

1889
FEB. 21.
APPEL-
LATE
CIVIL.
14 B. 17.

14 B. 17.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice
Nanabhai Haridas.

CHINTAMANRAV NARAYAN GOLE (*Original Plaintiff*), Applicant v.
BALA AND OTHERS (*Original Defendants*), Opponents.*
[21st February, 1889.]

Mamlatdars' (Bom). Act III of 1876—Award of partial claim—Construction—Injunction—Practice.

The plaintiff's suit to have the defendants restrained by injunction from causing disturbance to him in cultivating his fields was rejected by the Mamlatdar, [18] on the ground that his allegations were not proved against all the defendants, one of the defendants having been found not to have disturbed the plaintiff.

Held, reversing the order of the Mamlatdar, that there was nothing in the Mamlatdars' Act III of 1876 to prevent the Mamlatdar from granting the injunction as against the defendants against whom the case was proved.

The High Court directed an injunction to go under s. 4 of the Mamlatdars' Act, restraining the said defendants from causing the alleged disturbance to the plaintiff.

THIS was an application under the extraordinary jurisdiction against an order of Ray Saheb Rango Ramchandra, Mamlatdar of Satara.

On the 11th July, 1888, the applicant instituted a suit in the Mamlatdar's Court at Satara against the opponents, complaining that they had disturbed him in the cultivation of his land on the 7th July, 1888, and continued to do so. He, therefore, prayed that an injunction might be granted restraining the opponents from disturbing him any further.

The Mamlatdar found the allegation of the applicant proved as against all but one opponent, and was of opinion that he could not partially award the relief claimed by the applicant. He, therefore, rejected the applicant's suit with the following remarks:—

"According to the Act which governs this Court, the Court cannot allow one part of the claim and disallow another part of the claim. It has to award a claim when it is fully proved, and it has to disallow a claim when it is not fully proved * * * I reject it with costs, under s. 15 of Bombay Act III of 1876 * * *"

From this order the applicant applied to the High Court under its extraordinary jurisdiction.

Ganesh Ramchandra Kirloskar, for the applicant:—The applicant had proved the disturbance caused by the defendants, and the circumstance that it was not proved against Jaya did not justify in rejecting the claim *in toto*. There is nothing in the Mamlatdars' Act to prevent award of a partial claim—*Kashiram Vishnu Kamat v. Narayan Gopal* (1).

There was no appearance for the opponents.

JUDGMENT.

[19] SARGENT, C. J.—The plaintiff's claim was to have the defendants prohibited from causing disturbance. The Mamlatdar has found

* Extraordinary Application No. 117 of 1888.

(1) Printed Judgments for 1888 p. 102.

the case proved against all the defendants except Jaya. He should, therefore, have granted the plaintiff's prayer as regards the former persons and rejected it as regards Jaya. There is nothing in the language of the Mamlatdars' Act which prevents a part of the claim being allowed; see *Kashiram Vishnu Kamat v. Narayan Gopal* (1). We must, therefore, reverse the order of the Mamlatdar rejecting the claim so far as regards the defendants, except Jaya, and direct that an injunction do go under s. 4 of the Act restraining the said defendants from causing or attempting to cause any such further disturbance or obstruction as is alleged in the plaint.

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14 B. 19.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

RAMCHANDRA BABA SATHE (*Original Defendant*), Appellant v.
JANARDAN APAJI (*Original Plaintiff*), Respondent.*
[21st February, 1889.]

Mortgage—Redemption—Clause of conditional sale—Gahan lahan—Valuation—Jurisdiction—Account—Suit for redemption of distinct mortgages—Dehnan Agriculturists' Relief Act XVII of 1879, s. 13—Construction—Practice.

In a suit upon a mortgage where the sum due upon the mortgage is unknown, what determines the value of the subject-matter of the suit is the amount of the mortgage the rights connected with which are the subject of contention.

The plaintiff sought to redeem two mortgages executed by his father in 1839 in favour of the defendant. The mortgages contained *gahan lahan* clauses, in virtue whereof the defendant denied the plaintiff's right to redeem, and contended that the lands mortgaged had become his absolute property, which contention the lower Courts disallowed, holding the lands redeemable.

Held, that the lower Courts were right in recognizing the plaintiff's right to redeem as still in existence, the rule laid down in the case of *Ramji v. Chinto* (2) being in force in the Presidency of Bombay with regard to mortgages containing clauses of conditional sale.

By two separate mortgages certain lands were mortgaged in 1830 by the plaintiff's father to the defendant. In 1832 the plaintiff as an agriculturist brought the present suit for redemption of the lands comprised in both mortgages.

[20] *Held*, that separate accounts of the two mortgages should be taken. The mortgages were distinct transactions relating to different lands, and s. 13 of the Dekkhan Agriculturists' Relief Act contains no words enabling the Courts to treat them as one. The fact of their being included in the same suit could not affect the question.

In taking the accounts of the above mortgages it was proved that on one mortgage there was a sum of Rs. 5,075-13-2 due to the plaintiff (mortgagor) by the defendant (mortgagee), and on the other mortgage a sum of Rs. 3,774-2-7 due to the defendant (mortgagee) by the plaintiff (mortgagor). The plaintiff (mortgagor) contended that although by the ruling in *Janoji v. Janoji* (3) he could not compel payment of the Rs. 5,075-13-2 due to him on the one mortgage, he was entitled to have so much of it as might be necessary set off against the Rs. 3,774-2-7 still due by him on the other mortgage.

Held, that on the authority of *Janoji v. Janoji* (3) the plaintiff had no legal claim to the Rs. 5,075-13-2, and, that being so the existence of that balance in his favour on account of one mortgage could not be treated as extinguishing the

* Second Appeal, No. 823 of 1885.

(1) Printed Judgments for 1888, p. 102. (2) 1 B.H.C.R. 199. (3) 7 B. 185.