

(1917) 07 BOM CK 0001
In the Bombay High Court

Vishwanath Ganesh Paranjpe

APPELLANT

Vs

Kondaji Valad Sakhram and Another

RESPONDENT

Date of Decision : 27-07-1917

Acts Referred:

Citation : (1918) ILR (Bom) 49

Hon'ble Judges : Shah, J

Bench : Single Bench

Judgement

Shah, J.—The question of law that arises in this second appeal is whether the jurisdiction of the civil Courts to try suits by superior holders to recover their dues from inferior holders is barred by Section 85 of the Land Revenue Code.

2. Both the lower Courts hold that the section bars the jurisdiction of the civil Courts: in my opinion it does not. The Chapter in which the section occurs relates to superior and inferior holders, and the group, of sections including Section 85 relates to tenants rights. The main purpose of the section is to protect the tenants. It renders it incumbent upon the superior holders to receive payments from the inferior holders through the hereditary patel and village-accountant, and it entitles the superior holders to recover dues directly from the inferior holders with the previous consent of the Collector in case the hereditary patel or village-accountant, whose duty it is to recover the dues and to account for the same to the superior holders, fails to do so. The section does not provide, and in my opinion it is not the purpose of the section to provide, as to how the dues are to be recovered when the, inferior holders fail to pay. The section restricts the liberty of the superior holders to receive payments directly from the inferior holders, even though the latter may be willing to pay, in alienated village in which there exists an hereditary patel and village-accountant. But when an inferior holder fails to pay the dues the remedy for the recovery thereof as provided by the Land-Revenue Code is to be found in Sections 86 and 87. These sections are included in the group of sections relating to the recovery of superior holders dues. These sections show that it is a special remedy, and the proviso to

Section 86 shows that the remedy is of a limited character. There is nothing to show that it is an exclusive remedy and that it prevents parties from having recourse to civil Courts. It is also clear to my mind that a superior holder, who seeks to recover his dues through a Civil Court does not recover them directly from the tenant or the inferior holder within the meaning of Section 85. The right and remedy of the superior holders to recover their dues from the inferior holders, who have failed to pay the same, are not affected by Section 85 of the Land Revenue Code.

3. This view is supported by *Govindrav Krishna Raibagkar v. Balu bin Monapa* (1891) 16 Bom. 586. Sargent C.J. observes in his judgment that "if the Inamdar, or his assignee, had made a demand on the tenants for the enhanced rent through the hereditary patel, or village accountant, as required by Section 85, and they had refused, he would have become at once entitled to his ordinary civil remedy." In my opinion it is no answer to this decision to say that the point as to the consent of the Collector specified in Section 85 did not arise and was not decided.

4. I, therefore, reverse the decree of the lower appellate Court and remand the appeal for disposal according to law. Costs to be costs in the appeal.