
(1911) 11 BOM CK 0021
In the Bombay High Court
Case No : Civil Reference No. 9 of 1911

Dalpat Zopdoo Paul

APPELLANT

Vs

Mahadu Uka

RESPONDENT

Date of Decision : 20-11-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 113
Mamlatdars Court Act, 1906 — Section 23

Citation : (1912) 14 BOMLR 259

Hon'ble Judges : Basil Scott, J; Bachelor, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—We cannot entertain this reference because we do not think that the Collector has any power to make it under the provisions of the CPC read together with Section 23 of the Mamlatdars' Courts Act.

2. Section 113 of the Code says that any Court (within which term the Collector acting under the Mamlatdars' Courts Act, Section 23, is included) may state a case and refer the same subject to the conditions and limitations prescribed.

3. Order XLVI, Rule 1, shows that the conditions prescribed are that a reference shall be before or on the hearing of the suit or appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt.

4. The Collector is not a Court trying a suit or appeal or executing a decree. He, therefore, has no power of reference. He appears to be under a misapprehension as to his powers, because, Section 23(2) provides that on revision he may pass such order as he thinks fit, which gives him similar powers to those given to the High Court u/s 115 of the Civil Procedure Code.