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13 B. 213.

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.

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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.

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* Application No. 152 of 1887.

(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."

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Held, by the High Court, that the *khata* was an instrument purporting to evidence an obligation to pay money within the meaning of s. 56 of Act XVII of 1879, which section applied, although only one of the executants was an agriculturist.

Held, also, that, under the provisions of s. 56, the *khata* was not admissible in evidence in any case whatever, not even to enforce a liability against one who was not an agriculturist.

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

The plaintiff filed a suit in the Small Cause Court at Poona to recover Rs. 233-6-6, being the amount of principal and interest due on a *khata* adjusted and signed by both the defendants on the 19th December, 1884.

The defendants contended that both the defendants being agriculturists at the date of the *khata* sued upon, the *khata* was inadmissible [216] in evidence for want of registration, as required by s. 56 of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

The plaintiff admitted, at the hearing, that defendant No. 1 was an agriculturist, and applied to have his name struck off. This application was granted.

The Court found that the defendant No. 2 was not an agriculturist, and that, therefore, s. 56 of Act XVII of 1879 did not apply, and that the *khata* was valid and admissible against him.

A decree was accordingly passed against him for the amount claimed.

Against this decree the defendant No. 2 applied to the High Court under s. 622 of the Civil Procedure Code.

A rule *nisi* having been granted calling upon the plaintiff to show cause why the decree should not be set aside.

Mahadev C. Apte, for the plaintiff, showed cause.—The Court below has found that the only defendant now on the record is not an agriculturist. Section 56 does not, therefore, apply, and the *khata* is valid and admissible in evidence. If, however, the *khata* is not admissible, the Court below in admitting it has merely committed an error in the exercise of its jurisdiction. That is not a ground for the High Court's interference under s. 622 of the Civil Procedure Code (Act XIV of 1882).

Balaji A. Bhagvat, for the defendant, *contra*.—The *khata* in question is an instrument of the description specified in s. 56 of Act XVII of 1879. It is, therefore, inadmissible in evidence for any purpose whatsoever, unless it is duly registered and attested. See *Kanji Ladha* v *Dhonde* (1). It was, therefore, not merely an error in law, but a material irregularity to use it against the defendant. This Court can, therefore, interefere under s. 622 of the Civil Procedure Code.

JUDGMENT.

BIRDWOOD, J.—The plaintiff sued two defendants, one of whom is an agriculturist, on a *khata*, which contains not only an acknowledgment of liability to pay the amount due to the plaintiff, but also an agreement to pay interest. It is clearly, therefore, an "instrument" purporting to evidence an obligation [217] for the payment of money within the meaning of s. 56 (2) of Act XVII of 1879—*Kanji Ladha* v. *Dhonde* (1).

(1) 6 B. 729.

(2) NOTE.—Section 56 of Act XVII of 1879 provides as follows :—

"56. No instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge upon any property, or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a Village Registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent

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It is also, we think, an instrument executed by an agriculturist within the meaning of the section, even though only one of the executants is an agriculturist.

The Judge of the Court of Small Causes, in admitting the unregistered *khata* in evidence against the defendant, who is not an agriculturist, and in making a decree thereon, has, we think, acted illegally; for s. 56 of the above-mentioned Act provides that no instrument to which that section is applicable shall be "admitted in evidence for any purpose," unless it is written by or under the superintendence of, and attested by, a village-registrar. The use of the words "for any purpose" shows that the instrument in question, which was not written, and attested in accordance with the section, could not be admitted in evidence in any case whatsoever, not even to enforce a liability against one who was not an agriculturist.

We reverse the decree of the Court of Small Causes, and reject the plaintiff's claim with costs.

Decree reversed.

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13 B. 218.

[218] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

MULJI BHAISHANKAR AND ANOTHER (*Original Defendants*), *Appellants v.* BAIUJAM (*Original Plaintiff*), *Respondent.**
[16th April, 1888.]

Hindu law—Widow—Widow's right to separate maintenance—Widow directed by the husband to be maintained in the family house—Just cause for not living in family house—Imputation of unchastity.

A Hindu widow, who is directed by her husband to be maintained in the family house, is not entitled to maintenance if she resides elsewhere without a just cause.

P., a Brahmin, resided at Kava and died there in 1874 while his wife (the plaintiff), was living with her parents at Dabhoi. By his will he devised the greater part of his property to his nephew M., and bequeathed a house and certain other property to his wife "if she came to live at Kava." In 1883 the plaintiff sued M. and his brother for arrears of maintenance, alleging that they were in possession of her deceased husband's property, and, therefore, were liable for her maintenance. The defendants pleaded that the plaintiff led an immoral life, and had, therefore, forfeited her right to maintenance. They further contended that she was not entitled to maintenance, unless and until she came to reside at Kava, as directed by her husband's will. The Assistant Judge found that there was no evidence of plaintiff's unchastity, and that under the circumstances she could not live happily at Kava, where she had no relation, except the defendants, who had endeavoured to blacken her character. He awarded the plaintiff's claim.

Held, by the High Court confirming the decree, that the plaintiff had "a just cause" for not living with the defendants.

[R., 15 B. 236 (238); 24 C. 646 (656).]

SECOND appeal from the decision of W. H. Horsely, Acting Assistant Judge of Broach, in appeal No. 44 of 1885 of the district file.

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of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is written by, or under the superintendence of, and is attested by, a Village-Registrar:

"Provided that nothing herein contained shall prevent the admission of any instrument in evidence in any criminal proceeding."

* Second Appeal No. 164 of 1886.