

1866.
December 17.
Civil Petition.

Shántarám 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 NAGOVA' KOM JAKAN GAUDA'.

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.

Vishwanáth Náráyan Mandlik for the petitioner.—By ^{1866.}
Bombay Act No. V. of 1864 this suit ought to be brought ^{December 5.}
in the court of the Mámlatdár, and not in the court of the _{Civil Petition.}
Munsif.

COUCH, C. J. :—Reg. XVII. of 1827, Chap. VIII. (extended by Regs. V. and VI. of 1830) gave exclusive jurisdiction to the Revenue Courts in the adjustment of the respective rights of parties, in cases which relate to land and its rent and produce.

Those powers were altered by Act XVI. of 1838, Sec. 1, by which it was enacted, in modification of the rules contained in Chap. VIII. of Reg. XVII. of 1827, that all suits in regard to tenures, and the nature and extent of the interest and advantage which in virtue thereof should be enjoyed by the parties concerned, and all suits in which the right to possession of land, or of the watans of hereditary district or village officers is claimed, shall be brought in the Courts of Adálat and the courts subordinate thereto, and not in the Courts of Revenue: Provided, nevertheless, that it shall be lawful for the Revenue Courts to give immediate possession of all lands, premises, trees, crops, fisheries, and of all profits arising from the same, to any party dispossessed of the same or of the profits thereof; provided application be made to them by such party within six months from the date of such dispossession.

By this Act the power of the Civil Courts to entertain all suits in regard to tenures &c., and all suits in which the right to possession of land &c. is claimed, was revived, the prohibition to hear such suits being thereby removed. And although the Bombay Act, No. V. of 1864, gives to Mámlatdárs the power to hear and decide suits in regard to immediate possession, it does not follow that the Civil Courts have no power to decide suits of the same nature. On the contrary, Sec. 1 of Act VIII. of 1859 (Civ. Proc. Code) declares that they shall have such jurisdiction, there being no Act of the Government of India, and no Regulation of the

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Bombay Codes, by which their cognisance of the suits, is expressly barred (a).

It appears to me, then, that, in cases like the present, the Civil and Revenue Courts have concurrent jurisdiction.

NEWTON and WARDEN, JJ., concurred.

Application rejected.

(a) "The Civil Courts shall take cognisance of all suits of a Civil nature, with the exception of suits of which their cognisance is barred by any Act of Parliament, or by any Regulation of the Codes of Bengal, Madras, and Bombay respectively, or by any Act of the Governor General of India in Council."

NOTE.—For other decisions relating to the jurisdiction of the Civil and the Revenue Courts in suits regarding rent, "right to possession of land," &c., see 2 Bom. H. C. Rep., 191—201.—ED.

Civil Petition.

R. V. KOSHTI *Applicant.*

NA'RA'YAN DHULA'PPA' *Respondent.*

Sale of immoveable property—objections for irregularity disallowed—illegal order by Judge on appeal set aside—Act VIII. of 1859, Secs. 256 and 257.

On application by the judgment debtor to the Principal Sadr Amín to set aside the sale by auction of a house, in execution of a decree, on the grounds of material irregularities in publishing and conducting the sale, from which the applicant sustained substantial injury: the objections were disallowed as untenable, and the sale confirmed. But the District Judge, on appeal, set aside the sale for a ground on which he had no authority to interfere.

On petition to the High Court by the purchaser of the house:—*Held* that the order of the Judge must be set aside as illegal; and the original order, confirming the sale, allowed to stand.

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THIS was an application to set aside, as illegal, an order passed on appeal by the District Judge of Ahmednagar, on the 28th of July 1866, by which the sale of a house was cancelled, after it had been confirmed by the Principal Sadr Amín.

The sale was held at Ahmednagar, on the 17th of January 1866, in execution of a decree against the respondent, Náráyan; and the petitioner was the purchaser.