

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 257 of 1873.*1873
August 14.GANU BIN HANMANTRA'V *et al*, OriginalDefendants Nos. 2 and 3 *Appellants.*MORO GANESH..... *Plaintiff and Respondent.**Ejection—Third parties—Sec. 73 of the Civil Procedure Code.*

A landlord sues to eject his tenant. Other persons setting up a title adverse to the landlord are, at their own request, made parties under Sec. 73 of the Code of Civil Procedure.

Held that these persons cannot, by introducing themselves as parties change the nature of litigation between the landlord and his alleged tenant; but to establish their superior title, otherwise than through the tenant, they must bring a separate suit.

THIS was a special appeal against the decision of S. Ham-mick, Acting Assistant Judge of Puna, confirming the decree of the Subordinate Judge of Puna.

The special appeal was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ.

Mánikshá Jehángirshá for the special appellants.

V. N. Mandlik appeared for the respondent.

The facts, in so far as they are material, appear from the following judgment:—

PER CURIAM:—The plaintiff, in the present case, sued to eject the defendant Sadoji from *Pátilki watan* land, alleging that he had allowed him to occupy it, he himself being *Pátil*, as remuneration for his services while employed by the plaintiff as his substitute, which employment had now ceased. The plaintiff succeeded in his action, and Sadoji did not appeal against the decree of the Court of first instance. The present appellants, who had been allowed to come in at their own request as additional defendants, did appeal, and without raising any objection to the Subordinate Judge's finding that the defendant, Sadoji, had obtained the land from the plaintiff and held under him, they went to trial in appeal on the principal issue of whether the plaintiff was or was not the occupant of the office of *Pátil*, in which character he averred that he

1873

GANU BIN
HANMANT
RA'V
v.
MORO
GANESH.

had put in the defendant Sadoji. The Assistant Judge has found that he is the occupant of the office, and as such occupant is entitled to possession of the *watan* as against the appellants. The latter might maintain the right of Sadoji as their tenant, but in order to do this they had to take his place: *Doe d. Knight v. Smythe (a)*. They could not, by introducing themselves as defendants, cause an essential change in the nature of the litigation as already constituted between the plaintiff and Sadoji, or give themselves the advantages of defending instead of attacking parties: see the remarks of Coleridge, J., in *Doe d. Willis v. Birchmore (b)*. The plaintiff is the *Pátíl* in possession. He placed Sadoji in possession, and, on making out a case for the ejection of Sadoji, is entitled to obtain, and to retain, possession as against the present appellants until they establish a title superior to his. This it may be open to them to do in another suit, but for the present the decree of the Assistant Judge must be confirmed with costs.

Decree confirmed.

[APPELLATE CIVIL JURISDICTION.]

August 14.

Special Appeal No. 245 of 1873.

MA'HA'BUBIBI, WIDOW OF FATE'

MUHAMMAD *Plaintiff and Appellant.*

AMINA', WIDOW OF FATE'

MUHAMMAD *Defendant and Respondent.*

Muhammadan Law—Dower—Limitation—Act XIV. of 1859, § I. cls. 12 and 16.

The limitation of six years prescribed in clause 16, Sec. I. of Act XIV. of 1859, and not clause 12 of that section, applies to a suit by a Muhammadan widow to recover the amount of her dower, as her right does not constitute an interest in immoveable property.

THIS was a special appeal from the decision of E. Cordeaux, Assistant Judge, F. P., of Puna, at Sholapur, reversing the decree of the Subordinate Judge at Sholapur.

(a) 4 M. S. 347.

(b) 9 A. & E. 669.