

Appeal No. 3 of 1870 under Act XXVII. of 1860.

1870.
June 24.

VISHVANATH HARI *et al.*.....Appellants.

*Certificate to collect Debts—Refusal to grant Certificate—Appeal—
Act XXVII. of 1860.*

No appeal lies from an order of a District Judge refusing to grant a certificate under Act XXVII. of 1860.

THIS was a petition of appeal against an order of R. F. Mactier, Judge of the District of Sātára, refusing to grant a certificate, under Act XXVII. of 1860, to enable the petitioners to collect the debts due to their deceased father, Krishnáji Bâji Bhágvat. The refusal was based upon the fact that a certificate to administer the property of the deceased had already been granted to his eldest son under Reg. VIII. of 1827.

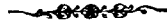
The application was heard by LLOYD and KEMBALL, JJ.

Nagindas Tulsidás, for the appellants:—This appeal is brought under Sec. 6 of Act XXVII. of 1860. [LLOYD, J.:—Sec. 6 says “the granting of such certificate may be suspended by an appeal to the Sudder Court;” but it does not say that an appeal shall lie to the Sadr Court against the refusal by the District Judge to grant a certificate, nor does any such inference follow.] “Granting a certificate” necessarily includes the refusal to grant it. An appeal must be against some order; that order may be for granting, or for refusing to grant, a request made, there cannot, in the very nature of the thing, be an appeal by the man whose request is granted. Therefore, the appeal, which Sec. 6 undoubtedly gives, must be by the person whose request is refused. Moreover, the section gives the Sadr Court power to declare the party to whom the certificate should be granted. This evidently means that this Court can order a certificate to be granted to a person to whom the District Judge has refused it. Now, how is this court to proceed? It cannot proceed *ex mero motu*. It must, therefore, proceed upon the application of the losing party.

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PER CURIAM:—The Court is of opinion that it is discretionary with the District Judge to grant or to refuse a certificate under Act XXVII. of 1860, and that, if he has refused to grant a certificate, no appeal lies, under Sec. 6 of the Act, against his order.

Appeal dismissed.



June 27.

Special Appeal No. 104 of 1870.

VITHU bin MÁNKU *Appellant.*
 AMBITÁ bin JOTI *Respondent.*

Pátiki Watan—Eldership—Act XI. of 1843—Jurisdiction.

Where the plaintiff sued to be declared entitled to the office of *Mulki Patil* in the village of Kotávery, as being the senior of his family, and alleged that the defendant, the actual incumbent of that office, had no right to share in the management of the *watan*, and had, in fact, until 1866, upon the death of the father of the plaintiff, never done so, it was held that the Civil Courts had jurisdiction to entertain the claim of the plaintiff.

Abaji bin Sankroji v. Niloji bin Baloji (a) distinguished.

THIS was a special appeal from the decision of R. F. Mactier, District Judge of Sátára, in appeal Suit No. 196 of 1869, reversing the decree of the Munsif of Máyani.

The plaintiff, Vithu bin Mánku, sued to obtain a declaration that he was the *vadil* (senior) in his family, and, as such, entitled to hold permanently the office of *mulki patil* in his village, Kotávery. He stated that the *watan* had been in his family for more than one hundred years, till the death of his father in 1866, when the revenue authorities made the defendant *patil*, and referred the plaintiff to the Civil Court. He, therefore, brought this suit to have his right to the *watan* declared, and to be declared entitled to do the work, take the proceeds, and enjoy the *manpan*.

The defendant answered that the plaintiff was a stranger to the *watan*, which belonged to him, the defendant, as *vadil* or senior, and that the duties vested in him as such.