

1883  
 SADÁSHIV  
 LALIT  
 v.  
 JAYANTIBÁI.

*Bechardás Thobundás v. Gokúlia Bhagla alias Bhagvín<sup>(1)</sup> and Prannath Panrey v. Shri Mongula Debia<sup>(2)</sup>.* We, therefore, reverse the orders of both the lower Courts with costs.

*Orders reversed.*

(1) Printed Judgments for 1882, p. 379.

(2) 5 Calc. W. R., p. 176.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Melvill.*

February 8.

GĀNESH HATHI (PLAINTIFF), APPELLANT, v. MEHTA VYA'NKAT-  
 RA'M HARJIVAN (DEFENDANT), RESPONDENT.\*

*Jurisdiction—Court of Small Causes—Suit for money illegally exacted from plaintiff—Mámlatdár's order—Bombay Act V of 1879, Sec. 87.*

A suit for an amount less than Rs. 500, which the plaintiff alleged to have been illegally exacted from him by the defendant as rent, under a Mámlatdár's order, held to be cognizable by a Court of Small Causes, and not by a Subordinate Civil Court.

A Mámlatdár's order, under section 87 of Bombay Act V of 1879, does not preclude the parties from having recourse to the Civil Courts, if dissatisfied with it.

UNDER section 617 of the Civil Procedure Code, (Act X of 1877,) this case was referred for the decision of the High Court by H. S. Phillpotts, District Judge of Ahmedabad.

The plaintiff, Ganesh, sued the defendant for Rs. 136-5, alleging that the defendant had illegally exacted the amount from him (plaintiff) as rent for land under an order of the Mámlatdár of Daskroi in the taluka of Ahmedabad. The plaintiff had first filed a suit in the Small Cause Court at Ahmedabad to recover this money, but that Court rejected it on the ground that it had no jurisdiction to try it. He then instituted the present suit in the Subordinate Court at the same place. The Subordinate Judge, however, on the 23rd October, 1882, returned the plaint to the plaintiff for its presentation to the proper Court, *viz.*, the Court of Small Causes. The plaintiff thereupon appealed to the District Judge, who referred the case to the High Court, with the following remarks:—

“This is a suit to recover money illegally exacted from the plaintiff, as the High Court have ruled in the case of *Rámchandra*

\* Civil Reference, No. 2 of 1883.

*Bhickáji v. The Collector of Ratnágiri*<sup>(1)</sup>, viz., money had and received to the use of the plaintiff, and, therefore, cognizable by the Small Cause Court. The learned Judge of that Court, however, has ruled that he has no jurisdiction, because the Mámlatdár's decision, under which the defendant obtained the amount in dispute, was unrepealed, and the plaintiff was estopped by the Mámlatdár's decree against him. That decree, the learned Judge observed, was conclusive, and the Small Cause Court could not sit in judgment against it.

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"I hold, however, that the Mámlatdár's order is not a decree. The only order he can pass is under section 86 of Bombay Act V of 1879, the concluding paragraph of which is clearly against the opinion of the learned Judge. It is as follows:—'Nothing in this section shall prevent either party from having recourse to the Civil Courts to recover from the other such amount as he may deem to be still due to him, or to have been levied from him in excess of what was due.' This clearly shows that the order of the Mámlatdár was not even *prima facie* conclusive, and, as respects the legal aspects of the parties, was no more conclusive than the order of a private person would be. There was, therefore, no necessity for the plaintiff to sue for a cancellation of that order, still less was he estopped by it. He had a perfect right to sue the defendant for monies had and received, without suing to upset the Mámlatdár's order."

There was no appearance of parties in the High Court.

*Per Curiam*.—We think that the District Judge is right in holding that the Small Cause Court had jurisdiction. The case is on all fours with *Rámchandra Bhickáji v. The Collector of Ratnágiri*<sup>(1)</sup>. So far as the nature of the claim is concerned, and as pointed out by the District Judge, the concluding paragraph of section 87 of Bombay Act V of 1879 shows clearly that the Mámlatdár's order does not, as supposed by the Judge of the Small Cause Court, preclude the parties from having recourse to the Civil Courts, if dissatisfied with it.

(1) 10 Bom. H. C. Rep., 305.