

[384] Holding, therefore, that we possess revisional jurisdiction, we proceed to deal with the case before us. It appears that the Magistrate directed the prisoner to be sent "to the reformatory at Yerrowda for five years, or until he shall attain the age of eighteen." The question arises, whether the Magistrate was not bound to ascertain the age of the prisoner, and in accordance with that finding to direct the confinement in the reformatory according to the rules. It is not enough to simply find that the offender is under the age of sixteen. Otherwise it will be necessary for the superintendent of the reformatory to make inquiries on this point. In the criminal return the prisoner's age is apparently entered as fourteen, but in the record of the prisoner's statement before the Bench of Magistrates the age is entered as seventeen, while in the proceedings the Clerk to the Bench of Magistrates entered the age as *sixteen*. We, therefore, reverse the order of the Magistrate and return the proceedings to him, that he may ascertain the prisoner's age and then pass an order in accordance with s. 8 and with the rules under s. 22 of Act V of 1876.

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Order reversed.

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APPELLATE CIVIL.

Before Mr. Justice Scott and Mr. Justice Candy.

VISHNU ATMARAM (*Original Defendant*), Appellant v. ANANT VISHNU (*Original Plaintiff*), Respondent.* [2nd December, 1889.]

Landlord and tenant—Lessee—Sub-lessee—Rights and liabilities of a sub-lessee—Sale of lessee's interest—Determination of sub-lease.

B. held certain land as a lessee under M. The lease did not contain any covenant against sub-letting, or any forfeiture clause. B. sub-let a portion of the land demised to A. M. obtained a decree against B. for arrears of rent, and in execution attached and sold the entire holding, including A's interest, as a sub-lessee.

Held, that the sale in execution did not affect the sub-lessee's interest in the land, or put an end to the sub-lease.

THIS was a second appeal from the decree of R. S. Tipnis, Acting Assistant Judge of Ratnagiri, in appeal No. 397 of 1886.

One Babaji's Nalavade held a certain *thikan*, as lessee, under Narayan Mahale for a term of twenty-four years. The lease [385] under which he held, did not contain any covenant against sub-letting, nor any forfeiture clause.

Babaji sub-let a portion of the *thikan* to the plaintiff for a term of thirteen years.

Narayan Mahale obtained a decree against Babaji for arrears of rent. In execution of this decree, Babaji's interest in the whole *thikan* was attached. Nobody intervened to raise this attachment. But the Court, acting under s. 287 of the Code of Civil Procedure (Act XIV of 1882), summoned the plaintiff and other persons with a view to ascertain the incumbrances to which the property was liable, and passed an order, dated 11th August, 1885, to the effect that the plaintiff must either

* Second Appeal, No. 575 of 1888.

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pay off the decree in the rent-suit, or allow the entire holding to be sold, including his own interest as a sub-lessee.

The plaintiff failed to pay off the amount of the decree. The property was then put up for sale, and purchased by Vishnu (defendant No. 3). The certificate of sale issued to the purchaser set forth the order passed under s. 287 of the Code of Civil Procedure. The plaintiff thereupon sued to have the order of the 11th August, 1885, set aside, and to establish his rights as a sub-lessee.

The Court of first instance dismissed the suit, holding that the order in question was properly made, and that the plaintiff had lost his rights as a sub-lessee in consequence of the execution sale.

The Assistant Judge, in appeal, passed a decree declaring that the attachment and sale in execution of the decree in the rent-suit did not by themselves prejudice the rights and liabilities of the plaintiff towards his lessor Babaji.

Against this decree the auction-purchaser, defendant No. 3, preferred a second appeal to the High Court.

Ghanasham Nilkant Nadkarni, for appellant.—The order in the execution proceedings binds the sub-lessee. He was given the option either to satisfy the decree in the rent-suit, or allow the sale of the entire holding, including his own interest in the land. He failed to pay off the decretal amount, and he must take the consequences. [386] The sale of Babaji's right, title and interest in the holding put an end to the sub-lease.

Manekshah Jehangirshah, for respondent.—The sub-lessee was not a party to the rent-suit, nor to the proceedings in execution. He was indeed examined by the Court under s. 287 of the Civil Procedure Code, but that was only to ascertain what interest he had in the holding. The order directing him to pay off the decree was altogether *ultra vires*. It should be treated as a mere nullity. Disregarding the order in question, we have to look to the terms of the original lease granted to Babaji. That lease contains no provision against sub-letting, and no forfeiture clause. In the absence of any such clause, the sale of Babaji's interest does not affect the sub-lessee's rights. Refers to Woodfall's *Landlord and Tenant*, p. 11.

JUDGMENT.

SCOTT, J.—The only point argued before us is whether the sale of Babaji's interest in the land put an end to Anant's sub-lease held from Babaji.

We think that the Assistant Judge was right in answering this question in the negative.

The law is quite clear on the subject. A lessee, who is not restrained by his lease from sub-letting, may demise for any less term than he himself has (1). It is only in case the lessee has incurred a forfeiture that the original lessor may evict the sub-lessee. Admittedly, in the lease by which Babaji held under Mahale, there was no covenant against sub-letting, and nothing showing that forfeiture of tenancy was incurred by default in payment of rent. It is also clear that Babaji transferred a part only of his interest to the plaintiff, so that we have to deal with a sub-lease, and not an assignment.

(1) Woodfall's *Landlord and Tenant*, p. 11.

Mahale in his suit against Babaji did not, however, try to follow the land: he brought a simple money suit, and he obtained a simple money decree. In execution of that decree there was an attachment and sale of Babaji's property, *viz.*, his interest in the land. Anant was not a party on the record, either in the suit or in the execution proceedings. Therefore, even if his liability could be established, he could not in the execution proceedings [387] be called upon to pay the full amount of the money decree obtained by Mahale against Babaji, and his failure to do so would not, in any way, affect the sub-leases under which he is in possession.

The decree, therefore, must be confirmed with costs, but its language must be, for the sake of clearness, amended to the following. The attachment and sale of Babaji's interest in the land to stand—the plaintiff's rights as a sub-lessee under the lease of the portion of the land let to him by Babaji on the 3rd November, 1882, to be reserved—the order passed in execution proceedings for sale so far as it includes plaintiff's interest, to be set aside.

Decree confirmed.

14 B. 387.

APPELLATE CIVIL.

Before Mr. Justice Scott and Mr. Justice Candy.

GANESH KRISHNAJI (*Original Plaintiff*), Applicant v. KRISHNAJI *alias* BALAJI GOPAL (*Original Defendant*), Opponent.* [3rd December, 1889.]

Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 3, cl. (w)—Its application to non-agricultural classes—Special Judge—His revisional jurisdiction.

The Dekkhan Agriculturists' Relief Act (XVII of 1879) is not limited in its application to agriculturists only, but applies to all classes under certain conditions.

The plaintiff sued to recover Rs. 50 as money spent by him on account of the defendant. The suit was filed in the Court of the First Class Subordinate Judge at Satara, where both parties resided. The Subordinate Judge passed a decree in plaintiff's favour. The Special Judge, in revision, reversed this decree and dismissed the suit. The plaintiff thereupon applied to the High Court, under s. 622 of the Code of Civil Procedure (Act XIV of 1882), urging that as neither party to the suit was an agriculturist, the Special Judge had no revisional jurisdiction in the matter.

Held, that the Special Judge had such jurisdiction, the suit being one falling within cl. (w) of s. 3 of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

THIS was an application under the extraordinary jurisdiction of the High Court.

The plaintiff sued to recover Rs. 50 from the defendant under the following circumstances. The plaintiff alleged that there [388] was a temple of Shri Murlidhar at Nimb founded by the common ancestor of both parties; that under an agreement dated 24th November, 1859, it was settled that the worship of the idol should be performed by the plaintiff's and defendant's branch of the family in alternate years; that for the proper performance of the worship of the idol Rs. 25 should be paid each year out of the income of some *inam* land belonging to the family; that this arrangement was carried out till 1881; that the defendant failed to make any provision for the worship of the idol in the years 1882 and

* Application under Extraordinary Jurisdiction, No. 193 of 1889.