decree in the redemption suit.

Against this order of review the present application was made to the High Court under its extraordinary jurisdiction.

*Báláji Abáji Bhágrat* for the applicant:—The Special Judge had no jurisdiction to review his order. The provisions of the Code of Civil Procedure apply to proceedings before the Subordinate Judge and not to those before the Special Judge: see Section 74 of the Dekkhan Agriculturists' Relief Act (Act XVII of 1879); *Vishwanáth Shridhar v. Abá bin Joti*<sup>(1)</sup>.

*Ganesh Rámchandra Kiloskar, contra*:—Every Court has an inherent jurisdiction to review its own decrees or orders, just as it has the power to amend a decree and bring it into conformity with the judgment. The Legislature need not confer the authority in express terms.

BIRDWOOD, J.:—In this case the plaintiff obtained a redemption decree, which was confirmed by the Special Judge, who called for and examined the record under section 53 of the Dekkhan Agriculturists' Relief Act of 1879. The High Court also declined to interfere with this decree when applied to under section 622 of the Code of Civil Procedure. The Special Judge, however, granted a review of his decree, on the ground that the District Court had, subsequently to that decree, disallowed the right of the plaintiff's vendor to the property which the plaintiff sought to redeem, and at the rehearing he reversed his former decree and rejected the plaintiff's claim.

The plaintiff now asks this Court to set aside the Special Judge's second decree on the grounds, first, that the Special Judge had no jurisdiction to review his first decision, and, secondly, that the decision of the District Judge furnished no sufficient cause for granting a review. It also now appears that the District Judge's decree has been reversed by this Court, which affirmed the right of the plaintiff's vendor to the property in dispute: see *Márutí v. Bábáji*<sup>(2)</sup>.

(1) P. J. for 1886, p. 11.

(2) P. J. for 1890, p. 213.

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There is no provision in the Dekkhan Agriculturists' Relief Act itself which lays down the procedure to be followed by the Special Judge, or gives him the power of reviewing an order once passed by him. Section 74 of the Act provides only that, except so far as it is inconsistent with this Act, the Code of Civil Procedure shall apply to all suits and proceedings before Subordinate Judges under the Act. It would appear, therefore, that the Code of Civil Procedure is not applicable to proceedings before the Special Judge; and this was the opinion also of the Division Bench (Sargent, C. J., and Nanābhāi, J.), which decided *Vishwanāth Shridhar v. Abā bin Joti*<sup>(1)</sup>. It follows that the Special Judge has no jurisdiction to grant a review of a decree or order once made by him on the ground of the discovery of new evidence, as was done by the Special Judge in this case; for, apart from special legislative authorization, no Court would have any such power.

We reverse the order of the Special Judge, granting a review, and the decree which followed it, and restore the decree of the Subordinate Judge, with costs of this application on the opponent.

*Order reversed.*

(1) P. J. for 1886, p. 11.

## ORIGINAL CIVIL.

*Before Mr. Justice Farran.*

MANGALDA'S PARMA'NANDA'S, (PLAINTIFF), v. TRIBHUVANDA'S NARSIDA'S, (DEFENDANT).\*

1891.

May 5.

*Will—Construction—Gift to sons or daughters of M. who may be alive at M.'s death—Gift to a class to be ascertained at future time—One member of such class in existence at testator's death—Tayore case—Hindu Wills Act (XXI of 1870), Sec. 3—Succession Act (X of 1865), Sec. 98.*

P., a Hindu, died in September 1886, and left two sons, viz. the plaintiff and one Manmohandās. By his will P. left the residue of his property to trustees who were to invest it in Government promissory notes and to pay the interest thereof to the wife of his son Manmohandas and after her death to pay it to Manmohandas. He further directed that after Manmohandās' death "the amount of the interest

\* Suit No. 413 of 1890.