

done. In the property in which defendants Nos. 10 and 11 have their admitted share, the branches of Bhivráv and Yashvantráv and Balvantráv have each $\frac{1}{3}$ rd of the remainder. Plaintiff represents $\frac{1}{9}$ th of Bhivráv's $\frac{1}{3}$ rd; defendant 2 another $\frac{1}{9}$ th and defendant No. 1 another $\frac{1}{9}$ th; defendant No. 8 represents $\frac{1}{3}$ rd of Bhivráv's $\frac{1}{3}$ rd and defendant No. 9 the remaining $\frac{1}{3}$ rd of Bhivráv's $\frac{1}{3}$ rd; defendants Nos. 3 and 4 represent Yashvantráv's $\frac{1}{3}$ rd; defendants 5, 6, 7 represent Balvantráv's $\frac{1}{3}$ rd. In the property in which defendants 10 and 11 have no share the division will be the same, exclusive of any deduction on account of defendants 10 and 11. The Subordinate Judge ordered each party to bear his own costs. Under the circumstances, we think the same order will be fair in the present appeals.

Decree amended.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

SHRINIVAS HANMANT AND OTHERS, (ORIGINAL APPLICANTS), APPELLANTS,
v. GURUNATH SHRINIVAS AND ANOTHER, (ORIGINAL OPPONENTS),
RESPONDENTS.*

1890.

December 17.

Civil Procedure Code (Act XIV of 1882), Sec. 265—Partition effected by Collector in execution of a decree—Not subject to revision by Civil Court—Execution of decree.

When the Collector makes a partition under section 265 of the Code of Civil Procedure (Act XIV of 1882), the Civil Court has no power to examine his work or to direct him to make a fresh partition.

Dev Gopál Sávant v. Vásudev Vithal Sávant(1) followed.

APPEALS from the orders of Ráv Bahádur Bábáji Lakshman, First Class Subordinate Judge of Dhárwár, in miscellaneous cases Nos. 80 and 81, 94 and 95 of 1888.

*Appeals Nos. 91 and 92 of 1889 and Nos. 3 and 4 of 1890.

(1) I. L. R., 12 Bom., 371.

1890.
MA'DHAVR'AV
MANOHAR
v.
ÁTM'ARÁ'M
KESHAV.

1890.

SHRINIVAS
HANMANT
2.
GURUNATH
SHRINIVAS.

The appellants applied to the First Class Subordinate Judge of Dhárwár to set aside the partition made by the Collector in execution of decrees Nos. 249 and 250 of 1882. They alleged that the partition was not in accordance with the terms of the decrees, and that the decree-holders had in collusion with the Circle Inspector effected an improper division of the lands in dispute by securing an allotment of better lands to himself than had been awarded to them.

The Subordinate Judge dismissed the applications as barred under article 165 of the Limitation Act (XV of 1877).

Against this decision the applicants appealed to the High Court.

Macpherson (with him *Shámráo Vithal*) for appellants:—Article 165 of the Limitation Act applies to cases falling under section 332 of the Code of Civil Procedure (Act XIV of 1882). The present case is governed by article 172 of the Limitation Act.

Latham (Advocate General), (with him *Máneksháh Jehángirsháh*) for respondents:—The Civil Court has no jurisdiction to revise a partition effected by the Collector under section 265 of the Code of Civil Procedure—*Dev Gopál Sávant v. Vásudev Vithal Sávant*⁽¹⁾; *Parbhudás Lakhmídás v. Shankar Bhái*⁽²⁾.

BIRDWOOD, J.:—The appellants in these cases complained to the Subordinate Judge that a partition made by the Collector under section 265 of the Code of Civil Procedure was not a proper one. They alleged that the plaintiff had, in collusion with the Circle Inspector, secured the allotment of better land to himself than had been given to them, and they asked that the possession which had been given to the plaintiff might be cancelled. The Subordinate Judge dismissed the application as time-barred. It is unnecessary to discuss the question of limitation dealt with by the Subordinate Judge, as we are of opinion that the preliminary objection taken by the respondents must prevail, *viz.*, that the Civil Court has no jurisdiction to interfere in the matter. The language of section 265 is clear. “The partition,” it says, “shall

(1) I. L. R., 12 Bom., 371.

(2) I. L. R., 11 Bom., 662.

be made by the Collector," and according to a certain law. The power thus given to the Collector is not in any way made subject to the superintendence of the Civil Court or to revision by a Civil Court. No doubt, the Collector cannot refuse to carry out the decree or order of the Court (*Ganoji v. Dhondru*⁽¹⁾); but when he has made a partition under the section the Court has no power to examine his work or to direct him to make a fresh partition. In *Satyagavada v. Appá*⁽²⁾ Melvill and Nánabhái Haridás, JJ., observe that "though the Civil Court might not be able to entertain the question whether, as between the parties to the suit, the partition had been properly made by the Collector, it was bound to inquire into the complaint of a third party, alleging that he had been illegally dispossessed." These learned Judges evidently were of opinion that it was not open to one of the parties to move the Civil Court in such a matter. In *Dev Gopál Sávant v. Vásudev Vithal Sávant*⁽³⁾ this Court distinctly ruled that the Civil Court could not interfere upon an allegation that the Collector had made an objectionable partition, as to do so would be to take the execution out of the Collector's hands in direct contradiction of the law. We follow that ruling, and as in the present cases the allegation amounts to no more than that the partition made is an unequal one, we think that the Subordinate Judge had no power to interfere. For this reason we confirm the decrees with costs. The complaining parties can, if so advised, apply for redress to the Collector.

1890.

 SHRINIVAS
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 SHRINIVAS.

Decrees confirmed.

(1) I. L. R., 14 Bom., 450.

(2) P. J. for 1881, p. 31.

(3) I. L. R., 12 Bom., 371.