

# **BOMBAY HIGH COURT**

Nana Aba Katkar

Vs

Sheku Andu Bokade

(L Jenkins,C.J. K.C.I.E and Batchelor C.J.)

28.01.1908

## **JUDGMENT**

### **Lawrence Jenkins, C.J.**

1. This application for revision arises out of a suit commenced on the 24th February 1906 under the Mamlatdars' Courts Act 111 of 1876. On the 29th of October 1906 the Mamlatdars' Courts Act II of 1906 came into operation, and by Section 2 of that Act, the Mamlatdars' Courts Act of 1876 was repealed.
2. On the 2Gth of January 1907 the Mamlatdar dismissed the suit with costs.
3. On the 12th March 1907, the plaintiff presented a petition for revision to the Collector of Sholapur.
4. On the 6th of April 1907 the Collector held that he had no jurisdiction to entertain the application.
5. The plaintiff considering himself aggrieved by the Collector's order has presented this application to the High Court for revision.
6. Under the (sic) Courts Act of 1876 the Collector had no power of revision.
7. By Section 23 of the Mamlatdars' Courts Act of 1906 it is provided as follows :-"The Collector may call for and examine the record of any suit under this Act." Section 7 shows what a suit under this Act, is; it says all suits under this Act shall be commenced" in the manner therein indicated, and there is a variation, though only a very slight one, from the requirements of Section 5, the parallel section of the Mamlatdars' Courts Act of 1876. So that on the words of the Act itself it cannot be said that we are now concerned with a suit under the Mamlatdars' Courts Act of 1906. In the enquiry before us reference has been made to two decisions of this Court which, it is argued, govern this case.

8. The first of them is *Gulam, Rasul v. Balu Sayaji*<sup>1</sup> where it was held that the Mamlatdars' Courts Act of 1900 took away the Mamlatdars' jurisdiction over houses not falling within the description contained in Section 5 of that Act with the result that the Mamlatdar had no jurisdiction to proceed with a suit brought in respect of such houses though commenced before the Act came into operation. It was there considered by the learned Judge that the case was governed by the rule laid down in Maxwell that " No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues." That decision was afterwards followed in *Vajechand Ramaji v. Nandram Ddluram*<sup>2</sup> and that decision would be binding on us unless it appears that it was opposed to the decision of a superior tribunal. It appears to us that those decisions are opposed to previous binding decisions which apparently were not brought to the notice of the Court. Thus in *The Colonial Sugar Refining Company Limited v. Irving*<sup>3</sup> it was said, " as regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord N Coke to the present, day. the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment; and therefore the only re-question is--was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a more matter of procedure ? It serins to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held, to act retrospectively unless a clear intention, to that effect is manifested. "

9. That case shows that to disturb an existing right of appeal is not a mere alteration of procedure.

10. Then again in *Ratanchand Shrichand v. Hanmandrav Shivbdkas*<sup>4</sup> a decision of a full Bench, also apparently not cited, the Court had to consider the effect on a pending suit of an enactment which gave a, different; right of appeal, and it was there said "a suit is a judicial proceeding, and the word 'proceedings' must be taken to include all the proceedings in the suit from the date of its institution to its final disposal, and therefore to include proceedings in appeal. It follows, in the judgment of the Court, that in all suits commenced before the passing of the Bombay Courts' Act. the procedure must (unless another made of procedure is expressly substituted by that Act) be the same as it would, have boon if that Act had not been passed."

11. These cases are sufficient to justify in treating the decisions in *Gulam Rasul v. Balu. Suyaji*<sup>5</sup> and *Vajechand Ramaji, v. Nandram Dalurmn*<sup>6</sup> as not binding on us.

12. Now turning for a moment to the Bombay General Clauses Act J of 1904, we find it is there provided (Section 7) as follows: "Where this Act or any Bombay Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or affect any investigation, legal proceeding or remedy in respect of any such right, and any such investigation, legal proceeding Or remedy may be instituted, continued or enforced as if the repealing Act had not been passed. "

13. Now the right in respect of Avhich this suit is commenced was a right acquired under the Mamlatdars' Courts Act of 187G, and this suit was commenced under that Act.

14. On the words of the Bombay General Clauses Act, therefore, it appears to us that it would be wrong to hold that the Collector had jurisdiction ; so to hold would be to affect a legal proceeding in respect of a right which had accrued under the old Act.

15. If authority be needed for this, then we think it is to be found in the decision pronounced by Mr. Justice Wilson in *Hurrosundari Dabi v. Bhojohari Das Manji*<sup>7</sup> which closely resembles in its circumstances the present case. What was there sought was to take advantage of a power of appeal given after the suit had been commenced. After referring to *Ratanhcand Shrichand v. Hanmmantrav Shivbakas* and two other similar cases, it was said, " these cases are on all fours with the present case, with this exception that there an appeal was given under the repealed Act, and it was hold that the repealing Acs did not take away the appeal. Here the repealed Act excluded an appeal. It follows on the same principle that the repealing Act cannot give an appeal."

16. In the same way here we hold that the repealing Act cannot give the right of revision in respect of proceedings commenced under the Mamlatdars' Courts Act of 1876.

17. In our opinion, the Collector took the correct view and we must, therefore, discharge this rule with costs.

Cases Referred.

1(1907) 9 Bom. L.R. 527

2(1907) 9 Bom. L.R. 1028

3[1905] A.C. 369

4(1869) 6 B.H.C. 106

5(1907)9 Bom. L.R. 527

6(1907) 9 Bom. L.R. 1028  
7(1866) I.L.R. 13 Cal. 36