

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.

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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 Gangádhár, the present plaintiff, is not warranted by the Xázar'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 Konkan District, in Appeal Suit No. 141 of 1862, reversing the decree of the Şadr Amín of Ratnágirí.

Khátizá and another sued in the court of the Şadr 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 Şadr Amín found the disputed house to be the old family dwelling-place, in which the defendant was a

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sharer to the extent of one-third; and therefore decided against the plaintiff.

In appeal, the Acting Senior Assistant Judge laid down the point for decision to be, whether Isubji occupied the house as owner, or at the pleasure of Khátizá, the plaintiff; and found as follows:—

“The Court holds that there is as much evidence in support of Khátizá’s assertions as there is of Isubji’s; while in the evidence of the witnesses called by Isubji there are several material discrepancies. In Isubji’s *kaiphayat* [statement] he says he is sharer to the extent of one-third, and that he was just going to sue Khátizá for it. In his examination he says he is owner to the extent of one-half. The Court is not here called upon to decide whether Isubji is entitled to a share in the house, and to what extent; yet the above discrepancies in his own statement materially weaken his case, in the Court’s opinion.

“The Court, therefore, believing that Isubji’s present occupation depends on the pleasure of Khátizá, reverses the Şadr Amín’s decree, and directs that he vacate the house: costs on respondents.”

The case was heard before NEWTON and WESTROPP, JJ.

Dhirajlál Máthurádas for the appellant.

Vishnu Moreswar Kelkar for the respondent.

PER CURIAM:—It appearing to the Court that if Isubji was entitled to a share in this property, he ought not to have been ejected, the Court consider that the Senior Assistant Judge was wrong in laying down that he was not bound to determine in this action, whether or not Isubji was entitled to a share; although there may have been no duty cast on the Judge in the present action to determine the extent of that share.

The *onus* of proving an exclusive title to the property lies on Khátizá. The decree of the Court below is, therefore, reversed; and the suit remanded for re-trial and a new decree on the merits: costs to follow the final decision.

Appeal allowed.