Civil Petition.

RA'YASANGJI MA'DHAVASANGJI and another...*Applicants.*
THE EXECUTORS of DAYA'BHA'I .....*Opponents.*

Execution of decree—Parties—Setting aside.

D. M. brought a suit against C. D., described as the heir of D. V., and in 1838 obtained a decree to be satisfied out of the estate of D. V. In 1862 the executors of D. M.'s will applied to the Munsif's Court to have the decree executed against the estate of D. V., which was then in the possession of R. and others, C. D. having died; and R. and others resisted the application, on the ground that C.D., who alone had been made defendant in the suit, was not the heir of D. V. The Munsif rejected the application; but his order was reversed on appeal by the District Judge:—

Held that the Judge's order must be set aside on the grounds that C. D. was not the heir of D. V.; that neither he, nor his guardian on his account, was, at the date of the decree, in possession or enjoyment of the property against which it was sought to be executed; and that neither the heirs of D. V., nor any persons through whom they claimed, were parties to the suit in which the decree was passed.

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DAYA'BHAI MANCHARJI brought a suit on a mortgage bond against Chandarsang Dipsang, described as the heir of Dhirajsang Vakatsang, the mortgagor; and obtained a decree, in which it was ordered that the amount of the judgment, Rs. 4,607, be recovered from the estate of Dhirajsang Vakatsang.

In 1862 Dayábhái's executors sought to execute the decree against the estate of Dhirajsang, then in the possession of Ráyasangji and others, Chandarsang having died; and a notice issued from the court of the Munsif of Urpad, calling upon Ráyasangji and others to show cause why the decree should not be executed against the estate of Dhirajsang in their possession. Ráyasangji and his brother Himatsangji opposed the application, on the ground that Chandarsang, against whom alone the suit had been brought, was not the heir of Dhirajsang; and the Munsif, finding it to be so, refused to execute the decree.

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On appeal the Judge of Surat reversed the Munsif's order, on the 20th of January 1866.

Nánábhái Haridás, on the 26th of April, obtained a *Rule Nisi*, on behalf of Ráyasangji and his brother: calling upon the executors of Dayábhái to show cause why the order of the District Judge should not be set aside, on the grounds that the decree of the 13th of March 1838, of which execution was sought, was not obtained against any person who was the heir of Dhirajsang; and that the applicants, Ráyasangji Mádhavasangji and Himatsangji Mádhavasangji, were his heirs, and were not, nor was any person through whom they claimed, a party to the suit in which that decree was made. And the following order was made by the Court:—

"Let the District Judge ascertain and report, whether at the date of the decree now sought to be executed, the defendant Chandarsang, or his guardian on his account, was in possession or enjoyment of the property against which the said decree is now sought to be executed; and if not, who was in possession or enjoyment of the said property at that time; and if the said defendant, Chandarsang, was then in such possession or enjoyment, either by himself or guardian, let the District Judge ascertain and report whether the said defendant, Chandarsang, has since been deprived of such possession or enjoyment, and if so, when and under what circumstances, and whether he was the heir of Dipsang."

The report of the District Judge was as follows:—

"It appears, from an inquiry instituted into the points therein mentioned, that neither Chandarsang, nor his guardian on his account, was at the date of the decree passed by the Munsif of Urpád, namely, 13th of March 1838, in possession of the property against which the said decree is now sought to be executed. The said property, however, at the time referred to appears to have been in the possession of Dipsang's cultivator; and nothing seems to have been brought forward by the trustees of the late Dayábhái to show that Chandarsang was the heir of Dhirajsang."

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Shántárám Náráyan now (Dec. 17) appeared to show cause. It was only when notice was served on the persons in possession of the estate, and after Chandarsang had died, that it was alleged by the opponent—the other heirs did not show cause—that Dipsang was not the heir of Dhirajsang, but merely his foster son.

PER CURIAM (COUCH, C. J., NEWTON and WARDEN, JJ.) :—In this case a person, who is not shown to have been the heir of the deceased mortgagor, was alone made defendant in the suit brought by the executors of the mortgagee; whilst other persons who claim to be the heirs, and who are now in possession, had no notice of the suit, until it was sought, several years after the decree was passed, to execute it against the estate.

The decision of the Munsif was right; and we, therefore, reverse the order of the Judge, but without prejudice to any right which the decree-holder may have to establish his claim against the estate of Dhirajsang by suit brought against his heirs.

Order reversed.

Civil Petition.

Ex parte NAGOVÁ kom JAKAN GAU'DÁ.

Dispossession of immoveable property—Civil and Revenue Courts—Jurisdiction—Reg. XVII. of 1827, *Chap.* VIII.—*Act XVI. of* 1838, *Sec.* 1—*Act VIII. of* 1859, *Sec.* 1—*Bombay Act No. V. of* 1864.

Held that the Civil and the Revenue Courts have concurrent jurisdiction to hear and decide suits in regard to immediate possession.

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THE petitioner had been sued in the court of the Munsif of Saundatti by Mudiáppá bin Virpáksháppá, who sought to recover possession of certain immoveable property, of which he alleged that he had been unlawfully dispossessed; the suit having been commenced within six months from the time of such dispossession, in accordance with Sec. XV. of Act XIV. of 1859.