

Miscellaneous Appeal No. 5 of 1869.

1870.
April 13

GOWIND HARI WALEKAR *Appellant.*

SHIDRAM bin SHIDMURTI *Respondent.*

Procedure—Principal Civil Court of District—Civ. Proc. Code, Secs. 285, 286—Bombay Civil Courts Act, 1869 (XIV. of 1869), Sec. 19.

When an Assistant Judge is invested with all the powers of a District Judge within any part of the district of such Judge, the Court of the Assistant Judge must be considered, equally with the Court of the District Judge, the principal Civil Court of original jurisdiction, and a decree sent for execution in such part of the district is properly executed by or under the directions of such Assistant Judge.

The functions of the Court executing a decree are judicial, and not merely ministerial.

THIS was a miscellaneous appeal from the decision of R. White, Judge of the district of Puná.

The facts sufficiently appear from the judgment.

The appeal was argued on the 30th of March 1870, before GIBBS and LLOYD, JJ.

Snantaram Narayan for the appellant.

Anstey (with him *Nanabhai Haridas*), for the respondent.

Civ. adv. vult.

April 13th. GIBBS, J.:—The facts of this case are as follows:—

A decree was passed on the Original side of this court against one Shidram bin Shidmurti Ainpure, an inhabitant of Bombay, and also of the Solapur collectorate. The plaintiff, Govind Walekar, not being able to execute his decree in Bombay, applied, under Sec. 285 of the Civil Procedure Code, for, and obtained, a certificate from the Original side of this court, which, with a copy of the decree, he presented in the District Court at Puná, deeming that to be "the principal Civil Court of original jurisdiction in the district" in which he wished his decree to be executed. On his application to that court to attach certain moveable and immoveable property belonging to the defendant, the District Judge (Mr.

1870.
 Goind H.
 Walekar
 v
 Shidram
 Shidmurti

White) issued the customary order to his Názár, but on a further application forwarded the application and the order to the Munsif of Bársi, by whom the attachment was made.

Subsequently, on an application by the defendant, the District Judge reviewed his order, and set it aside, on the ground that he had no jurisdiction in the matter. His order runs thus:—

“When I gave the order for execution of the decree, I was not aware that the Acting Assistant Judge at Solápur had, previously to the receipt of the copy of the decree and certificate, been invested, under Sec 19 of the Bombay Civil Courts Act, 1869, with all the powers of a District Judge within that part of the Puná district forming the sub-collectorate of Solapur.

“The section in question provides that the jurisdiction of an Assistant Judge so invested shall *pro tanto* exclude the jurisdiction of the District Judge from within the said limits.

“I had, therefore, no jurisdiction in the matter of the execution of this decree in the limits of the Solápur sub-collectorate.

“It is true that Sec. 286 of the Code of Criminal Procedure provides that a decree to be executed in another district must be sent to the principal Civil Court of original jurisdiction in the district in which the applicant may wish the decree to be executed, and that the Bombay Civil Courts Act, 1869, enacts that there shall be in such zillá or district a district court which shall be *the* principal court of original civil jurisdiction in the district within the meaning of the Code of Civil Procedure: from which said provision and enactment it might be inferred that it was not contemplated that there should ever be two principal courts of original civil jurisdiction in the same district, which is the case in a district where there is, besides the District Judge, an Assistant Judge invested with all the powers of a District Judge, in a portion of the district, from which portion also the exercise of the jurisdiction of the District Judge is *pro tanto* excluded.

"But such an inference would be opposed to the legal maxim that when the provisions of two statutes are manifestly repugnant the earlier enactment will be impliedly modified or repealed—a maxim which may I presume, be applied to the case of the provisions of the same statute being manifestly repugnant, as Secs. 3, 5, and 7 of the Bombay Civil Courts Act, 1869, appear to be with Sec. 19 of that Act.

1870.
Govind H.
Walekar
v.
Shidram
Shidmurti

"The decree, under this view of the matter, should have been transmitted to and executed by the Assistant Judge at Solapur; and hence the proceedings taken in execution of the decree by this court must be held to be invalid on account of want of jurisdiction."

Against this order the present appeal is admitted, and the court has to decide the effect of Secs. 5, 7, 19, and 20 of the Bombay Civil Courts Act of 1869.

The 5th section declares that there shall be in each district a District Court presided over by a Judge to be called the District Judge. By the 7th section this District Court is declared to be the principal court of original civil jurisdiction in the district within the meaning of the Code of Civil Procedure.

By Sec. 14, Government may appoint one or more Assistants to the Judge, and by Sec. 19 Government may invest an Assistant Judge with all or any powers of the District Judge within a particular part of a district; and it enacts that the jurisdiction of an Assistant Judge so invested shall *pro tanto* exclude the jurisdiction of the District Judge from within the said limits. By Sec. 20 the Assistant Judge is to use the seal of the District Judge.

By the 286th section of Act VIII. of 1859 the application for execution is to be made in the principal civil court of original jurisdiction in the district.

By notification in the *Government Gazette*, the Governor in Council invested one of the Assistants to the Judge of Puná with the full powers of a District Judge, to be exercised within that portion of the Puná district which includes the

1870.
Govind H.
Walekar
v
Shidram
Shidmurti.

sub-collectorate of Solápur, and directed him to hold his court at Solápur. The court and local jurisdiction of the Munsif of Bársi forms part of this portion of the district.

Such being the case, it follows that the District Judge, having lost his jurisdiction within that portion, could not issue an order to the Munsif of Bársi to attach property situated within his (the Munsif's) jurisdiction.

Now it is perfectly clear to me that the Act (Bombay Civil Courts Act) nowhere intended that there should be more than one court of principal original civil jurisdiction in a district, and also that the only jurisdiction the District Judge can exercise is that conferred on the district court. He can, therefore, exercise those powers only in the portion of the Puná district which is not within the sub-collectorate of Solápur, within which the jurisdiction of the principal Civil Court of original jurisdiction is to be carried out by the Assistant Judge, in whom all the powers of the District Judge in that portion have been vested by Government; and his court at Solápur must be considered, equally with that at Puná, the principal Civil Court of original jurisdiction. In fact that there are two officers, the District Judge and his Assistant, who between them exercise the jurisdiction of a District Judge in the entire Puná district, namely, the District Judge in the Puná, and the Assistant Judge in the Solápur, collectorate—the one having no power within the limits of the other, but the court, the powers of which they carry out, being one.

I am, therefore, of opinion that in presenting the High Court's decree for execution in the Puná district the plaintiff was not wrong in presenting it at Puná, but that the plaintiff having so done, it was the Judge's duty, when he found the property situated in the Solápur sub-collectorate, to have sent the papers to the Assistant Judge, the officer who in that portion of his district alone could exercise the jurisdiction of a District Judge. It is clear to me, therefore, that the District Judge, Mr. White, was acting *ultra vires* in passing the order

he did for the execution of that decree; and I, therefore consider the order now appealed against so far correct.

1870.
Govind H.
Walekar
v.
Shidram
Shidmurti

It has been urged upon the court by Mr. Shántarám Náráyan that in directing the attachment of the property by the Munsif of Bársi the District Judge was only acting ministerially, and, therefore, as it did not form part of his jurisdiction as District Judge, it was not affected by the Assistant Judge's appointment. This argument has been met by Mr. Anstey, for the opposite side, who showed that the provisions of Secs. 286 to 296 were clearly of a judicial character, and, by Sec. 294, open to an appeal.

The proper order in this case, as it appears to me, is to confirm the District Judge's decision, and to direct the papers to be returned to that officer with instruction to forward them to the Assistant with full powers at Solápur for execution.

Costs of this appeal to be borne by the appellant.

LLOYD, J. :—I concur.

~~~~~  
*Regular Appeal No. 4 of 1869.*

Jan. 19.

RÁMCHANDRA NARSINHA MAHÁJAN ..... *Appellant.*

THE COLLECTOR OF RATNÁGIRI..... *Respondent.*

*Khoti Tenure—Assessment—Liability of Khot of Attached Village to Assessment in respect of lands held by him—Bombay Act I. of 1865, Secs. 3 and 38.*

*Held* that a *khot* is liable to be assessed for *khoti* profits in respect of land in his private occupation during the time that the *khoti* village is under attachment by Government.

*Quere*—whether a *khot* in respect of such lands is a tenant within the meaning of Sec. II., cl. (1) of Bombay Act I. of 1865, and whether the powers in Sec. 38 of that Act apply to such lands.

**T**HIS was an appeal from the decision of Baron De H. Larpent, District Judge of Ratnágiri, in Original Suit No. 13 of 1868.

The *khoti* village of Kezar was in 1865 attached by Government, in consequence of the refusal of the *khots* to enter into