

**(1906) 10 BOM CK 0013**

**Bombay High Court**

**Case No:** Civil Application No. 251 of 1904

Motilal Virchand

APPELLANT

Vs

The Collector

RESPONDENT

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**Date of Decision:** Oct. 16, 1906

**Acts Referred:**

- Bombay Civil Courts Act, 1869 - Section 32

**Citation:** (1906) 8 BOMLR 904

**Hon'ble Judges:** Louis P. Russell, Acting C.J.; Heaton, J; Beaman, J; Aston, J

**Bench:** Full Bench

**Final Decision:** Dismissed

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### **Judgement**

Louis P. Russell, Acting C.J.

1. The question referred to the Pull Bench by the order of Reference dated the 1st October 1906 is whether Mamlatdars empowered by the Mamlatdars" Act can entertain and decide suits to which the Collector is a party.
2. Two points were propounded to us by the Advocate General before the Pull Bench.
3. We state them in the reverse order to that in which he argued them.
4. The first point, therefore, may be stated as follows, viz., that looking at the history of the Mamlatdars" Courts it could not have been intended that a suit against the Collector would lie therein. The second point was whether the prerogative of the Crown whereby in England the Crown cannot be sued in Civil Courts applies to India so as to preclude the present suit being entertained.
5. Before we deal with these points however we would wish to state very shortly the nature of the plaintiff's claim.

6. The suit was filed in the Court of the Mamlatdar of the Daskroi Taluka in Ahmedabad by the plaintiff Motilal Virchand on behalf of the Manager of the Maneckchawk Panjarapole in Ahmedabad against the defendants (1) the Collector of Ahmedabad and (2), (3) and (4), the other defendants, whose names need not be set out; and the plaintiff claimed possession of the house and premises in the plaint specifically described and stated that one Vimalbhai had died on the 31st of March 1904; that the lower portion of the bungalow in the plaint mentioned was in the possession of defendant 2 and the remaining portion in that of defendant 1; that the Collector, defendant 1, had levied an attachment upon the Immovable and move-able property of the said deceased in respect of tagavi and assessment, but that the moveable property of the said deceased having been sold, and all the claims of Government having been satisfied defendant 1 had no right to keep the said building in his possession.

7. As to the first of the above points it is, we think, necessary shortly to go through the various Regulations and Statutes relating to Mamlatdars.

8. Now the first is Regulation XVI of 1827. This Regulation defines the duties of the Collector and his powers in regard to the Subordinate Revenue Officers ; and Section 6 (Clauses 1) provides that "all Collectors of the revenue, their Assistant, and Native Officers, shall, with respect to acts done by them in their official capacities, be subject to the jurisdiction of the Zilla Civil Court." Chapter II contains provisions inter alia as to Kamavisdar or other head Native Revenue officer in any district.

9. Regulation XVII of 1827, c.v.s. 17, Clause 1 enables the Collector to authorise Kamavisdars to demand security and take other steps in that section provided to ensure the realisation of the Revenue.

10. These Kamavisdars are, it appears, the present Mamlat-dars.

11. By Regulation VI of 1830 it was provided that in modification of the rules of Chapter VIII of Regulation XVII of 1827 the Collector and Sub-Collector are authorised to refer to the several Kamavisdars of their districts or other equal and similar officer, suits instituted under the provision of the said chapter, when the value of the matter at issue does not exceed Rs. 500 and by Section 5 an appeal lay inter alia from Kamavisdars or other similar officers to the Collector, or the Sub-Collector when within his district.

12. By Clause 2 of Section 1 of Act XVI of 1838, it was provided "that it shall be lawful for the Revenue Courts to give immediate possession of all lands to any party dispossessed of the same etc., provided applications be made to them by such party within six months from the date of such dispossession."

13. Section 16 of Act III of 1852 authorised certain powers which were vested in the Collectors of land revenue in that section specified to be exercised by Mamlatdars and enacted that any order passed by a Mamlatdar in virtue of Act III of 1852 should

be subject to appeal to the Collector or his Assistants.

14. Bombay Act V of 1864 in its preamble says : " Whereas doubts have been raised as to whether a Mamlatdar's Court in the Bombay Presidency can lawfully entertain applications for the immediate possession of lands etc., under the provisions of Section 1, Clause 2nd of Act XVI of 1838, unless the said applications be referred to it by a Collector or Sub-Collector under the provisions of Section 1 of Regulation VI of 1830, and whereas it is expedient to give Mamlatdars' Courts original jurisdiction in cases of the nature of those contemplated in Section 1, Clause 2nd of Act XVI of 1838, and also in cases in which a disturbance is attempted of the possession of lands etc., and to prescribe a form of procedure to be adopted by Mamlatdars when exercising such jurisdiction in cases of the above character," and enacts (Section 1) that Mamlatdars' Courts may give possession of lands etc., provided application be made within six months after dispossession and may also maintain existing possession. It then goes on to provide for the procedure in such suits. By Section 20 it is provided that " the powers of the Mamlatdar under this Act may be exercised by any Revenue Officer possessing powers corresponding to the powers of the Matalatdar, as defined in Chapter II of Regulation XVI of 1827 or by any other person who may be specially authorized by the Governor in Council to exercise the powers of a Mamlatdar under this Act." In the note to that section in Birdwood and Parsons' edition, it is said that the title Mamlatdar in Regulation XVI of 1827 does not occur ; the term "Kamavisdar " is employed, but the powers of that officer are not defined.

15. In *Exparte Nagowa kom Jakan Gauda* (1866) 3 B.H.C.R.A.C.J. 108 it was decided in 1866 that the Civil and the Revenue Courts have concurren jurisdiction to hear and decide suits in regard to immediate possession.

16. Bombay Act III of 1876 repealed Clause 2, Section 1, of Act XVI of 1838 and Bombay Act V of 1864, and stated that " Mamlatdar" includes any Revenue Officer ordinarily exercising the powers of a Mamlatdar and any other person who may be specially authorized etc.

17. It is now proposed (see Bill No. IV of 1905 Since the above was written the Bill has become law. See Bombay Act II of 1906 (Mamlatdars' Courts Act 1906), set out in Vol. VIII of the Bombay Law Reporter, p. 6 (Bombay Acts, 1906.) published in Bombay Government Gazette, Part VII, of the 26th February (1906) to repeal the Mamlatdar's Courts Act (Bombay Act III of 1876). In that Bill in Section 23 the Collector is empowered to revise the Mamlatdar's proceedings and where he takes any proceedings under the proposed Act, he shall be deemed to be a Court under the said proposed Act. Section 26 provides inter alia that no suit shall lie under the proposed Act against Government or against any officer of Government in respect of any act done or purporting to be done by any such officer in his official capacity, except where acting as a manager or guardian duly constituted under any law for the time being in force &c.

18. Of course the proposed Bill cannot affect the question now before us; but we only refer to it as showing the intentions of the legislature on this point.

19. From the above enumeration of the Statutes relating to Mamlatdars it appears to us clear that down to the time of the passing of Bombay Act V of 1864 the Mamlatdar was considered and treated as the subordinate officer of the Collector, and although that Act gave him the original jurisdiction which we have above pointed out, it is impossible for us to come to the conclusion that the legislature intended by that Act to alter his status with regard, to the Collector. Original jurisdiction might be given to him consistently with his occupying the same position with regard to the Collector as he did before that Act was passed, and if we may be allowed to refer to the new Bill it appears to us clear by the provisions of that Bill, to which we have before referred, that the legislature did not intend his subordination to the Collector to be interfered with. The judgment about to be delivered by Heaton J. brings this point out with great clearness.

20. In the present case there can be no doubt that in attaching the property of the deceased Vimalbhai, the Collector was acting under his powers as a Revenue Officer under the Revenue Code. We cannot believe that it could have been intended by the legislature to empower the Mamlatdar to sit in judgment upon the action of his superior officer in his Revenue capacity as he would have to do if the suit were allowed to be maintained in his Court.

21. Speaking for myself I would have been prepared to accede to the argument addressed to us by the Advocate General upon the other point which I have noted above. But as some of the other members of the Court are not prepared to do so, and as a finding on it is not absolutely necessary in this case I do not propose to record my reasons therefor.

22. Nor in this reference is it necessary to decide whether a suit such as the present will lie against a public Officer acting in his public capacity.

23. I would therefore answer the question submitted to us in the negative. The effect of this judgment will be to limit at all events the effect to the judgment in Balvantrao v. Sprott I L R (1899) 23 Bom. 761: 1 Bom. L.R. 414 to public Officers other than Collectors.

24. The application will be dismissed with costs.

Aston, J.

25. The question put in this Reference must I think be answered in the negative. In my opinion the matter is governed by Section 32 of the Bombay Civil Court's Act XIV of 1869 as amended and re-enacted in Act X of 1876, Section 15. The Section as originally enacted in Act XIV of 1869 was as follows :-

No Subordinate Judge shall receive or register a suit in which Government or any officer of Government in his official capacity is a defendant but he shall refer the party presenting the plaint in such suit to the District Judge in whose Court alone such suit shall be instituted.

26. This Section was amended by Section 15 of Act X of 1876 which runs "for Section 32 of the Bombay Civil Courts Act XIV of 1869 the following shall be substituted namely."

No Subordinate Judge or Court of Small Causes shall register a suit in which the Government or any officer of Government in his official capacity is a party, but in every such case such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of Section 19) such suit shall be instituted.

27. The second paragraph of the preamble to Act X of 1876 sets forth :

And whereas it is expedient that the jurisdiction of all the Civil Courts in the said " (Bombay) " Presidency should be limited in manner hereinafter appearing.

28. Thus in an Act entitled "an Act to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land revenue, and for other purposes," in the preamble of which the sentence already quoted appears, we find repeated a provision that a suit in which the Government or any officer of Government in his official capacity is a party shall be instituted in the Court of the District Judge alone, subject to the provisions of Section 19 of Act XIV of 1869 with which Section we are not concerned in this reference, otherwise than to show that it is the sole exception contemplated by the supreme legislature when enacting Act XIV of 1869 and Act X of 1876.

29. The decision in Balvantrao v. Sprott I L R (1899) 23 Bom. 761, 1 Bom. L.R. 414 is based upon the proposition that it is only the Courts mentioned in Act XIV of 1869 whose powers are restricted to suits in which Government or an officer of Government in his official capacity is a party.

30. The restriction on the powers of the Courts named in the first portion of the Section is referred to, but no mention is made of the exclusive jurisdiction given by the last part of the clause to the Court of the District Judge.

31. No reference occurs in the argument or in judgments to the title and preamble of Act X of 1876 or to Section 9, Clause 3, of the Specific Relief Act.

32. It appears to me that Act XIV of 1869 deals not only with the constitution of certain Courts but deals with certain suits and it gives to the Court of the District Judge constituted under that Act (and subject to the provisions of Section 19) exclusive jurisdiction as to suits of the nature covered by the question put in the Reference before us.

33. I do not feel pressed by the argument that if this view is correct it was unnecessary to amend Section 32 by the Act X of 1876, Section 15, by including Courts of Small Cause in the first part of Section 32 of Act XIV of 1869, first because amend-ments are often made to remove doubts and not to indicate any change in the original intention of the Legislature. Secondly, because the latter words of Section 32 of the Act of 1869 giving exclusive jurisdiction in such suits to the Court of a District Judge are re-enacted in the Act X of 1876 with the avowed purpose of limiting the jurisdiction of all the Civil Courts in the Bombay Presidency in the manner appearing in that later Act. Thirdly Acts XIV of 1869, X of 1876 are Acts of the Supreme Legislature and the Mamlatdar Court's Act, Bombay Act III of 1876, is an Act of the Local Legislature and no argument was advanced at the hearing of this Reference to show that it was competent to the Local Legislature to create a Court with power to entertain a suit in which the Government or any officer of the Government in his official capacity is a party when the Supreme Legislature has enacted that such a suit shall be instituted in the Court of the District Judge alone.

34. For the purposes of this reference I have assumed that a Mamlatdar's Court created by the Local Legislature is a Civil Court. It was taken to be a Civil Court in Balvantrao v. Sprott I L R (1899) 23 Bom. 761 1 Bom. L.R. 441 and that point is not referred.

35. For the above reason I would answer the reference in the negative.

Beaman, J.

36. I fully concur with the judgments delivered by the Chief Justice and by my learned colleague Mr. Justice Heaton.

Heaton, J.

37. The question referred to us is whether a Mam-latdar's Court has jurisdiction to try a suit to which a Collector is a party ? This question involves another, which is whether Balvantrao v. Sprott I L R (1899) 23 Bom. 761: 1 Bom. L.R. 441 was altogether rightly decided.

38. The learned Advocate General argued that a Mamlatdar's Court is without jurisdiction to try such a suit. He put forward two distinct propositions: first that a Mamlatdar's Court is without jurisdiction to try any suit to which an Officer of Government in his official capacity is a party and second that it is without jurisdiction to try a suit to which the Collector is a party. The first proposition is based on the argument that an Officer of Government in his official capacity acts in India as in England as a servant of the King, and in doing his master's bidding is by the King's prerogative protected against a suit unless a right to sue is expressly conferred by legislation. This is a large, an important and a difficult question. It is not necessary to decide it in order to answer this reference, and therefore it seems to me better to refrain from saying more than that before and accepting the learned

Advocate General's argument, more cogent reasons than those which he presented would be required ; unless further consideration led to the belief that those reasons are more convincing than at first hearing they appear to be.

39. The second proposition is founded on the peculiar position of the Collector in reference to the Mamlatdar and on the special nature of the Mamlatdar's Court's Act. The referring judgment states a number of reasons for doubting whether Balvantrao's case was rightly decided, so it will suffice here to set out briefly a summary of the reasons which have led me to a conclusion.

40. The Mamlatdar's Courts exist in order to summary proceedings, a speedy remedy for what may be called disturbance of possession or of rights in certain cases. In a sense, no doubt, these Courts are Civil Courts; but they provide a remedy outside of and additional to the ordinary remedies by suit : and these remedies are obtained by a procedure provided for by a Special Act and materially different from that of the ordinary Civil Courts. The Act establishing or rather continuing these Courts is therefore an Act with a special purpose, and has to be construed with reference to that purpose. The powers of the Courts are exercised by Mamlatdars who are subordinate Revenue Officers, subject as such to the Collector's authority, who by himself or by delegation to his Assistants and Deputies, hears appeals from the orders of Mamlatdars, when those orders are made in revenue or administrative matters. Moreover these powers were originally conferred on the Collectors and came afterwards to be transferred to Mamlatdars merely as a matter of convenience. One would suppose that the Legislature which transferred these powers from the Collector to the Mamlatdars did not contemplate the possibility that they would be exercised in proceedings to which the Collector himself was a party. Nevertheless the Mamlatdar's Courts Act (Bom. Act III of 1876) does not expressly state that a Collector may not sue or be sued in the Court of the Mamlatdar. Indeed taking the words of the Act by themselves they seem to contemplate a suit by or against any person. Therefore we are asked to hold that they do contemplate a suit by or against a Collector, as must be held if the reasoning in the case of Balvantrao v. Spratt is assented to.

41. Are we bound to accede to this request? We feel confident and that without the slightest hesitation, that the Legislature neither intended nor desired to confer on a Mamlatdar's Court the power to determine proceedings to which the Collector is a party.

42. Where the Collector is a party, he sues or is sued in respect of some official act. This act though done in virtue of the Collector's order or delegation, is often likely to be done by the Mamlatdar himself. If then the Mamlatdar has jurisdiction in the matter, he is empowered to hear and determine a proceeding in which the act of himself or of his direct official superior, is called in question. This is a state of things contrary to English notions of jurisprudence, and must fail to ensure that entire confidence in the disinterestedness of our tribunals, which is one of the first objects

and desires of the Legislature. This alone is a cogent reason for holding that the Act should be construed with reference to its peculiar purpose and in such a way as to avoid so gross an anomaly. Again the remedy intended and provided by the Legislature for one aggrieved with the decision or order of a Collector is an appeal to the Commissioner. This is clear from Chapter 13 of the Bombay Land Revenue Code. Then it is enacted by Section 11 of the Bombay Revenue Jurisdiction Act (Act X of 1876) that: " No Civil Court shall entertain any suit against Government on account of any act or omission of any Revenue Officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force, as within the period of limitation allowed for bringing such suit, it was possible to present." To allow a suit calling in question any act or omission of the Collector to be brought in the Court of a Mamlatdar in place of appealing to the Commissioner, would plainly be to defeat the intention of the Legislature.

43. It is not stated and we have not enquired, whether as a fact, the plaintiff in the referred case, had or had not exhausted his possible rights of appeal.

44. We merely refer in the matter as an indication of the clear intention of the legislature. Whether the Court of a Mamlatdar, is or is not a Civil Court within the meaning of Act X of 1876, it would be absurd to hold that a suitor can call in question a decision or order of the Collector by making that Officer a party in a summary proceeding before the Mamlatdar, when the law specifically provides that if an ordinary suit is brought in which any Officer of Government is a party, it must be brought in the Court of the District Judge : (Section 32 of the Bombay Civil Courts Act XIV of 1869.) We could only arrive at the conclusion that the Collector may be a party to a suit in a Mamlatdar's Court by closing our eyes to the clear intention of the legislature, to the clear purpose of the Act, and to certain evident absurdities and anomalies. This we are unable to do; and therefore our answer to the question referred must be and is: that a Mamlatdar's Court has not jurisdiction to try a suit to which a Collector is a party.