

satisfied that no substantial injustice has really been done to the minor. Had it been, had I felt convinced that equity required the ripping open of that old decree, I might possibly have found a way upon general principles to see the wrong righted. As it is, I do not think that there is any need to have recourse to very wide general principles of that kind or to take the present matter out of the four corners of the law within which it properly belongs.

I would, therefore, now confirm the decree of the Court below and dismiss this appeal with all costs.

HEATON, J.:—I concur.

Decree Confirmed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Hayward.

SAVLA BIN TUKARAM MALI AND OTHERS (ORIGINAL PLAINTIFFS NOS. 2 TO 5), APPELLANTS *v.* SANTYA VALAD PARSHYA MAHAR AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 8), RESPONDENTS.*

1918.

August 19.

Bombay Revenue Jurisdiction Act (X of 1876), section 4 (a)†—Bombay Hereditary Offices Act (Bombay Act III of 1874), section 18‡—Mahar Watan—Existence of the Watan can be investigated by the Civil Court—Jurisdiction of Civil Court—Suit by villagers to declare that the skins of their dead animals belonged to them.

* Second Appeal No. 305 of 1917.

† The material portion of the section runs as follows :—

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

(a) Claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act III of 1874 or any other law for the time being in force, or of any other village-officer or servant.

1918.

SAVLA
BIN
TUKARAM
v.
SANTYA
VALAD
PARSHYA.

The plaintiffs, residing in a village, sued for an injunction to prevent the skins of their dead animals being taken away by the defendants who claimed the right to retain the skins as Mahar-Watandars of the village. The lower Courts dismissed the suit as barred by section 18 of the Bombay Hereditary Offices Act, 1874, and section 4 (a) of the Bombay Revenue Jurisdiction Act, 1876. The plaintiffs having appealed :—

Held, that the question whether there was a Mahar-Vatan was within the jurisdiction of the Civil Courts.

Held, also, that the plaintiffs would be entitled to their injunction unless the defendants succeeded in showing that there was an hereditary office of Mahars.

SECOND appeal from the decision of C. C. Boyd, District Judge of Belgaum, confirming the decree passed by C. G. Kharkar, Subordinate Judge at Chikodi.

Suit for declaration and injunction.

The plaintiffs, who were the villagers of Kadapur, sued for a declaration that the skins of their dead animals belonged to them or in the alternative that they had a right to give the carcasses to the Mangs of the villages and for an injunction restraining the defendants in obstructing them in doing the same.

The defendants contended *inter alia* that they were the Watandar Mahars of the village; that they had a

‡ The section runs thus :—

18. When all or any of the property of a village-watan of lower degree than that of Patel or Kulkarni consists of a right to levy in money or kind directly from individuals, it shall be lawful for the Collector, on the application of any person interested, to cause the nature and extent of such right and of the duties to be performed, and the persons, families or classes liable to make payment and to perform the duties, to be defined in writing by a panchayat of five persons, whereof two shall be appointed by the villagers, two by the Watandars, and one, who shall be sar-panch, by the Collector.

The decision of the panchayat or of the Collector, as above provided, shall be final and binding on all persons or classes whose rights, duties or liabilities have been submitted to such decision.

right of taking the carcasses of the dead animals in the village and retaining their skins; and that the Civil Court had no jurisdiction to try the suit.

The lower Courts dismissed the suit on the preliminary ground that the plaintiffs could not maintain the suit owing to section 4 (a) of the Bombay Revenue Jurisdiction Act, 1876, and section 18 of the Bombay Hereditary Offices Act, 1874.

The plaintiffs appealed to the High Court.

A. G. Desai, for the appellant.—The present case is governed by *Raoji Fakira v. Dagdu*⁽¹⁾. Here, the very existence of the Vatan is denied. Such a case falls within the cognizance of the Civil Court.

Nilkanth Atmaram, for the respondent.—The Vatan Act deals with two classes of Watans, superior Watans and Watans lower than those of Patil and Kulkarni. As regards the latter class, the jurisdiction of the Civil Court is by implication ousted in favour of the Collector: see sections 18 and 64 of the Vatan Act. See also section 8 of the Vatan Act and section 4 of the Bombay Revenue Jurisdiction Act; *Bhiva v. Vithya*⁽²⁾.

HAYWARD, J.: The plaintiffs are villagers seeking an injunction to prevent the skins of their dead animals being taken by the defendants who are village Mahars claiming the right as Watandars.

The issues raised were: Whether defendants had the right, whether they were Watandar Mahars, and whether the suit was cognisable by the Civil Courts. The two former issues were not decided as it was held that the suit was barred by section 18 of the Vatan Act, 1874, and section 4 (a) of the Revenue Jurisdiction Act, 1876.

It seems to me the suit must be remanded for trial on the merits. The skins would *prima facie* belong to the

1918.]

SAVLA
BIN
TUKARAM
v.
SANTHA
VALAD
PESHIYA.

(1) (1916) 41 Bom. 23.

(2) (1900) 25 Bom. 186 at p. 188.

1918.

SAYLA
BIN
TUKARAM
T.
SANTYA
VALAD
PARSHYA.

villagers who owned the dead animals as pointed out in the case of *Yellapa Bhimapa v. Mankia* ⁽¹⁾, and the villagers would *prima facie* be entitled to the injunction sought against the Mahars. This might, however, be rebutted by showing a certain, continuous, immemorial and reasonable custom in favour of the Mahars as would appear from paras. 423 to 439 of Volume X of Halsbury's Laws of England. But if the right should be, as here pleaded, attached to an hereditary office vested in the Mahars, then the definition of its nature and extent would devolve exclusively on the Collector by section 18 of the Vatan Act, 1874, read with the third paragraph of Clause (a) of section 4 of the Bombay Revenue Jurisdiction Act, 1876. It seems to me, therefore, that the villagers would be entitled to their injunction unless the Mahars should succeed in showing that there is an hereditary office, that is to say, an office held hereditarily for the performance of duties connected with the administration within the meaning of the fourth paragraph and that they are Vatandars of that Vatan within the meaning of the sixth and seventh paragraphs of section 4 of the Vatan Act, 1874. If that should be established the parties would have to be referred for the settlement of their disputes to the Collector under section 18 of the Vatan Act, 1874. It seems to me that the question whether there is a Mahar Vatan is within the jurisdiction of the Civil Courts. Provision has been made for the creation of new Vatans and for the commutation of service and management of old Watans but no provision has been made for enquiry into the existence of old Vatans by the Vatan Act, 1874. Nor would such enquiry appear to be barred by anything in the Revenue Jurisdiction Act, 1876. It has been recently held on a parity of reasoning in the case of *Raoji Fakira v. Dagdu* ⁽²⁾ that the question who are Watandars

⁽¹⁾ (1871) 8 Bom. H. C. R. (A. C. J.) 27.

⁽²⁾ (1916) 41 Bom. 23.

of a Mahar Watan is likewise within the jurisdiction of the Civil Courts. It seems to me, therefore, that the suit must be remanded for these two matters to be determined and for disposal in the light of the above remarks under Order XLI, Rule 23, Civil Procedure Code. Costs to be costs in the cause.

HEATON, J. :—I concur.

Decree reversed. Case remanded.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Kajiji.

P. W. MONIE, MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY, AND THE MUNICIPAL CORPORATION FOR THE CITY OF BOMBAY, PLAINTIFFS *v.* THE REV. ROBERT SCOTT, DEFENDANT.*

The City of Bombay Municipal Act (Bombay Act III of 1888), sections 140 (c), 143 (1) (a) and (2) (d)—The Indian Universities Act (VIII of 1904), sections 21 (1) (c) and (f), 25 (1) and 2 (m)—The Code of Civil Procedure (Act V of 1908), section 90 and Order XXXVI—Hostels of a College built in pursuance of the provisions of the Indian Universities Act are exempt from the general tax leviable under the Bombay Municipal Act—Occupation of hostels by resident students is exclusively for charitable purposes—"Charitable purposes" in section 143 of the Bombay Municipal Act include all purposes within the meaning of Statute 43, Eliz. C. IV.—Additional fee paid by resident students is not "rent"—Premises occupied by a Superintendent of a hostel are exempt from a general tax, but not necessarily those occupied by a Professor or Assistant Superintendents—Case stated for opinion of Court can only be re-opened by mutual consent—Practice.

The plaintiffs, the Municipal Commissioner and the Municipal Corporation for the City of Bombay sued to recover from the defendant, the acting Principal of the Wilson College at Bombay, Municipal property taxes in respect of the buildings known as hostels belonging to that College. The Wilson College was affiliated to the University of Bombay under the Indian Universities Act VIII of 1904. Section 21 (1) of that Act provided that a College applying for affiliation to an University must satisfy the Syndicate of

1918.

SAVLA
BIN
TUKARAM
v.
SANTYA
VALAD
PARSHYA.

1918.

April 11.

* O. C. J. Suit No. 1213 of 1917,