

1877. in the instance of Mahadaji accused No. 4, Hari accused No. 7,  
 REG. Patlia accused No. 9, and Vishnu accused No. 13.

HANMANTA' v.

The appeal by the Government of Bombay against the judgment of acquittal recorded by the Sessions Court in the instance of Appaji, accused No. 14, has been permitted to be withdrawn.

The Court finds that Hanmantá accused No. 1 and Sakháram accused No. 2, between the 31st October 1874 and the 30th June 1875, abetted the commission of theft at Chowre, Shenvai, and Shilosi, in the Alibágh Collectorate, of about 8,000 khandis of wood, the property of the Government of Bombay, and that they have thereby committed an offence punishable under Sections 379 and 109 of the Indian Penal Code.

And the Court directs that the said Hanmantá and Sakháram be rigorously imprisoned for two years, and that they do each pay a fine of one thousand rupees, or, in default, do undergo rigorous imprisonment for a further period of nine months.

The sentence of imprisonment on Hanmantá No. 1 is to commence from the date on which he was sentenced by the Sessions Court.

### [APPELLATE CIVIL JURISDICTION.]

*Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Nánábhái Haridás.*

March 6.

BASA'PA' BIN MURTIA'PA' (DEFENDANT NO. 1 AND APPELLANT) v.  
 LAKSHMA'PA' BIN MARITAMA'PA' (PLAINTIFF AND RESPONDENT).\*

*Mámlatdár's order under Bombay Act V. of 1864—Possession—Revenue Courts—  
 Bombay Act III. of 1876—Act XVI. of 1838, Section 1, Clause 2.*

A Mámlatdár's order under Bombay Act V. of 1864 is not conclusive evidence of the facts of possession and dispossession between the parties. Section 1 of that Act gives to Mámlatdárs' Courts jurisdiction in case of dispossession within six months from the date of such dispossession, and relates to immediate possession; and under Section 15, the party to whom such immediate possession is given by the Mámlatdár, or whose possession he shall maintain, shall continue in possession until ejected by a decree of a Civil Court.

\* Special Appcal No. 310 of 1876.

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The power reserved to the Revenue Courts by Section 1, Clause 2, of Act XVI. of 1838, to determine the facts of possession and dispossession, was so reserved merely for the temporary purpose of enabling those Courts to dispose of the immediate possession, which was to continue until the Civil Court ejected the party put into such immediate possession. The purpose of Act XVI. of 1838, as that of Bombay Act V. of 1864, was temporary only, and chiefly to provide for the cultivation of the land and to prevent breaches of the peace until the Civil Court should determine the rights of the disputants. The decisions of the Revenue and the Mámílatdárs' Courts as to possession and dispossession do not bind the Civil Courts, the proceedings in the former Courts being of a summary character. The Civil Courts alone can entertain the question of title.

*Ex parte Nagova* (3 Bom. H. C. Rep. 108, A. C. J.) distinguished.

THIS was a special appeal from the decision of N. Daniel, District Judge of Dharwad, amending the decree of Shivaram Ramchandra, 2nd Class Subordinate Judge at Gadag.

This action was brought by Lakshmápá against Basápá bin Murtiápá and Basápá bin Shivápá to recover possession of certain land. The plaintiff alleged that he had purchased it from defendant No. 2 on the 4th July 1872; that he had obtained possession of the land, but that on the 7th December 1872 was ejected by an order of the Mámílatdár on the application of defendant No. 1, whom the Mámílatdár put into immediate possession under Bombay Act V. of 1864. Defendant No. 1, among other objections, pleaded that the land in dispute had been mortgaged to him by defendant No. 2 on the 1st June 1863 for Rs. 200, and that defendant No. 2 had no title whatever left in the land at the time when he (defendant No. 2) sold it to plaintiff. Defendant No. 2 admitted the sale of the land to plaintiff, but denied the mortgage set up by defendant No. 1. The Subordinate Judge held both the sale to the plaintiff and the mortgage to the defendant No. 1 proved, and awarded the land to the plaintiff on condition of his (plaintiff's) paying Rs. 200 to defendant No. 1 in satisfaction of the latter's mortgage lien. In the appeal, which was preferred by the plaintiff, the District Judge held the mortgage to defendant No. 1 not proved, and, amending the decree of the first court, awarded the land to the plaintiff as claimed in the plaint.

In special appeal only two points were raised, viz., 1st, that the Mámílatdár's order was binding on the Civil Court on the question of the title to the land, and, 2nd, that the plaintiff purchased with notice of the mortgage.

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*Mánehsháh Jehangirsháh* appeared for the special appellant.

*Shántárám Náráyan* appeared for the respondent.

The arguments used and the authorities cited in special appeal will appear from the following judgment delivered by -

WESTROPP, C. J. :—The special appellant's learned pleader has raised two points—1st, that, the land in dispute having been decided under Bombay Act V. of 1864 by the Mámlatdár to have been in the possession of the special appellant (defendant No. 1, Basápá Murtiápá) under the mortgage bond by the second defendant (Basápá Shivápá) of the 1st June 1863, his decision could not be questioned in the present suit on the title, and in *Lingápá v. Irápá* <sup>(1)</sup> a Mámlatdár's order, under Act V. of 1864, was treated as conclusive evidence of the facts of possession and dispossession. We, however, do not think that we could adopt that view of the law. The case there cited (*ex parte Nagova*) <sup>(2)</sup> does not appear to us to be an authority to that effect. It, in fact, merely decided that a Munsif's Court had, as well as a Mámlatdár's Court, jurisdiction to entertain a suit for restitution of possession of land of which the plaintiff had been dispossessed within six months previously to the institution of his suit in the Munsif's Court. The power, reserved to the Revenue Courts by Section 1, Clause 2, of Act I. of 1838, to determine the facts of possession and dispossession, was so reserved merely for the temporary purpose of enabling those Courts to dispose of the immediate possession, which was to continue only until the Civil Court ejected the party put into such immediate possession. Bombay Act V. of 1864, which gives to Mámlatdárs' Courts jurisdiction in cases of dispossession within six months from the date of such dispossession, also relates to immediate possession (Section 1), and provides, that the party to whom such immediate possession is given by the Mámlatdár, or whose possession he shall maintain, shall continue in possession, until ejected by a decree of a Civil Court (Section 15). The purpose of this Act, like that of Act XVI. of 1838, was temporary only, and, as we think, chiefly to provide for the cultivation of the land and to prevent breaches of the peace until the Civil Court

(1) Sp. Ap. 363 of 1870 decided on 18th September 1870.

(2) 3 Bom. H. C. Rep. 108, A. C. J.

should determine the rights of the disputants. Neither of these Acts gave any appeal against the Mámlatdárs' or Revenue Courts' decisions, which we think the Legislature would have permitted if it intended the decisions of the Revenue and Mámlatdárs' Courts as to possession and dispossession to bind the Civil Courts. The proceedings in those courts were of a very summary character, and it is important to observe that the question of possession is often inextricably mixed up with the question of title, which the Civil Courts only can entertain; or, in other words, the title often depends upon the possession. This is especially so amongst Hindus, where possession is frequently indispensable to title; also amongst Muhammadans where the validity of *hibas* is concerned; and see such cases as *Balaram Nemchand v. Appá Dullu*,<sup>(1)</sup> *Manmal Dashrath*,<sup>(2)</sup> and cases in which the sale or letting has been oral. The second proviso in Section 18 of Bombay Act III. of 1876, which enacts that the Mámlatdár's order is not to be conclusive respecting possession of property or the enjoyment of any use, we regard as introduced *pro majori cautela*, and not as affording any inference that under Act XVI. of 1838, or Bombay Act V. of 1864, it was conclusive. Further, neither this point as to the conclusiveness of the Mámlatdár's order, nor the special appellant's second point, that the purchase, by the plaintiff, in July 1872 was made with notice of the special appellant's mortgage of 1863, is taken in the memorandum of special appeal, and there does not seem to have been any good reason for taking the latter point, inasmuch as the District Judge has found that the plaintiff gave the full money value for the property, which it is not probable that he would have done if he were aware of the mortgage. We affirm the decree of the District Judge with costs.

*Decree affirmed.*

(1) 9 Bom. H. C. Rep. 121.

(2) 9 Bom. H. C. Rep. 147.

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