
(1946) 10 BOM CK 0006
In the Bombay High Court
Case No : Second Appeal No. 597 of 1943

Vinayak Hari Paranjape

APPELLANT

Vs

Province of Bombay

RESPONDENT

Date of Decision : 01-10-1946

Acts Referred:

Maharashtra Revenue Jurisdiction Act, 1876 — Section 4(d)(1)

Citation : (1948) 50 BOMLR 21

Hon'ble Judges : Leonard Stone, J;Gajendragadkar, J;Chagla, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Leonard Stone, Kt., C.J.—This is an appeal from the judgment dated June 30, 1942, of Mr. M.B. Honavar, who was then Assistant Judge, Thana, whereby he allowed the appeal of the Province of Bombay, who was defendant No. 2 in the suit and dismissed the cross-objections of respondent No. 1 the plaintiff, who claims to be the mortgagee in possession of certain inam rights under a mortgage deed dated October 29, 1929. The only other party to the proceedings is the mortgagor, the inamdar, and he raises no opposition to the plaintiff's claim as mortgagee, which, so far as is material, is contained in paragraphs 1 and 5 to the prayer of the plaint:

(1) It may be declared that the plaintiff is entitled to get his name as mortgagee in possession entered after the name of Sambhaji Shivaji Raje Shirke against the inam right in mouje Jamgaon and Kudli in the taluka of Roha and in mouje Vidhat in the taluka of Mangaon mentioned in Clause 3 above, in the relevant Government records.

(5) Defendant No. 2 may be ordered to pay to the plaintiff defendant No. 1's amount that is credited with Government in respect of the inam right in the three villages mentioned in Clause 1 above and the amount that will be credited with Government every year hereafter till payment of the mortgage amount.

2. I must confess that I find the attitude of Government in this matter somewhat difficult to understand, for there is no doubt that the grant of this inam, which dates from before the British connection in India, is an absolute grant to receive one half of the revenue of these three villages and that the right is heritable, partible and alienable at will; nor is there any doubt that the mortgagor is the present holder of the inam rights, subject to the estate and interest therein of the appellant as his mortgagee. 3. There is no dispute between mortgagor and mortgagee. The only complication, if it be a complication, is the fact that the villages in question are khoti villages, that is to say that in ancient times the Rulers of those days granted heritable right to a khot to collect the revenue for which service, of course, the khot is not without his remuneration. In practice the khot having collected the revenue, accounts to Government for all he receives, and Government then pays the khot his commission and pays one half of the balance to the inamdar and retains the other half itself.

In this case, Government refuses to recognise the mortgagee, though, as I have said, there is no dispute between him and his mortgagor, who raises no objection to the payment of his share of the revenue being made to the mortgagee. 4. The submissions made by the learned Advocate General on behalf of Government in justification of the attitude which Government have taken up are firstly, that by Sub-section 4 (d)(1) of the Revenue Jurisdiction Act no civil Court shall exercise jurisdiction as to any of the following matters: "claims against the Crown? to be entered in the revenue survey or settlement-records or village-papers as liable for the land-revenue, or as superior-holder, inferior-holder, occupant or tenant." And secondly, that to order Government to pay the plaintiff as mortgagee, and not the inamdar whose name is entered in Government records as the superior holder, would be to order something to be done contrary to the entries in those records, or in the absence of an entry in the records that the plaintiff is mortgagee. This, it is suggested, the Court cannot do. Mr. Dharap concedes that Sub-section 4 (d)(1) of the Revenue Jurisdiction Act precludes the Court from making the declaration asked for by prayer No. 1 of the plaint, but the question remains whether the appellant is entitled to the relief asked for by prayer No. On Government's behalf reliance is placed on the definition of "superior holder," in the Bombay Land Revenue Code, which is: "a landholder entitled to receive rent or land revenue from other land holders (hereinafter called "inferior holders"), whether he is accountable or not for such rent or land revenue, or any part thereof, to the Provincial Government.

5. I am unable to see how that definition has any material bearing on what we have to consider. The Code does not provide that Government shall pay nobody except the "superior holder." But the position taken up by Government is really grounded on the decision of Dattatraya Vishnu Dabholkar Vs. Sadashiv Shivram Nisal, in which it was held that the relationship between Government and the inamdar, who was the superior holder, under the Bombay Land Revenue Code, was not affected by the sale of the superior holder's rights, and that an injunction against Government to pay the plaintiff direct would be contrary to the

spirit of the Land Revenue Code. In delivering the judgment of the Court consisting of Mr. Justice Macklin and himself, Mr. Justice Broomfield said (p. 891):

We must hold, therefore, that this suit as against Government is barred. It follows from that that no order can be made that plaintiff's name should be entered in the village papers, and defendant No. 2 must remain as the superior holder. From that again it seems to follow that Government cannot be ordered not to pay the revenue to defendant No. 2 but to pay it to the plaintiff direct. The definition of superior holder in the Land Revenue Code, to which I have already referred, shows that he is entitled to the revenue. Section 85 of the Code provides that he is to receive his dues through the village officers. u/s 86 the superior holder only is entitled to assistance from Government. So that an injunction against Government to pay the plaintiff direct, and not to pay the superior holder, would be contrary to the spirit, if not to the express terms of the Land Revenue Code. The relation between Government and the superior holder is not affected by the sale of the superior holder's rights.

6. The learned Judge in the appellate Court below was of course bound by this decision which is distinguishable from the case before him, and he accordingly allowed the appeal from the trial Court, and dismissed the cross-objections. But the matter has now come before this full bench, and it is for us to consider whether the case of *Dattatraya v. Sadashiv* is rightly decided.

7. The jurisdiction of this Court is not barred or controlled, except in so far as it is taken away by some express statutory provision or by some inescapable implication arising from some statutory provision, and there is no statutory bar to the relief claimed by prayer No. 5. But the learned Advocate General relies upon Section 11 of the Revenue Jurisdiction Act, which provides that no civil Court shall entertain any suit against the Crown 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. But be it observed that this suit is not based on any act or omission of any revenue officer. The appellant claims his right to receive payment under and by virtue of the mortgage deed, and with great respect to the learned Judges who decided *Dattatraya's* case, it does not seem to me to follow, or to be contrary to the spirit of the express terms of the Land Revenue Code, for the Court to hold and to order that Government should pay the person who in law is entitled to receive the revenue, especially in such a case as this in which the superior holder whose name is registered in Government records raises no objection to such payment being made and acknowledges that the mortgagee is in fact his mortgagee.

8. In my opinion, the case of *Dattatraya v. Sadashiv* is not rightly decided. Because the Court has no jurisdiction to order Government to amend its records, it does not in my judgment follow that the jurisdiction of the Court to order payment to be made in to the person entitled to in law is in any way curtailed.

The statute does not expressly bar the jurisdiction of the Court and I can find nothing in the Acts referred to which raises any such implication, nor when a right is admittedly heritable, partible and alienable at will, do I understand why it is contrary to the spirit of the Land Revenue Code that this Court should not enforce legal rights when there is nothing in the Code to oust the jurisdiction of the Courts in this respect. The appellant is entitled to the relief claimed by him limited however to the relief claimed in prayer No. 5 of his plaint. The appeal must be allowed with costs throughout. Chagla, J.

9. I agree.

10. The point really lies in a very narrow compass. The jurisdiction of the Court is barred u/s 4 of the Revenue Jurisdiction Act and we are concerned in this case with Sub-clause (d)(1). That deals with a claim to be entered in the revenue-survey or settlement-records or village papers as liable for the land revenue, or as superior holder, inferior holder, occupant or tenant. To the extent that the plaintiff claims to have his name entered as the superior holder in the revenue records, the decision of the revenue officers is final and the Court has no jurisdiction to sit in judgment on that decision. But to the extent that the plaintiff claims as a question of title to be entitled to land revenue to be paid by the land holder, it is not a matter for the final determination of the revenue officers. I am not prepared to hold that jurisdiction can be ousted by mere inference unless it is ousted by necessary implication following upon the clear words of the statute. The Advocate General has not convinced me that as a matter of necessary implication it follows that because Government refused to put the name of the plaintiff as the superior holder in the revenue records, therefore, the Court would have no jurisdiction to consider the question of title whether in fact he is entitled to receive rent or land revenue from the mortgagor who is the land holder. If we were to accede to the Advocate General's argument, it would amount to this that the Government would arrogate to themselves the right to determine questions of title.

11. It is perfectly patent that an entry in a revenue record does not decide questions of title, and what the Advocate General really contends is that by reason of the fact that the plaintiff is not shown as the superior holder in the revenue records he is not entitled to receive rent or land revenue from the mortgagor which in effect is deciding the question of title which is for a civil Court and not for the revenue authorities. The decision in *Dattatraya v. Sadashiv* was really based, with great respect to the learned Judges who decided it, on a misconception of the definition of the term "superior holder". Superior holder is not a person who is entered as such in the revenue records. He is the person who is entitled to receive rent or land revenue from other land holders. If the definition was that any person whom the Government recognises as superior holder and enters his name in the revenue records becomes automatically the superior holder, then undoubtedly Government could resist the claim of the plaintiff to have the amount paid to him, but that not being the definition of

superior holder, I agree with the learned Chief Justice, that, although the plaintiff is not entitled to prayer (1)?and Mr. Dharap very frankly has not pressed for that prayer?he is certainly entitled to prayer (5) viz., to have the amount paid to him till his mortgage is satisfied. I therefore agree that Dattatraya v. Sadashiv was wrongly decided and it should be overruled by the decision of this bench,

Gajendragadkar, J.

12. Two villages Jamgav and Kudali in taluka Roha and a village Vidhat in taluka Mangaon are khoti sharkati inam villages, the original grant in respect of them having been made in favour of the family of Raje Shirkes. Under the said grant Government is entitled to take half the assessment of the three villages and the grantee's family is entitled to recover the other half. Sambhaji Shivaji Raje Shirke was in possession of the entire inam village of mouje Vidhat as mortgagee-in-possession. The entire inam village of mouje Jamgav belonged to him partly by inheritance and partly by purchase as well as possessory mortgage. With regard to the third village of mouje Kudali, the said Sambhaji owned 5 annas 4 pies share by reason of purchase and was in possession of another 5 annas 4 pies share as mortgagee-in-possession. The said Sambhaji mortgaged with possession all his right, title and interest in the aforesaid three villages to the plaintiff under a registered mortgage deed executed on October 29, 1929. Up to 1932-33, the method adopted in collecting and distributing the revenue of these villages was that in terms of the rent-notes passed by the khots to the Government half the assessment of these three villages, together with the local fund, used to be collected by the khots, and paid directly to the Government and the other half of the assessment which was also collected by the khots used to be paid by them to the members of the Raje Shirke's family or mortgagees from them. Since 1933-34, the Collector of the district has been taking rent notes from the khots by which the khots are required to pay the total amount of assessment of the three villages to the Government. In his circular issued by the Collector in this behalf, he has directed that the inamdars of the said villages would be paid their share of the revenue of the village by the Government. When this new arrangement was introduced, the mortgagee from Sambhaji Shirke applied to the Collector intimating to him of his mortgage rights and requesting him to pay to him the share of the revenue payable to his mortgagor. This application was rejected by the Collector. It would appear that the mortgagor had himself made a similar application to the Collector suggesting that the mortgagee's name should be entered in the revenue records as mortgagee-in-possession, and that the amount due to be paid to him in regard to his right in the aforesaid villages should be paid directly to the mortgagee. This request of the mortgagor himself was similarly rejected by the Collector. The Collector, it seems, has ordered that the names of all sharers in the three inam villages should be entered in the records, and they should be paid the amounts according to their shares directly. Under these circumstances, the mortgagee had to institute the present suit in the Court of the Civil Judge (Senior Division), Thana. To his suit he impleaded Sambhaji Raje, his mortgagor, and the Secretary

of State for India in Council, as defendants Nos. 1 and 2. He claimed that it should be declared that he has a right to get his name entered in the revenue records as mortgagee of the inam rights of defendant No. 1, and, that as such mortgagee-in-possession he was entitled to take the amount pertaining to the inam right of his mortgagor in the three villages in question. He alleged that about Rs. 8,500 were payable to his mortgagor in respect of his right, title and interests in the said villages, and he claimed that the said amount should be directed to be paid to him. Against his mortgagor, defendant No. 1, he claimed a permanent injunction restraining him from taking the amount of the inam right credited with the Government up to the date of the suit and the amount that would be credited thereafter in respect of the inam right in the three villages in question until his mortgage amount is satisfied. Against the Secretary of State, defendant No. 2, the plaintiff claimed an injunction ordering him to pay to the plaintiff the amount that is credited with the Government in respect of defendant No. 1's inam rights in the three villages and the amounts that would similarly be credited with the Government in respect of the said rights of defendant No. 1 year after year until the plaintiff's mortgage amount is satisfied.

13. The mortgagor defendant No. 1 admitted the plaintiff's claim. He pleaded that there was a practice in the family of the grantee to mortgage and sell the shares in the three villages for the last more than hundred years, and he stated that he had no objection to the name of the plaintiff being entered in the revenue records as a mortgagee and that he would similarly have no objection to the Government directly paying to the plaintiff the amount that is due and payable to him (defendant No. 1) until the plaintiff's mortgage is satisfied.

14. The Secretary of State, defendant No. 2, resisted the plaintiff's claim on several grounds. It was alleged that the suit was barred u/s 4 (a) of the Revenue Jurisdiction Act, as also u/s 4 of the Pensions Act. The custom of alienability pleaded by defendant No. 1 and relied upon by the plaintiff was denied by defendant No. 2 and it was alleged that the grant to the Shirke family was of saranjam rights and as such the mortgage in favour of the plaintiff was void. It was further stated that the order of the Collector refusing to enter the name of the plaintiff in the Record of Rights was valid and correct and that though the plaintiff may have a claim against his alienor, he had no right against defendant No. 2.

15. On these pleadings the learned Civil Judge (Senior Division) framed seven issues. He found that the mortgage in favour of the plaintiff was legal and valid so far as the villages in suit are concerned and that it was binding on defendant No. 2. He held that the suit villages are not saranjam, and that they are not resumable at the will of the Government. He found that the plaintiff was entitled to be paid directly from the treasury the income belonging to the mortgagor. In his opinion the suit was not barred either u/s 4 (a) of the Revenue Jurisdiction Act or u/s 4 of the Pensions Act. On these findings the learned Judge came to the conclusion that the plaintiff was entitled to the amount claimed in the suit as well

as to the declarations and injunctions as prayed for by him. Accordingly the plaintiff's claim was substantially decreed by the learned Judge. It may be mentioned that the injunction issued by the learned Civil Judge against defendant No. 2 was to be operative during the lifetime of defendant No. 1. Against this decree the Secretary of State for India in Council, now described as the Province of Bombay, preferred an appeal in the Court of the learned Assistant Judge at Thana. The plaintiff filed cross-objections against the said decree in so far as the injunction issued against the Province of Bombay was limited during the lifetime of defendant No. 1, and against the order as to the payment of costs.

16. The learned Assistant Judge who heard the appeal rejected the contention of defendant No. 2 that the grant in question was saranjam and that the mortgage in favour of the plaintiff was void. He also held that the suit was not barred by Section 4 of the Pensions Act, On behalf of the plaintiff it was conceded before the lower appellate Court that a suit to have the plaintiff's name entered in the Record of Rights even as a mortgagee-with-possession from the superior holder is barred u/s 4 (d) of the Bombay Revenue Jurisdiction Act. It has been held by a Division Bench of this Court in Dattatraya Vishnu Dabholkar Vs. Sadashiv Shivram Nisal, that such a claim in terms falls within the scope of Section 4 (d) of the Bombay Revenue Jurisdiction Act. It was argued before the lower appellate Court on behalf of the Province of Bombay that the plaintiff's claim for injunction against defendant No. 2 must likewise be held to be barred and it was contended that even this point is covered by the said decision in Dattatraya's case. The lower appellate Court took the view that the point was concluded by the decision in Dattatraya's case and that he was, therefore, bound to hold that the plaintiff's claim against defendant No. 2 as a whole was barred. Accordingly, he allowed the appeal preferred by the Province of Bombay and dismissed the plaintiff's suit against the appellant. The cross-objections filed by the plaintiff were dismissed with costs. During the hearing of the appeal it was contended before the lower appellate Court on behalf of defendant No. 1 that the admissions made by him in regard to the plaintiff's claim in the trial Court had been obtained by misrepresentation and fraud and it was suggested that he should be permitted to withdraw his written statement and to oppose the plaintiff's claim. The lower appellate Court rightly rejected this contention and proceeded to affirm the decree passed by the learned trial Judge against defendant No. 1. In fact, defendant No. 1 had not made any appeal against that decree. The present second appeal has been filed by the plaintiff and the only point which arises for decision is whether the lower appellate Court was right in refusing to grant the injunction to the plaintiff against defendant No. 2 as claimed by him in the plaint.

17. Mr. Dharap for the appellant has conceded that in very similar circumstances it has been held by this Court in Dattatraya's case that the claim for injunction such as has been made by the plaintiff in this case cannot be granted and that the suit in which such a claim is made along with the claim to have entries made in the revenue records must be treated as barred by Section 4 (d) of the

Revenue Jurisdiction Act. Mr. Dharap has, however, contended that the view adopted in the said case that the Court had no jurisdiction to grant an injunction to the plaintiff should be re-considered, and he argued that the reasoning on which the said decision was based is not supported by any provisions of the Land Revenue Code or the Revenue Jurisdiction Act. That is how this matter is being heard by a Full Bench.

18. It may be mentioned that in this case the plea urged by defendant No. 2 in the trial Court was that the suit was barred u/s 4 (a) of the Revenue Jurisdiction Act. This plea was based upon the allegation made by defendant No. 2, that the grant in question was saranjam. Section 4 (a) provides inter alia that no Court shall exercise jurisdiction as to the claims against the Crown relating to the lands granted or held as saranjam. This plea has been negated by both the Courts below. It has been found that as early as 1882 the character of this grant had been in dispute between the grantee and the Government and it was held that the grant was not a fouj saranjam, and that Government had no right to resume it. There is no evidence whatever to show that any of the saranjam rules-were ever applied to this grant. There are, on the contrary, some statements made on behalf of the Government in 1889 showing that they had no interest whatever in this grant. By the members of the grantee's family, the property conveyed under the grant has been treated as heritable, partible and alienable at will. Both the Courts have thus found that the right, title and interest of defendant No. 1 in the village in suit is partible, heritable and alienable. In that view, the plea raised by defendant No. 2 u/s 4 (d) of the Revenue Jurisdiction Act, is obviously unsustainable. In appeal it was contended that the suit was barred u/s 4 (d) of the Revenue Jurisdiction Act, and as I have already stated, the plaintiff, in fact, conceded that his claim with regard to the entry in the revenue record was barred under the provisions of the said section. Section 4 (d)(1) excludes the jurisdiction of the Court to deal with any matters where claims are made against the Crown to be entered in the revenue survey or settlement records or village-papers as liable for the land-revenue, or as superior holder, inferior holder, occupant or tenant. Thus in terms the plaintiff's claim that his name should be shown as a superior holder or as a mortgagee of the superior holder's rights in the revenue papers is clearly barred u/s 4 (d)(1). In Dattatraya's case a similar claim "was made by a mortgagee who had obtained a decree on his mortgage and in execution of it had purchased the mortgagor's right, title and interest in the property mortgaged. It was held by a Division Bench of this Court that his claim to have his name entered in the revenue records was barred by Section 4(d) of the Revenue Jurisdiction Act. "It follows from that" observed Broomfield J. (p. 891):

that no order can be made that plaintiff's name should be entered in the village papers, and defendant No. 2 must remain as the superior holder. From that again it seems to follow that Government cannot be ordered not to pay the revenue to defendant No. 2 but to pay to the plaintiff direct.

Mr. Justice Broomfield referred to the definition of superior holder in the Land Revenue Code and to the provisions of Sections 85 and 86 of the said Code. He held that

an injunction against Government to pay the plaintiff direct, and not to pay the superior holder would be contrary to the spirit, if not to the express terms of the Land Revenue Code. The relation between Government and the superior holder is not affected by the sale of the superior holder's rights.

19. It is thus evident that this Court took the view that a claim to have the name entered in the village papers was expressly barred u/s 4 (d) of the Revenue Jurisdiction Act, and the claim for injunction could not be granted since it was "contrary to the spirit, if not to the express terms of the Land Revenue Code."

20. It has not been suggested before us that the claim for injunction made by the plaintiff in this case by itself falls within the scope of any of the sections of the Revenue Jurisdiction Act. The plaintiff having proved that the mortgage in his favour is valid and binding on defendant No. 1, prima facie he will be entitled to recover the amount of land revenue in the three villages in question falling to the share of the mortgagor. Prima facie it would also follow that the plaintiff would be entitled to obtain appropriate injunctions against his mortgagor as also against the Province of Bombay who is liable to pay the mortgagor, superior holder, his share in the land revenue of the said villages. In view of the decision in Dattatraya's case it has become necessary to consider if there is any provision in the Land Revenue Code which affects this position so as to oust the jurisdiction of the Court to give adequate relief to the plaintiff.

21. Section 3 (13) of the Land Revenue Code defines "superior holder" as a landholder entitled to receive rent or land revenue from other landholders whether he is accountable or not for such rent or land revenue, or any part thereof, to Government. u/s 53 of the Land Revenue Code a Register of alienated lands has to be maintained by the revenue authorities. In the said alienation register there is a column under which the superior holder's name has to be shown. The provisions of the Land Revenue Code further require that the revenue authorities must take steps to check the entries in the material columns in the said alienation register and amend or add to the said entries showing the devolution of the superior holder's rights by succession, survivorship, alienation or otherwise. Chapter VII of the Land Revenue Code deals with the rights and liabilities of the superior and inferior holders. Section 85 provides that every superior holder of an alienated village or of an alienated share of a village shall receive his dues on account of rent or land revenue from the inferior holders through the patel and accountant of such villages directly with the previous consent of the Collector. If the patel and accountant fail to recover the dues to which the superior holder is entitled, the Collector shall on a written application from such superior holder recover such sum from such patel or accountant as an arrear of land revenue. Section 86 provides for assistance to which superior holders are entitled in the matter of recovering their dues from inferior holders.

If an application is made by superior holders in that behalf, they shall be entitled to the assistance by the use of precautionary and other measures for the recovery of their dues. Section 87 provides the procedure which has to be followed by the Collector in making final orders on the superior holder's application for assistance. It must be pointed out that Sub-section (4) of Section 87 in terms lays down that nothing in the said section shall prevent either party from having recourse to the civil Courts to recover from the other such amount as he may deem to be still due to him, or to have been levied from him in excess of what was due, as the case may be. Section 135 (1) provides that the Collector shall refuse assistance to any superior holder u/s 87 if his claim to such assistance is not supported by an entry or entries duly made in the Record of Rights, Register of mutations or Register of tenancies. It would thus appear that if the transferee of the superior holder's Rights seeks to obtain assistance under the provisions of the Land Revenue Code, he would not be entitled to it unless his name has been entered in the revenue record as a superior holder. In that limited sense alone it may perhaps be permissible to say that the claim made by the plaintiff in the present case is somewhat "contrary to the spirit, if not to the express terms, of the Land Revenue Code." But the remedy by way of assistance u/s 87 is not the only remedy open to the superior holder to recover his dues; he can sue in a civil Court to recover his dues. In fact, it is not at all obligatory upon the superior holder to have recourse to the said summary remedy before making his claim in that behalf in a civil Court. That being so, the mere fact that the alienee from the superior holder may not be able to avail himself of the summary remedy provided for under the Land Revenue Code, it does not follow that he is not a superior holder within the meaning of Section 3 (13) of the Land Revenue Code. Superior holder, according to the said definition, is a land holder entitled to receive land revenue from other land holders. In other words a person who proves his title or right to recover the land revenue either as a purchaser or a mortgagee-in-possession is and must be regarded to be a superior holder. It seems to me that there is nothing either in the provisions or in the spirit or scheme of the Land Revenue Code to justify the assumption made by Broomfield J. that in determining a person's right to recover land revenue the entry of his name as superior holder in the revenue papers has any material or decisive bearing. For the purpose of granting summary assistance the said entry is decisive; but for deciding the point as to who is a superior holder in a regular suit questions of title must be considered and their decision cannot and is not intended to be materially affected by entries made in revenue papers. At best u/s 135 J of the Land Revenue Code some entries made under the provisions of the said Code give rise to a presumption; but the said presumption can be rebutted by other evidence. In the present case the plaintiff's right is admitted by the person who is shown as a superior holder in revenue papers and it is otherwise proved beyond doubt. That being so, I am unable to hold that the civil Court is precluded from recognising or giving effect to that right.

22. In this connection it may be useful to refer to the provisions of Section 135 1

of the Land Revenue Code itself. The said section is very similar to Section 4 (d) (1) of the Revenue Jurisdiction Act; it bars suits against the Crown in respect of a claim to have an entry made in any record or register maintained under Chapter X or to have any such entries amended or omitted. It cannot obviously be suggested that if wrong entries are made in the Record of Rights in regard to any lands the rightful owners cannot assert their rights to the said lands in civil Courts solely because they cannot ask for the correction or amendment of the said entries in the revenue records.

23. If the argument urged before us by the learned Advocate General is carried to its logical conclusion, I apprehend it may lead to somewhat startling results. Take the case of a person who is shown in the revenue papers as a superior holder. On his death if the revenue authorities erroneously enter the name of a distant bhauband who is not entitled to succeed to the deceased superior holder and reject the application of such superior holder's son to have his name shown as superior holder, on the argument of the learned Advocate General the son would not be entitled to claim his share of the land revenue from the Government since his name is not entered in the revenue record as superior holder. It seems to me that the provisions of the Land Revenue Code do not obviously purport, and are not intended, to invest the revenue authorities with jurisdiction to decide finally questions of title at all.

24. The provisions of the Revenue Jurisdiction Act seek to oust the jurisdiction of civil Courts in dealing with certain classes of claims and to that extent they deprive the subject of the remedy ordinarily available to him. That being so, it is clear that the said provisions must be strictly construed. In the present case, as I have already stated, there is in fact no provision in the Revenue Jurisdiction Act under which the plaintiff's claim for injunction can be held to be barred. Broomfield J. himself held that the suit before him was barred because part of the plaintiff's claim as to the entry in the revenue record offended against the provisions of Section 4 (d)(1) of the Revenue Jurisdiction Act, and the rest of his claim was inconsistent with the spirit of the Land Revenue Code. I am disposed to think that the conclusion thus recorded by Broomfield J. in Dattatraya's case, in regard to the plaintiff's claim for injunction against the Government is based upon a misapprehension of the effect of the provisions of the Land Revenue Code.

25. It has been contended before us that if the plaintiff's claim for injunction is granted, Government may indirectly be compelled to make the necessary amendment in the revenue papers and in that sense even the claim for injunction is barred u/s 4 (d)(1) of the Revenue Jurisdiction Act. I am unable to accept this contention. Section 4 (d)(1) bars the jurisdiction of civil Courts to entertain particular claims, and I feel no hesitation in holding that the said provisions must be confined to the particular claims specifically mentioned therein. Indeed, the attitude of the Province of Bombay in the present case appears to me to be absolutely unreasonable. It is significant that defendant No. 1, whose name is shown as superior holder in the revenue record, is himself a

mortgagee-in-possession of one village and the revenue authorities made no difficulty in recognising his rights as mortgagee and showing his name as superior holder in regard to the said village. For some time prior to 1934, the plaintiff himself was paid the due amount by the khots of the three villages without any objection from the Collector. Besides, when the rights of the plaintiff-mortgagee-in-possession are proved in a Court of law, it is obviously the duty of the revenue authorities to make a note of the said rights in their record. It is true that so long as the provisions of Section 4 (d)(1) of the Revenue Jurisdiction Act are not amended, Courts cannot compel revenue authorities to perform their duty in keeping the revenue records correctly; but since their refusal or failure to record the plaintiff's status in the revenue papers cannot in law affect his rights, I see no justification for holding that his claim for an appropriate injunction to enforce his rights against defendant No. 2 cannot be granted. I, therefore, agree that the plaintiff's appeal succeeds and must be allowed. The decree passed by the lower appellate Court dismissing the plaintiff's suit against defendant No. 2, is set aside, and the plaintiff is granted an injunction against defendant No. 2 in terms of his prayer in Clause (g) of the plaint. His claims against defendant No. 2 to have his name entered in the revenue records fails and is dismissed. Since the plaintiff has substantially succeeded against defendant No. 2, defendant No. 2 must pay the plaintiff's costs throughout.