

Special Appeal No. 631 of 1863.

1864.
March 17.

BHA'U' BA'BA'JI GHOLAP *Appellant.*
GOPA'L and KONDA'JI, sons of KUMA'JI valad
Khandoji; and RA'MJI bin BAHIRJI..... *Respondents.*

Mortgage—Assignment—Redemption—Rent.

Where a mortgagee had assigned his interest, and agreed to pay rent to the assignee, and subsequently permitted the mortgagor to redeem :—

Held that a suit for rent could not be maintained in the Revenue Courts by the assignee against the mortgagor, as the relation of landlord and tenant never existed between them, nor against the representatives of the mortgagee after they ceased to be in occupation of the land ; but that the assignee should proceed under the assignment in the Adálat Courts.

THIS was a special appeal against the decision of the Acting Collector of Puná, in Appeal Suit No. 5 of 1863, amending the decree of the Mámlatdár of Pábal.

The appellant sued the respondents for the rent for eight years, at Rs. 3 per annum, of certain land mortgaged to him by the father of the first and second defendants.

The Mámlatdár at first rejected the plaint, treating the claim as barred by Act XIV. of 1859, Sec. 1, Cl. 8 ; but the Collector, on appeal, found that three out of the eight years claimed were within the prescribed period, and remanded the suit for a re-trial on the merits.

The first and second defendants then filed a statement to the effect that the land in question was the property of Bahirji Málí, who mortgaged its *mivási* to their father for Rs. 12-8 ; that while in their possession it was mortgaged by them to the plaintiff ; that, the period of the first mortgage having expired, they made over the land to the third defendant, Rámji, Bahirji's son, and passed a bond to the plaintiff for the arrears of rent due. The defendant Rámji contended that the present action, founded on an agreement passed by Kumáji to the plaintiff, would not lie against him ; and that he was in possession of the land as proprietor.

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v.

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et al.

The Mámlatdár found that eight years' rent was due ; and held that, as the suit was instituted within the prescribed period in the Munsif's court, but dismissed for want of jurisdiction, the whole claim was saved under Sec. 14 of Act XIV. of 1859.

This decree was amended by the Collector, who awarded three years' rent, to be paid by defendant Rámji.

Vishnu Moreshvar Kelkar for the appellant.

Málhavráv Krishna Khárkar for the respondents.

PER CURIAM (FORBES and TUCKER, JJ.) :—We find that this was an action brought in a revenue court by the assignee of a mortgagee, against the said mortgagee and the original mortgagor, to recover the rent of the mortgaged land, which the mortgagee had agreed to pay to the assignee, when he made the assignment. Subsequent to the assignment, the mortgagor had been put into possession of the land by the mortgagee, on the payment, as it is stated, of the mortgage debt.

We are of opinion that no action for rent can be brought in a revenue court by the assignee against the mortgagor, as the relation of landlord and tenant never existed between them ; nor against the mortgagee's representatives, after they ceased to be in occupation of the land.

We, therefore, reverse the Collector's decree ; and dismiss the claim, with all costs on the plaintiff, without prejudice to the plaintiff's right to institute a suit in the Adálat courts, to enforce any rights which he may possess, under the assignment, against any of the defendants.

Appeal allowed.