

1873. We, therefore, decline to grant to him leave to amend it, as
 asked for by his learned counsel, and must, on the grounds
 assigned by the District Judge, affirm his decree with costs.
 We may mention that in the Supreme Court, and at the
 Original Jurisdiction Side of the High Court, the practice
 has been not to allow a person, as next friend of an infant,
 to bring a suit on behalf of the latter without the previous
 permission of a Judge in Chamber.

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Decree confirmed.

[APPELLATE CIVIL JURISDICTION.]

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 July 7.

Special Appeal No. 62 of 1873..

ABDUL GANI..... *Plaintiff and Appellant.*
 KRISHNA'JI BHIKAJI for
 himself and as the heir
 of the deceased BA'LU
 KRISHNA'JI..... *Defendant and Respondent.*

*Mortgage—Land Revenue—Occupant—Mortgagee's omission to pay
 Land Revenue—Purchaser at a Revenue Sale—Bombay Act I. of 1865,
 Sec. 36—Title—Mesne Profits.*

Where land, in the possession of a mortgagee, is sold by the *Mamlat-
 dar* for arrears of Government land revenue :—

Held that as the land revenue is the paramount charge on the land,
 whoever derives title from the occupant takes it subject to that charge
 and that, therefore, the purchaser at the sale was entitled to the land,
 free from any mortgage lien.

THIS was a special appeal from the decision of G. Ayerst,
 Acting Assistant Judge of Tanna, affirming the decree
 of the Subordinate Judge of Mahad.

Abdul Gani brought the action to establish his right to,
 and obtain, possession of certain land with a claim for the
 mesne profits thereof for two years. The land was sold by
 the revenue authorities on the 10th February 1868 for

arrears of revenue due to Government, and was purchased by the plaintiff, Abdul Gani. The defendants were in possession of the land under a mortgage, dated the 14th January 1866. The Subordinate Judge awarded possession of the land to the plaintiff on his paying the mortgage money to the defendants.

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In appeal the plaintiff contended that being a purchaser at a revenue sale, he was entitled to hold the land absolutely under Sec. 36, Bombay Act I. of 1865. The Assistant Judge held that the plaintiff acquired by the revenue sale only the right and interest of the mortgagor in the land, and was in no better position, and that, therefore, his purchase was subject to the satisfaction of the mortgage lien.

The special appeal was argued before WESTROPP, C.J., and NA'NA'BA'I HARIDA'S, J.

Dhirajlál Mathurádás for the appellant:—The decision of the Lower Court is opposed to the provisions of Sec. 36, Bombay Act I. of 1865, and Sec. 12 of Regulation XVII. of 1827. The land having been sold by the revenue authorities, on failure by the occupant or his mortgagee of payment of Government assessment, and purchased by the plaintiff, the Assistant Judge was wrong in holding that the plaintiff purchased it subject to the claim of the mortgagee.

Ghanashám Nilkant, *contra*:—Exhibit 32 shows that only the mortgagor's right and interest were sold. No demand on the part of the revenue authorities was made on the mortgagee, and, therefore, the sale could not affect him. Besides, by the mortgage deed, the mortgagor had agreed to pay the Government assessment.

WESTROPP, C.J.:—The land revenue is the paramount charge upon the land. The right of occupancy depends on payment of that revenue, Bombay Act I. of 1865, Sec. 36. Whoever, whether by mortgage or otherwise, derives title under the occupant, takes the land subject to that liability. Government in respect of land revenue is only bound to recognize the occupant, who is, by Sec. 2, cl. (j) of the same

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 BHIKAJI. as responsible to Government for payment of the assessment
 due upon any field or recognized share of a field." The mortgagee, if he wish to maintain his security, ought to see to the regular payment of the land revenue, and if he do not, he has only his own negligence to blame if the land be sold by Government for non-payment of that revenue. As to the paramount nature of the claim of Government, see *Secretary of State for India v. Bombay Landing and Shipping Company (a)*. The purchaser Abdul Gani, therefore, acquired a good title under the sale made to him by the Mámílatdár, and has become duly entitled to the possession and occupancy of the lands in dispute and to a reasonable sum for mesne profits since the tenth day of March 1868 (being one month after the sale to the plaintiff by the Mámílatdár), until the delivery of possession of the land to the plaintiff under our decree.

The Court, therefore, reverses the decrees of both of the Courts below, and declares that the plaintiff has established his title to the occupancy and immediate possession of the lands in dispute under the sale, made to him by the Mámílatdár, on the 10th day of February 1868, free from any mortgage to, or claim by, the defendants, and orders and decrees that the plaintiff be forthwith put into such occupancy and possession; and this Court further directs the Court of the Subordinate Judge to ascertain and allow to the plaintiff a reasonable sum for mesne profits of the land from the 10th day of March 1868, until the time of delivery of possession of the land under this decree to the plaintiff; and this Court also directs the defendants to pay to the plaintiff the sum to be so allowed by the Subordinate Judge for mesne profits, and the costs of the suit, and of both appeals.*

Decrees reversed.

(a) 5 Bom. H. C. Rep., O. C. J., 23 and especially pp. 48, 50.

* See next case.