

Referred Case.

1871.
March 14.

JA'LAM PUNJA'.....*Plaintiff.*
KHODA' JAVRA'*Defendant.*

Costs—Bombay Act V. of 1864—Suit for Costs incurred in a Possessory Suit—Mámlatdár's Court.

No action lies for the recovery of costs incurred by a defendant in defending himself in a possessory suit brought against him in a Mámlatdár's Court under Bombay Act V. of 1864.

CASE stated for the opinion of the High Court by Ráv Bahádúr Gopálráv Hari Deshmukh, Judge of the Small Cause Court at Ahmedábád:—

“Is an action for the recovery of costs incurred in the Mámlatdár's Court, in defending a claim to possession of land under Bombay Act V. of 1864, maintainable ?

“Can the Mukhtiár's fee be included in the costs, and, if so, at what rate? * * * * *

“It appears that the defendant filed a suit in the Mámlatdár's court against the plaintiff for possession of a field situated in the village of Hathez. The plaintiff employed a Mukhtiár to defend his right, which was ultimately allowed by the Mámlatdár under date the 25th of July 1870. Now the plaintiff sues the defendant for the recovery of Rs. 16-3-6, alleged to have been expended by him in defending himself.

“The details of the said sum were as follows:—

| | | | | |
|---|-----|----|---|---|
| Fee paid to the Mukhtiár | Rs. | 14 | 0 | 0 |
| Stamp for power of attorney | „ | 0 | 8 | 0 |
| Stamp for written statement | „ | 0 | 8 | 0 |
| Stamp for copy of Mámlatdár's order ... | „ | 1 | 3 | 6 |

Rs. 16 3 6

“The defendant pleads that the court may hold him liable for such costs as it may think just.

“Sec. 3 of Bombay Act V. of 1864 states that ‘all suits under this Act shall be commenced by a plaint, which shall be presented to the Mámlatdár in open court by the plaintiff in person, or by his recognised agent.’ This appears to

1871. allow the employment of Mukhtiárs, and they generally
 JALAM PUNJA v. KHODA' JAVRA' practise in the Mámlatdár's Court; but there is no recog-
 nised standard by which their fee is regulated. There is
 nothing said about the award of costs in the Act above re-
 ferred to. Mámlatdárs, as far as I know, do not award them.
 The Mámlatdár's order, produced by the plaintiff, is silent
 about them. Hence the party gaining the case has brought
 a claim for damages in this court.

“With reference to the first question, my opinion is that the claim is maintainable; and with reference to the second, I think that such fee as the court may think fit may be allowed. As there is no provision in the Act above referred to in respect to costs, and as there is no standard of fees for Mukhtiárs, I entertain some doubts on the subject, and hence make this reference.”

The reference was considered by WESTROPP, C. J., and KEMBALL, J.

PER CURIAM:—The Court is of opinion that an action for the recovery of costs incurred in the Mámlatdár's Court, in defending a claim for possession of land under Bombay Act V. of 1864, is not maintainable. This Act, except in Sec. 11, is silent as to costs. That section relates only to costs as between witnesses and the parties respectively requiring their attendance. The Act makes no provision whatever for the award of such costs as are sued for now in the Court of Small Causes, namely, costs as between party and party; the Court, therefore, thinks that it must infer that the Legislature did not intend that costs should be recoverable. The Court, therefore, cannot see how it can be properly held that such an action will lie. The second question, namely, Can the Mukhtiár's fee be included in the costs? and, if so, at what rate? is only a branch of the first, and the Court directs that both questions be answered in the negative.

Reply accordingly.