

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice.

BABAJI KONDAJI MALI AND OTHERS, HEIRS OF THE DECEASED KONDAJI WALAD MANKU MALI (ORIGINAL PLAINTIFF'S HEIRS), APPLICANTS *v.* BALA FAKIRA MAHAR AND OTHERS (ORIGINAL DEFENDANTS), OPONENTS.*

1937
July 30

Civil Procedure Code (Act V of 1908), s. 115—Mamlatdars' Courts Act (Bom. II of 1906), s. 23 (2)—Collector—Revision—Mamlatdar's findings of fact—Collector reversing the findings of fact—Whether High Court can interfere in revision.

The High Court can interfere in revision under s. 115 of the Civil Procedure Code, 1908, against an order of a Collector made under s. 23 (2) of the Mamlatdars' Courts Act, 1906, setting aside a Mamlatdar's order on the ground that he did not agree with the Mamlatdar's findings of fact.

Kashiram Mansing v. Rajaram,⁽¹⁾ *Hasan v. Rasul,*⁽²⁾ *Irbasappa v. Basan-gowda,*⁽³⁾ *Jagannath Devkaran v. Dhondu Ananda,*⁽⁴⁾ and *Maruti v. Bankallal,*⁽⁵⁾ referred to.

CIVIL REVISION APPLICATION against the order passed by J. G. Simms, Collector of Ahmednagar, in Possessory Suit No. 33 of 1935 of the Court of the Mamlatdar of Parner.

Suit for injunction.

The land in suit Survey No. 47 situate at Parner in Ahmednagar District belonged to one Chandmal. On August 30, 1935, Chandmal leased the land to Kondaji and Aba. On October 15, 1935, the defendants caused obstruction to Kondaji and his partner in the cultivation of the said survey number. On November 2, 1935, Kondaji (original plaintiff) filed a suit under the Mamlatdars' Courts Act, 1906, in the Court of Mamlatdar of Parner against the defendants to restrain them from causing obstruction to his possession of the survey number.

The Mamlatdar found (1) that Kondaji was actually in possession of the survey number, (2) that the defendants were disturbing Kondaji in his possession, and (3) that the

*Civil Revision Application No. 294 of 1936.

⁽¹⁾ (1911) 35 Bom. 487.

⁽³⁾ (1919) 44 Bom. 595.

⁽²⁾ (1913) 37 Bom. 595.

⁽⁴⁾ (1923) 48 Bom. 334.

⁽⁵⁾ (1933) 35 Bom. L. R. 576.

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disturbance commenced within six months before the suit was filed. On these findings of fact the Mamlatdar, on December 17, 1935, issued an injunction against the defendants restraining them from causing or attempting to cause any further disturbance or obstruction to Kondaji.

The defendants applied to the Collector of Ahmednagar under s. 23 of the Mamlatdars' Courts Act, 1906, for revision of the order passed by the Mamlatdar. The Collector on June 19, 1936, set aside the order of the Mamlatdar because he did not agree with the Mamlatdar's findings of fact.

Babaji and others (plaintiffs), who were the heirs of Kondaji, applied in revision to the High Court under s. 115 of the Civil Procedure Code, 1908, against the order of the Collector, contending *inter alia* that the Collector had no jurisdiction to reverse the order of the Mamlatdar on a question of fact under s. 23 (2) of the Mamlatdars' Courts Act and that the finding or order of the Mamlatdar was not tainted with any illegality which alone would have given jurisdiction to the Collector to interfere in revision.

The application was heard.

B. G. Rao, for the applicants.

J. G. Rele, for the opponents.

BEAUMONT C. J. This is an application in revision under s. 115 of the Civil Procedure Code. The applicant made an application to the Mamlatdar under the Mamlatdars' Courts Act asking for an injunction to restrain the opponents from obstructing him in the possession of certain immoveable property. The Mamlatdar held that the applicant was in possession of the property, and that the opponent had obstructed him, and granted an injunction. On an application to the Collector under s. 23 of the Mamlatdars' Courts Act the Collector set aside the order of the Mamlatdar, disagreeing with the Mamlatdar's findings of fact. Now it was laid down by a division bench of this Court consisting of Sir

Basil Scott and Mr. Justice Rao in *Kashiram Mansing v. Rajaram* ⁽¹⁾ that the Collector exercising powers of revision under s. 23 of the Act is not entitled to exercise the powers of a Court of Appeal, and seeing that under s. 23 (1) there is no right of appeal the Court held that the Collector was not entitled to set aside the Mamlatdar's order merely because he disagreed with the findings of the Mamlatdar who was competent to arrive at those findings. A similar decision was given by another division bench of this Court in *Hasan v. Rasul*.⁽²⁾ But in *Irbasappa v. Basangowda*⁽³⁾ a division bench consisting of Sir Norman Macleod and Mr. Justice Heaton laid it down that the Court would not interfere in revision under s. 115 of the Civil Procedure Code unless the party applying to the Court has no other remedy, and that in a case under the Mamlatdars' Courts Act the aggrieved party is entitled to file a suit. Accordingly the Court in that case refused to interfere. No doubt the facts in that case are very similar to the facts in the present case. In a later case,—*Jagannath Dewkaran v. Dhondu Ananda*,⁽⁴⁾ a division bench consisting of Sir Norman Macleod and Mr. Justice Crump did interfere with an order of the Collector made under s. 23 (2) of the Mamlatdars' Courts Act on the ground that the Collector could only interfere with such an order if he was satisfied that it was illegal or improper, that is to say, the Court in that case followed the decisions of this Court in *Kashiram Mansing v. Rajaram* ⁽¹⁾ and *Hasan Malik v. Rasul Malik*,⁽²⁾ and did not follow the decision in *Irbasappa v. Basangowda*.⁽³⁾ In the year 1932, the question came before Mr. Justice Broomfield in an unreported case, and he considered that on the balance of authority the Court would interfere in cases of this nature, and he pointed out that Sir Norman Macleod, who presided over the Court in

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⁽¹⁾ (1911) 35 Bom. 487.⁽²⁾ (1913) 37 Bom. 595.⁽³⁾ (1919) 44 Bom. 595.⁽⁴⁾ (1923) 48 Bom. 384.

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Irbasappa v. Basangowda,⁽¹⁾ had also presided over the Court in the later case of *Jagannath Dewkaran v. Dhondhu Ananda*.⁽²⁾ In *Maruti v. Bankatlal*⁽³⁾ I distinguished the case of *Irbasappa v. Basangowda*,⁽¹⁾ but in so doing I expressed approval of the principle there enunciated. However the cases in the opposite sense were not cited to me. It is very undesirable that the practice of the Court in these cases should remain in doubt. It is a hardship on litigants if they do not know whether an application in revision against the order of the Collector under s. 23 (2) of the Mamlatdars' Courts Act will be entertained or not. In my opinion, on the balance of authority it must be taken as settled that the Court will interfere in these cases. It is clear that such a case falls within the terms of s. 115 of the Civil Procedure Code, because the basis of the decisions of this Court has been that the Collector has assumed jurisdiction in appeal, which he does not possess under the Act, and has therefore exercised a jurisdiction not vested in him. The question is one as to the practice of the Court and in my judgment the practice must now be taken as settled in favour of interference in a proper case.

In the present case the Collector's order was an order made in appeal and not properly in revision. He set aside the Mamlatdar's order because he did not agree with the Mamlatdar's findings of fact. That, in my opinion, he had no power to do. I must, therefore, set aside the order of the Collector and restore the order of the Mamlatdar. Rule made absolute with costs throughout.

Rule made absolute.

J. G. R.

⁽¹⁾ (1919) 44 Bom. 595.

⁽²⁾ (1923) 48 Bom. 384.

⁽³⁾ (1933) 35 Bom. L. R. 576.