

1888
APRIL 3.
—
APPEL-
LATE
CIVIL.
—
13 B. 203.

assist her, if I could, by allowing any amendment of the plaint or otherwise, seeing that the sale to the defendants took place in 1871, that they have been in possession of the whole *bhag* ever since that time, that the Collector has not moved to have the sale set aside, but has entered the names of the defendants in his register, and that according to the findings of the lower Courts, the plaintiff has taken the sale-deed from the three brothers and the widow of the fourth, not for any [213] consideration, but with a view to raise up litigation and to defraud the defendants by depriving them of the property they have purchased. I concur, therefore, in confirming the decree of the lower appellate Court with costs.

Decree confirmed.

13 B. 213.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

GULABBHAI GOPALJI AND OTHERS (*Original Defendants*), *Applicants v.*
JINABHAI RATANJI (*Original Plaintiff*), *Opponent.**
[3rd May, 1888.]

Mamlatdars' Act (Bombay Act III of 1876), s. 15, cl. (c)—Suit for injunction—Person dispossessed in execution of decree—His remedy by suit or application under s. 332 of the Code of Civil Procedure (Act XIV of 1882)—

A person is not entitled to claim relief (by way of injunction) under s. 15, cl. (c) of the Bombay Mamlatdars' Act (III of 1876), if he is not in possession at the time of the suit.

A person, dispossessed of his land in execution of a decree of a Civil Court against a third party, should proceed for the alleged obstruction of his possession, not by a suit in the Mamlatdar's Court, but by an application under s. 332 of the Code of Civil Procedure (Act XIV of 1882), or by a regular suit.

THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

One Jinabhai Ratanji filed a suit in the Mamlatdar's Court for an injunction restraining the defendants from obstructing him in his possession and enjoyment of certain lands. The Mamlatdar found that the defendants had obtained possession through the Civil Court in execution of a decree against a third person. But he was of opinion that the possession had been improperly obtained, as the bailiff, who executed the decree, had made no inquiry whatever of the village officers as to ownership of the lands in question. He, therefore, granted the injunction prayed for.

Against this decision the defendants applied to the High Court under its revisional jurisdiction.

[214] A rule *nisi* was issued to the plaintiff, calling upon him to show cause why the Mamlatdar's order should not be set aside as being illegal and *ultra vires*.

Manekshah Jehangirshah showed cause.

Nagindas Tulsidas, *contra*.

*Application under Extraordinary Jurisdiction No. 3 of 1888.

JUDGMENT.

The judgment of the Court (BIRDWOOD and PARSONS, JJ.) was delivered by

BIRDWOOD, J.—The suit in the Mamlatdar's Court was one falling under cl. (c) of s. 15 (1) of Bombay Act III of 1876; and the first issue in it was, whether the plaintiff was actually in possession of the property claimed. Unless he was in possession at the time of the suit, he could not obtain any relief under cl. (c). The Mamlatdar found that he had, as a matter of fact, been dispossessed before the filing of the suit by a bailiff of a Civil Court in the execution of a decree obtained by the defendants against a third person. He, however, granted the relief prayed for, as he was of opinion that the bailiff had improperly given possession to the defendants without making "any inquiry of the village *kamadar* as to the true facts of the case." But that was not a question with which the Mamlatdar was concerned. It is clear that, in the present case, the plaintiff should have proceeded for the alleged obstruction of his possession by the defendants, not by a suit under the Mamlatdars' Act, but by an application under s. 332 of the Civil Procedure Code or by a regular suit, as advised. The Mamlatdar acted illegally in making a decree in the plaintiff's favour in opposition to the distinct [215] direction contained in s. 15 of the Act. We, therefore, reverse the decree made by him, and reject the plaintiff's claim with costs throughout.

Decree reversed.

13 B. 215.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

DINSHA KUVARJI (*Original Defendant No. 2*), Applicant v. HARGOVANDAS GOVARDHANDAS (*Original Plaintiff*), Opponent.* [10th April, 1888.]

Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 56—Account adjusted and signed by two debtors, one of whom was an agriculturist—Suit against one agriculturist—Evidence—Inadmissibility of unregistered khata for any purpose whatever.

The plaintiff sued two defendants, one of whom was an agriculturist, on a *khata* which contained an acknowledgment of liability to pay the amount due to the plaintiff, and also an agreement to pay interest. The defendant, who was an agriculturist, was struck off the record, and the plaintiff proceeded against the other, and obtained a decree against him for the amount claimed—the Court being of opinion that s. 56 of Act XVII of 1879 did not apply, and that the *khata* sued on was valid and admissible in evidence although not registered.

* Application No. 152 of 1897.

(1) "Section 15.—On the day appointed the Mamlatdar shall proceed to hear all the evidence that is then and there before him, and to try the following issues, *viz.*,.....

"(c) If the plaintiff avers that he is still in possession of the property, or in the enjoyment of the use, but that the defendant disturbs or obstructs, or has attempted to disturb or obstruct, him in his possession or use—

"(1) whether the plaintiff or any person in his behalf is actually in possession or enjoyment of the property or use claimed :

"(2) whether the defendant is disturbing or obstructing, or has attempted to disturb or obstruct, him in such possession or enjoyment :

"(3) whether such disturbance or obstruction, or such attempted disturbance or obstruction first commenced within six months before the suit was filed."

1888
MAY 3.
APPEL-
LATE
CIVIL.
13 B. 213.