

and that Narhar then returned his mortgage to the three sons of Bahirji, who then made the same over to Manikji. Narhar did not execute or in anywise assign his mortgage to Manikji, but he (Narhar) attested the mortgage to Manikji. Although that mortgage to Manikji, as already said, recites the making over, by the sons of Bahirji, of Narhar's mortgage-deed to Manikji, the latter has not produced it, nor has it been given in evidence either here or in the lower Courts. The writer of Manikji's mortgage states that he indorsed upon Narhar's mortgage-bond a release thereof which was signed by Narhar—a circumstance which may perhaps account for the non-production of that mortgage. No excuse for its non-production has been given by or on behalf of Manikji, and secondary evidence of it, therefore, is inadmissible. Hence there was not before the lower Courts and is not here any lawful evidence that Narhar's mortgage ever existed. But, even if there were, there is naught (as we have said) to show any assignment of it by Narhar, or of any intention, on his part, to assign it to or to keep it on foot for the benefit of Manikji.

Under these circumstances we must reverse the decree of the District Judge (except so far as it reverses the decree of the Subordinate Judge), and make a decree that the plaintiffs, Damodar and Apaji, do recover the premises in the plaint mentioned. We give no mesne profits in consequence of the laches of the plaintiffs in enforcing their claim, and we direct that the parties, respectively, bear their own costs throughout. This decree is made without prejudice to any equities which may exist between the plaintiffs, Damodar and Apaji.

*Decree reversed.*

## APPELLATE CIVIL.

*Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Kemball.*  
 NA'RA'YAN BHIVRA'V (ORIGINAL DEFENDANT), APPELLANT, v. KASHI  
 AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

July 27.

*Landlord and tenant—Inamdar—Notice to quit—Ejectment—Partition.*

An *inamdar* cannot eject a yearly tenant without six months' notice to quit, ending with the cultivating year. Nor can he eject other tenants, except on the expiration of their term of years or other interest in the land.

\* Second Appeal, No. 29 of 1880, from order.

1881  
 APAJI  
 BHIVRAV  
 BAYRIKUR  
 v.  
 KAVJI.

1881

NARAYAN  
BHIVRAV  
v.  
KASHI.

Where a family of *inamdars* disagree among themselves, and one of them obtains a decree for partition against the others, he cannot, in execution thereof, eject (without due notice to quit) the tenantry on such portion of the land as may have been allotted to him under that decree in a suit to which such tenantry were not parties, and by which, therefore, their rights are not barred.

THIS was a second appeal from a remand order of R. F. Mactier, District Judge of Satara, reversing the decree of K. S. Vinchurkar, First Class Subordinate Judge of the same place.

The suit was for possession of certain land under the following circumstances :—The defendant, Narayan, obtained a decree against one Khanderao Balvant for a partition of certain *inam* lands, and in execution of it ejected the plaintiffs, Kashi and Lakshman, from the land in dispute on the 13th April, 1877. The plaintiffs thereupon applied, under section 230 of the Civil Procedure Code (Act VIII of 1859), to the Subordinate Court of Satara by which the execution was granted, alleging that they were the *mirasdar* owners of the land ; that they and their ancestors had been in possession of it for a very long time ; that the defendant was merely an *inamdar* not entitled to the land or possession of it. They, therefore, prayed for the restoration of the land to them. The defendant, Narayan, answered (*inter alia*) that he had been put in possession of the land by the Court as his share under a decree for partition.

The Subordinate Judge rejected the plaintiffs' claim. In appeal, the District Judge reversed that decision, and remanded the case for the trial of the issue whether Khanderao Balvant, under whom the defendant claimed, had a right to the land or to rent only.

The defendant appealed to the High Court.

G. B. Kirloskar for the appellant.

S. V. Bhandarkar for the respondent.

The following is the judgment of the Court delivered by—

WESTROPP, C. J.—The plaintiffs, it is not denied, were in possession of certain lands ( $4\frac{1}{2}$  *bighas* and  $4\frac{1}{2}$  *pands*) at Vargaon, and have been so for several years. The defendant, Narayan Bhivrav, as an alleged co-parcener in an *inam* estate, obtained a decree against Khanderao Balvant for partition of lands, whereof the land, the subject of the present suit, forms a part, and was,

under that decree, put into possession of the last-mentioned land on the 13th April, 1877, and the plaintiffs were then dispossessed thereof. The plaintiffs were not parties to the partition suit, and had not received six months' notice to quit. They applied, on the 4th of June, 1877, for restitution of possession, and accounted for their delay by the circumstance that, when they ought to have made an application under section 230 of Act VIII of 1859, the Court of the Subordinate Judge was closed. The latter made his order, under that section, converting the application into a suit, and directing it to be numbered and registered as such. In that application the plaintiffs alleged that the defendant was merely an *inamdar* entitled to rent, and not to the land or possession thereof, and that the plaintiffs were *mirasdars* of the land, and they and their ancestors in the same capacity had possession of the land for many centuries. *Inamdars* may or may not be entitled to eject tenants, but cannot eject even a yearly tenant without six months' notice to quit ending with the cultivating year (*Pandurang Sakharam v. Yedneshwar Shitaram Chitnis*<sup>(1)</sup>, a Satara case,) or other tenants except on the expiration of their term of years or other interest in the land. It is not to be tolerated that, if a family of *inamdars* disagree amongst themselves, and one of them obtains a decree for a partition against the others, he should thereupon, in execution of that decree, thrust out of possession (without due notice to quit) the tenantry on such portion of the land as may have been allotted to him under that decree in a suit to which such tenantry are not parties, and by which their rights are, therefore, not barred. On this ground alone, if on no other, the plaintiffs are entitled to restitution of possession of which they were summarily deprived under an award (converted into a decree) in proceedings to which they were not parties.

But the plaintiffs further claim (as we have said) to be *mirasdars*, and also deny that the *inamdars* are entitled to the land or to anything but their rent (it is not pretended that the rent is in arrear); and it is competent for the plaintiffs, if they please, to waive their right to restitution of possession on the ground of want of notice to quit, and to elect to have this case decided

1881

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(1) See next case, p. 70, *infra*.

1881

NARAYAN  
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v.  
KASHI.

on the question of title, viz., whether the defendant, as *inamdar*, to whom this portion of the land has been allotted under the partition decree, is entitled to recover the land even on due notice to quit. We are not, however, to be understood as advising the plaintiffs to waive their right to restitution on the mere ground of expulsion from possession without notice to quit. They may, if they please, leave the defendant to serve his notice to quit hereafter, and in a new suit, to be brought by the defendant, to prove, if he can, that on such notice he has the right to eject the present plaintiffs.

If the plaintiffs now elect to waive the notice, and prefer to have in this suit a decision on the right of the defendant to eject them even upon notice, then some such issue as that directed by the District Judge should be laid down and tried. The issue suggested by the District Judge may, perhaps, be advantageously paraphrased thus: "Is the *inamdar*, under his grant in *inam* (*sanad*), or otherwise entitled to obtain possession of the land in the plaint mentioned?" Subject to the above remarks we affirm the order of remand of the District Judge; and the Subordinate Judge is, upon the new trial, to be guided by those remarks. The costs of suit and of both appeals are to abide the final result of such new trial.

*Order of remand affirmed.*

## APPELLATE CIVIL.

*Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Melvill.*

1880  
November 16.

PA'NDURANG SAKHA'RA'M AND OTHERS (ORIGINAL DEFENDANTS),  
APPELLANTS, v. YEDNESHWAR SHITA'RA'M CHITNIS (ORIGINAL  
PLAINTIFF), RESPONDENT.\*

*Inamdar—Landlord and tenant—Notice to quit—Ejectment.*

Tenants cannot be ejected as mere trespassers. If they are yearly tenants, they are entitled to a clear six months' notice to quit before they can be evicted. If they are tenants for a term of years or for a life or lives, there must be proof of an expiration of the term by effluxion of time or of the falling of the life or lives.

THIS was a second appeal from the decision of R. F. Mactier, District Judge of Satara, affirming the decree of P. S. Binivale, First Class Subordinate Judge at the same place.

\* Second Appeal, No. 313 of 1880.