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fore, null and void in itself in respect of the matter contained in it.

Dádábhái Frámji for the respondent.

PER CURIAM :—The Court find that as the special respondent sued to establish his ownership, and not for any limited right of use; and as the District Judge found that the special respondent's claim to ownership was entirely unsupported by proof, he should have decreed against the special respondent, without entering on any question as to the special respondent's right, if any, to an easement over the said ground, or any part of it: since no such question is raised by the plaint, or ought to have been decided in this suit.

The Court, therefore, reverse the decision of the District Judge, and affirm that of the Principal Ṣadr Amín: all costs on the special respondent.

Appeal allowed.

NOTE.—"In suits under the Civil Procedure Code, the Court is certainly bound to take into consideration all the rights of the parties to the suit, whether legal or equitable, and by its decree to give effect to those rights as far as possible; but we think that the Court should confine itself to granting such relief as is prayed by the plaint:" *Per Scotland*, C.J., and *Bittleston*, J., in *Virasvámi Grámani Ayyasvámi Grámani*, 1 Mad. H. C. Rep. 477.—ED.

Feb. 12.

Special Appeal No. 633 *of* 1863.

RA'MDA'S SA'KHARLA'L .....*Appellant.*
GANGA'DHAR R. DONGRE .....*Respondent.*

Remand—Point for Decision—Positive Finding.

The District Judge not having come to any positive finding on the point for decision laid down by himself in an appeal; the High Court reversed his decree, and remanded the suit for a re-trial on the merits.

THIS was a special appeal from the decision of C. Gonne, Acting Judge of the Konkan, in Appeal Suit No. 314 of 1862.

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The defendant, Rámdás, in a suit between himself and one Dámji Jagjívan, obtained a judgment against the latter; and in execution of the decree therein, attached a house and a *chasmá* (*a*) of a warehouse.

To raise that attachment, and to establish his proprietary title under Sec. 247 of Act VIII. of 1859, Gangádhar brought the present action in the court of the Munsif of Bassein: setting forth that the aforesaid property belonged to him, he having purchased it for Rs. 249 from Dámji Jagjívan, Shake 1771 (A. D. 1849-50), and let it to the said Dámjí under an agreement, bearing date the 2nd of Mágh Shudh, Shake 1781, at an annual rental of Rs. 12; that the defendant had once caused the property to be attached in 1849; but, that, on his showing his proprietary title, the attachment was removed.

The defendant answered that the claim set up by the plaintiff was false, and that the two documents, viz., the deed of sale and the lease, on which the plaintiff rested his claim, had been pronounced fabrications in 1861, when he sought to remove the attachment.

The Munsif held the documents to be fabrications and dismissed the claim.

From this decision an appeal was made to the Acting Judge, who reversed the Munsif's decree, giving his reasons as follows:—

"The point for decision is, whether the sale by Dámji to the plaintiff was *bonâ fide* or not.

The evidence of four witnesses has been taken in support of the genuineness of the transaction, but the Munsif has put their evidence aside as unworthy of belief. The Court would not readily doubt the Munsif's appreciation of their evidence; but in the present case the evidence of these witnesses does not seem to be very much to the point. There can be no doubt that the documents were passed; and the question is whether they were *bonâ fide* or not. This is not

(*a*) A room included betwixt two posts or two cross-beams of a building; an intercolumniation.—*Molesworth.*

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a question which the evidence of these witnesses would much help to decide. The chief thing to look at is the date when the documents were passed. Have they been concocted now for the occasion? or were they executed on the dates they bear?

"The Court finds that, so long ago as 1849, the defendant attached the house, and the plaintiff asserted his claim then. Though it does not appear, it might be presumed, that he was then provided with documents to establish his claim. It may further be presumed that the defendant admitted the genuineness of his claim, for he agreed to withdraw his attachment.

"On the face of these facts, the Court finds it difficult to understand the Munsif's decree, which is hereby reversed: costs on the respondent."

The case was heard before WESTROPP and TUCKER, JJ.

Shántárám Náráyan, for the appellant:—The Judge was wrong in assuming that the respondent (plaintiff) was possessed of the deed of sale and the lease, from the bare fact of his having preferred a claim to the property in question on the occasion of a previous attachment by the appellant. He was also wrong in assuming that the appellant (defendant) admitted the genuineness of the respondent's claim, from the fact of his having withdrawn the previous attachment; the same having been withdrawn on account of certain overtures for an amicable settlement from the judgment debtor.

No one appeared for the respondent.

PER CURIAM:—The Acting Judge not having come to any positive finding on the issue, whether the sale by Dámji to the plaintiff was or was not collusive and fraudulent, the Court reverses his decree; and remands the cause for re-trial on the merits.

The Court further observes that, even supposing that the deed of sale bearing date 5th Shake 1771, Ashvín Vadya (corresponding with the 6th of October 1849), was executed at that time, such execution affords no presumption of the

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bona fides of the sale; if, as appears to be the fact, the defendant, Rámdás Sákharlál, then had a valid claim against Dámji, inasmuch as the same reason would have then existed for Dámji's attempting to screen his property from execution as existed shortly previous to the attachment in 1862, which gave rise to the present suit.

The Court also observes that the presumption which the Judge draws from the withdrawal, in March 1851, by the defendant Rámdás, of his attachment, laid on in 1849, that he (the defendant) admitted the genuineness of the claim of Gangádhar, the present plaintiff, is not warranted by the Názar's report, exhibit No. 32.

The Court orders the costs of this appeal to follow the final result.

Appeal allowed.

NOTE.—Compare with this case, S. A. No. 734 of 1864, at p. 32, *antè*.

Special Appeal No. 608 of 1863.

Feb. 24.

ISUBJI valad MUHAMMAD .....*Appellant.*
KHA'TIZA' kom A'BDULJI and another ...*Respondents.*

Ejectment—Part-owner—Burden of Proof.

In a suit to eject the special appellant from portion of a house, which he claimed to be in possession of as part owner :—*Held* that the lower appellate court was wrong in laying down that it was not called upon to decide whether the defendant was entitled to a share in the house; as the *onus* of proving an exclusive title to the property lay on the plaintiff.

THIS was a special appeal from the decision of A. T. Crawford, Acting Senior Assistant Judge of the Konkaṇ District, in Appeal Suit No. 141 of 1862, reversing the decree of the Ṣadr Amín of Ratnágirí.

Khátizá and another sued in the court of the Ṣadr Amín of Ratnágirí, to eject Isubji from a portion of a house, in which it was alleged he had been permitted to reside. Isubji replied that he was a part-owner of the house to the extent of one-third. The Ṣadr Amín found the disputed house to be the old family dwelling-place, in which the defendant was