

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 194 of 1873.*1873
September 23.BA'BA'JI.....*Plaintiff and Appellant.*ANNA'.....*Defendant and Respondent.**Acts XVI. of 1838 and Bombay V. of 1864—Decisions of the Court of the Mámlatdár—Suit for possession in opposition to Mámlatdár's decision—Limitation.*

An order of the Court of the Mámlatdár under the last clause of Sec. 1 of Bombay Act. V. of 1864, recognizing the possession of a party and enjoining others from disturbing that possession, is not an order under Act. XVI. of 1838; and the limitation of three years, prescribed in Article 7 of Sec. 1 of Act. XIV. of 1859, does not apply to a suit brought to establish a right against the operation of such an order in the regular Civil Court.

Although such an order of the Mámlatdár is a summary decision, the suit in the Civil Court is not a suit to set aside the order itself, but for possession in opposition to that recognized by the Mámlatdár's injunction and is not, therefore, within the limitation of one year, prescribed by Article 5 of Sec. 1 of Act XIV. 1859.

THIS was a special appeal from the decision of R. F. Mactier, Judge of the district of Satará, confirming the decree of the Subordinate Judge of Ashtá.

The plaintiff Bábáji, sued his brother, Anná, in October 1871, to recover a piece of land, the possession of which, in 1865, was provisionally recognized by the Mámlatdár to be in the latter. Anná, *inter alia*, pleaded that the suit was barred by the statute of limitation. The Courts below considered the limitation of three years under Section 1, clause 7 of the statute to apply, and rejected the claim as barred.

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

Shántarám Náráyan for the appellant:—In order to see what provision of the Limitation Act applies to this suit,

1873

BA'BA'JI
" ANNA'.

we must see exactly what the nature of it is. The suit arises in consequence of certain proceedings held before the Court of the Mámlatdár in 1865. In that Court, the present defendant, complained that a disturbance of his possession had been attempted by the present plaintiff, and prayed for an injunction, directing the latter to refrain from causing that disturbance. The Mámlatdár could not take notice of this complaint under Act XVI. of 1838, as he had no jurisdiction. The jurisdiction to issue an injunction in such a matter, is a new jurisdiction, vested in the Mámlatdár by the last clause of Sec. 1. of Bombay Act V. of 1864. Even if this were not so, the Mámlatdár could not have acted in the matter under Act XVI. of 1838, and here there was no such reference. It is clear, therefore, that the Mámlatdár, when he took notice of this complaint, and recognized the defendant Anna's possession, he did so under the Act of 1865, and, consequently, the limitation of clause 7, Section 1. of Act XIV. of 1859, which, in clear terms, refers to an order under Act XVI. of 1838, does not apply.

Rávsáheb V. N. Mandlik, contra:—The increase of jurisdiction given to the Mámlatdárs' Court by Act V. of 1864, did not change the constitution of that Court. It was before the Act a Civil Court, and is so now: *Máhádáji v. Sonu (a)*. But supposing it were otherwise, it has been held that a Mámlatdár's decision is a summary decision, and, therefore to a suit to set it aside, the limitation of one year under clause 5 of Sec. 1 of the statute applies. Special Appeal No. 25 of 1873; *Bhagvant v. Gangábái*, decided on the 7th of August 1873 by MELVILL and PINHEY, JJ.

Shántarám in reply:—This suit is not to set aside the Mámlatdár's order, but to establish a right to possession in opposition to it.

WEST, J. :—It has been decided by the case of *Máhádáji v. Sonu (supra)* that a Mámlatdár's is a Civil Court. Special

Appeal No. 25 of 1873* has decided that the orders of this Court restoring a person dispossessed to his possession, are orders made under Act XVI. of 1838. As such they prevent the recovery of the property to which they apply, through the operation of clause 7 of Sec. 1 of Act XIV. of 1859, unless a suit be brought within three years from their date. By the same decision, however, it has been ruled that the jurisdiction granted by the last clause of Sec. 1 of Bombay Act V. of 1864 is a wholly new one. An order made in the exercise of this new jurisdiction, is not one made under Act XVI. of 1838, and the limitation, prescribed by clause 7 of Sec. 1 of Act XIV. of 1859 does not apply to a suit brought to establish a right against the operation of such an order.

But, it is said, if the Mámíatdár's injunction against disturbing possession is not one under Act XVI. of 1838, it is a summary order not otherwise expressly provided for, and, therefore, causing clause 5 of Sec. 1 of Act XIV. of 1859 to bar any suit instituted to get rid of its effect after the lapse

**Note.*—In this case MELVILL J., said:—"It has been contended for the appellants that the claim is barred by cl. 7, Sec. I., Act XIV. of 1859, inasmuch as the respondents are bound by an order respecting the possession of the property made by the Mámíatdár more than 3 years before the institution of the suit. The order in question purports to have been made under Bombay Act V. of 1864. That Act empowered the Mámíatdárs' Courts to give possession under Sec. I., cl. 2 of Act XVI. of 1838, and also to interfere by injunction in cases in which there had been no actual dispossession, but in which a disturbance of possession is attempted. The latter provision is a new one, and the order contemplated by it is one which could not have been made under Act XVI. of 1838. In the present case, the order made by the Mámíatdár appears to us to be not of the nature of an order to restore possession, but to be an injunction not to interfere with existing possession. In other words, it is an order made under the new provision of Bombay Act V. of 1864, and not under the old provision of Act XVI. of 1838, and it seems to us impossible to hold that clause 7, Sec. I of Act XIV. of 1859, which applies to orders made under Act XVI. of 1838, can be extended to orders of a different character made under a subsequent Act, and which it would not have been possible to make under Act XVI. of 1838."—Ed.

1873

 BA'BA'JI
 v
 ANNA'.

1873
 BA'BA'JI
 v
 ANNA'

of one year from its date. That the Mám-latdár's is a "summary decision," we think, is true. It falls fairly within the definition of a summary decision given by L. JACKSON, J., at 2 Beg. L. R. 236, and the inquiry is of the same kind to which Sec. 4 of Reg. VIII. of 1827 applies the phrase "summarily investigate." But though it is thus a summary decision of a Civil Court, a suit brought to upset the title on which it rests, is not, in our opinion, a suit to set aside the order itself. As Sir B. Peacock said in the Full Bench case of *Loknarain Singh v Ranee Myna (b)*: "If the summary order made under this Act is to be no impediment to bringing a regular suit, there is no necessity for setting aside that order." The order is essentially a provisional one, and when the possession, on which it rests, is changed by a decree of a competent court, it ceases along with its cause. A suit for possession in opposition to that recognized by the Mám-latdár's injunction is not, therefore, within the limitation prescribed by clause 5 of Sec. 1 of Act XIV. of 1859. The present was, we think, such a suit, and we must reverse the decree of the District Judge, pronouncing it barred by limitation, and remand the cause for retrial and a new decree upon the merits. Costs to follow the final decision.

Decree reversed and suit remanded.

(b) 7 Cal. W. R. Civ. R. 200.