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Before Mr. Justice Birdwood and Mr. Justice Jardine.

MOULAKHAN (*Original Plaintiff*), *Appellant v.* GORIKHAN (*Original Defendant No.* 1), *Respondent.** [28th April, 1890.]

Civil Procedure Code (Act XIV of 1882), *s.* 331—*Investigation under this section not limited to possession—Court competent to deal with questions of title—Order under this section—Appeal from such order—Practice.*

The investigation of claims under s. 331 of the Code of Civil Procedure (Act XIV of 1882) is not limited to the fact of possession. Any question of title arising between the contending parties in connection with their right of possession may be finally determined in such investigation as in an ordinary action of ejectment.

A. obtained a decree in the Court of a First Class Subordinate Judge for possession of property worth more than Rs. 5,000. In executing this decree against a portion of the property awarded, which was worth Rs. 420, A. was resisted by B., who claimed to hold the property under a title adverse to the judgment-debtors. B.'s claim was thereupon numbered and registered as a suit under s. 331 of the Code of Civil Procedure (Act XIV of 1882). The First Class Subordinate Judge, who investigated the claim, ordered B.'s obstruction to be removed and the property to be put into A.'s possession. B. appealed against this order.

Held, that the appeal lay to the District Judge under Act XIV of 1869, the subject-matter of the claim being less than Rs. 5,000.

[F., 27 A. 453=2 A.L.J. 132=25 A.W.N. 50; R., 22 B. 967; 25 B. 478; 11 C.L.J. 478=5 Ind. Cas. 573; Expl., & D., 27 B. 302.]

SECOND appeal from the decision of Dr. A. D. Pollen, District Judge of Belgaum, in appeal No. 89 of 1888.

One Hasan died in 1868, leaving him surviving a childless widow Amabi, and a cousin (the plaintiff in the present case). On Hasan's death his property, consisting, for the most part, of *vatani* lands, was transferred to his widow's name in the revenue records. Amabi died in 1879. Thereupon disputes arose as to the succession **[628]** to Hasan's estate between the plaintiff on the one hand and Amabi's sister Sydabi, and Sydabi's daughter Tajbi on the other.

In 1886 the plaintiff obtained a decree against Sydabi and Tajbi, establishing his right of succession to Hasan's property, and awarding him possession thereof. This decree was passed by the First Class Subordinate Judge of Belgaum, the property being worth more than Rs. 5,000.

In executing this decree against a portion of the property awarded, namely, a field worth Rs. 420, the plaintiff was obstructed, by the defendants, who alleged that the field in question had been originally mortgaged to them by Hasan in 1865, and that they had afterwards purchased Hasan's equity of redemption in 1867.

The defendants' claim was, therefore, numbered and registered as a suit under s. 331 of the Code of Civil Procedure.

The First Class Subordinate Judge, who investigated that claim, held that the field in dispute being *vatan* property could not be alienated by Hasan beyond his lifetime, and that the defendants had, therefore, no title to the field after Hasan's death. The Subordinate Judge, therefore,

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passed an order directing the defendant's obstruction to be removed, and the land to be put into the plaintiff's possession.

This order was reversed, on appeal, by the District Judge, for the following reasons :—

"The Subordinate Judge seems to have misunderstood the nature of the suit. The real issue in the case was—whether the land in dispute belonged to plaintiff's judgment-debtors and was in defendants' possession on their account; or whether it was in defendants' possession on their own account or on account of some person other than the judgment-debtors.

"But the Subordinate Judge has regarded the suit as if it were one to set aside an illegal alienation of *vatan* land. If the plaintiff, by virtue of his decree declaring him to be the heir of Hasan as against his judgment-debtors who also claimed to be the heirs of Hassan, wished to set aside an illegal alienation of *vatan* lands that took place in the lifetime of Hasan, his proper course was to proceed by regular suit against the alienees in possession, and [629] not by seeking to execute his decree against his judgment-debtors. In the present suit, all that has to be seen is whether the present defendants are in possession on account of or on behalf of plaintiff's judgment-debtors Sydabi and Tajbi. It is quite evident, from the pleadings and arguments in the lower Court, that the defendants are in possession on their account adversely to Hasan and to the heirs of Hasan. Plaintiff's suit must, therefore, fail.

"If he still thinks it worth while to sue to present defendants with a view to getting the alienation of *vatan* lands set aside, he is at liberty to do so: but we must consider whether, if the alienation took place in 1866, his suit would not be time-barred. The lower Court's decision on this point seems to be opposed to the High Court's decision in *Radhabai* v. *Anantrav Bhagvant Deshpande* (1); but the question not properly arising in this suit, I abstain from deciding on it now.

"I reverse the decree of the the lower Court, and reject plaintiff's claim with costs throughout, but without prejudice to plaintiff's right to bring a suit, if so advised, to recover possession of the land from defendants on the ground of its illegal alienation by Hasan."

Against this decision the plaintiff appealed to the High Court.

Branson (with him *G.R. Kirloskar*), for appellant.—I contend that the appeal from the Subordinate Judge's order lay, not to the District Court, but to the High Court. The proceedings under s. 331 of the Code of Civil Procedure are but a continuation of the original suit in which the decree for possession was passed. And as the subject-matter of the original suit was more than Rs. 5,000, the appeal lay to the High Court: see *Ravloji Tamaji* v. *Dholapa Raghu* (2).

[BIRDWOOD, J.—That ruling is expressly dissented from in *Dayachand Hemchand* v. *Hemchand Dharamchand* (3): see also *Twatadswami* v. *Shidlingaya* (4). The point is now covered by authority.]

Branson:—My next point is that the District Judge was wrong in confining the investigation under s. 331 of the Code of Civil Procedure to the fact of possession. He ought to [630] have gone into the whole case. The Court is competent, under that section, to inquire into questions of title, as well as into the fact of possession—*Chinnasami Pillai* v. *Krishna*

(1) 9 B. 198.
(2) 4 B. 123.
(3) 4 B. 515 (527).
(4) P. J. for 1884, 82.

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Pillai (1); *Rakhal Churn Mandul* v. *Watson & Co.* (2); *Fornindro Deb Raikut* v. *Rani Jugodishwari Dabi*(3).

Shivram Vithal Bhandarkar, for respondent.—The investigation under s. 331 is limited to the question of possession. The real issue which the Court has to decide is whether the claimant was in possession in his own right or on account of the judgment-debtor. The investigation is to be made on the same principle as is laid down in ss. 278—281 of the Code —*Rungo Vithal* v. *Rikhvadas* (4).

JUDGMENT.

BIRDWOOD, J.—The plaintiff obtained a decree against Sydabi and Tajbi for the possession of certain property worth more than Rs. 5,000. In execution of the decree against a portion of the property, a field worth Rs. 420, the officer charged with the execution of the warrant was resisted by the defendants, who claimed to be in possession of the field on their own account. Their claim was, therefore, numbered and registered as a suit under s. 331 of the Code of Civil Procedure.

The First Class Subordinate Judge found that the property in suit was *vatan* property; that the successive holders of it had only a life-interest in it; that the defendants, who were the mortgagees of a former holder, Hasan, the plaintiff's first cousin, and the purchasers of the equity of redemption at a Court sale, had no title as against the plaintiff, and that the suit, which was filed in 1887, was not barred by time, the property having descended on Hasan's death in 1868 to his widow Amabi, who died in 1879, when the cause of action arose to the plaintiff. The Subordinate Judge, therefore, ordered removal of the defendants' obstruction and decreed possession of the land to the plaintiff.

The District Judge reversed this decision in appeal, as he was of opinion that the real issue in the case was whether the land in dispute belonged to the plaintiff's judgment-debtors and was in the possession of the defendants on their account, or whether it **[631]** was in the defendants' possession on their own account or on account of some person other than the judgment-debtors. He found that the defendants were in possession on their own account adversely to Hasan and the heirs of Hasan; and he, therefore, rejected the plaintiff's claim with costs, leaving it to him to bring a further suit, if so advised, to set asi e the alienation of the *vatan*.

The plaintiff contends in this Court, as he did in the Court below, that the defendant's appeal from the First Class Subordinate Judge's decision lay to this Court and not to the District Court. But we think that the District Court had jurisdiction to hear the appeal. In *Ravloji Tamaji* v. *Dholapa Raghu* (5) it was, no doubt, held that the investigation of a claim under s. 226 of Act VIII of 1859, which corresponds to s. 331 of the present Code, was a mere continuation of the suit in which the execution of the decree had been resisted, and that the order made upon such investigation, was one made in that suit; but we are unable to concur in this decision, which was dissented from in *Twatadswami* v. *Shidlingaya* (6) which followed the opinion expressed by Sir Michael Westropp in *Dayachand Hemchand* v. *Hemchand Dharamchand* (7), that it was impossible to maintain that the claim made by a total stranger to

(1) 3 M. 104.
(2) 10 C. 50.
(3) 14 C. 234.
(4) 11 B.H.C.R. 174.
(5) 4 B. 123.
(6) P.J. for 1884. p. 82.
(7) 4 B. 515, (527).

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a suit could be regarded as a continuation of a suit in which there had been a final decree before the claim was made. In the present case, the value of the subject-matter of the property in dispute was less than Rs. 5,000. Though that was so, the First Class Subordinate Judge had special jurisdiction under the Code to try the case—*Sithalakshmi* v. *Vythilinga* (1); and, under s. 8 of Act XIV of 1869, as s. 26 is not applicable to the case, the appeal lay from his decision to the District Court.

We think, however, that the District Court took a wrong view of the provisions of s. 331 of the present Code of Civil Procedure. In the Code, as enacted in 1877, s. 331 required that the claim of the person who resisted the execution of a decree for possession should, when registered as a suit between the decree-holder as plaintiff and the claimant as defendant, be investigated by the Court with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under **[632]** the provisions of the Specific Relief Act, 1877, s. 9. The powers of the Court were thus strictly limited by the terms of that section to an inquiry into the question of possession—*Chinnasami Pillai* v. *Krishna Pillai* (2). By s. 52 of the amending Act XII of 1879, the provisions of which are re-enacted in the Code of 1882, the word and figure "chap. V," that is, chap. V of the Code, are substituted, in s. 331, for the words and figures "the Specific Relief Act, 1877, s. 9," and the following paragraph is added to s. 331: "Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise." The intention of the Legislature, in so altering the section, was clearly to enlarge the powers of the Courts in the investigation of claims under s. 331. Any question of title arising between the contending parties in connection with their right of possession may now be finally determined in such investigation as in an ordinary action on ejectment. The order made under s. 331, whether for executing or staying execution, has now the force of a decree determining the title and the right of possession, and it is not intended that the plaintiff should be forced to a fresh suit, or should have the right to bring a fresh suit, if the decree is against him.

We, therefore, reverse the decree of the lower appellate Court and remand the appeal for a re-hearing with reference to the foregoing remarks.

JARDINE, J.—In this case the claim of the defendant was investigated under s. 331 of the present Code of Civil Procedure.

The first point argued by Mr. Branson in the appeal of the plaintiff to this Court is that the District Court had no jurisdiction to hear the appeal from the Subordinate Judge, since the subject matter of the original suit, out of which the present case arises, was above Rs. 5,000 in value. The learned counsel relied upon *Ravloji Tamaji* v. *Dholapa Raghu* (3). But that decision is dissented from by Westropp, C. J., in *Dayachand Hemchand* v. *Hemchand Dharamchand* (4), and is not in its general terms reconcileable with **[633]** *Motichand Jaichand* v. *Dadabhai Pestanji* (5). In *Twatadswam* v. *Shidlingaya* (6), Sargent, C.J., and Nanabhai Haridas, J., take the same view as Sir M. Westropp. So do the Judges who decided *Muttammal* v. *Chinanna Gounden* (7). These cases, with the exception

(1) 8 M. 548.
(2) 3 M. 104.
(3) 4 B. 123.
(4) 4 B. 515 (527).
(5) 11 B.H.C.R. 186.
(6) P. J. for 1884, p. 82.
(7) 4 M. 220.

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of that of *Twatadswami* v. *Shidlingaya*, are interpretations of s. 229 of Act VIII of 1859. *Sithalakshmi* v. *Vythilinga* (1) follows the principle applied in them in determining the value of the subject-matter for purpose of jurisdiction. The Code of 1882 contains the following new clause :—

"Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise."

The conditions as to appeal are found in Act XIV of 1869. Following the views expressed by Sir M. Westropp, I am of opinion that the subject-matter of the present claim, which relates to property only worth Rs. 420, and that of the original suit in which it was made are not identical; and that the District Judge has rightly held that the appeal from the Subordinate Judge lay to his Court.

The District Judge has treated the facts of the litigation as follows. The decree for possession of the land now in suit which the plaintiff obtained in his original suit was obtained against the then defendants on proof of the plaintiff's title to the same as the heirs of one Hasan. The present defendants obstructed the plaintiff, and their claim, which is registered as the present suit under s. 331 of the Code, is that they are in possession on their own account and not as heirs of Hasan. The learned Judge writes : —[His Lordship read the passage above set forth, and continued.]

Mr. Branson, for the appellant, argues that the District Judge was wrong in precluding the plaintiff from succeeding on the strength of whatever title he could plead and prove as against any right of the defendants to retain the possession. Mr. Shivram for the respondent supported the decree, on the ground that the investigation under s. 331 is limited to the fact of **[634]** possession; and he referred to *Rango Vithal* v. *Rikhivadas* (2) as an analogous case indicating the principle on which the Legislature has acted.

Whatever the law may have been when the Code of 1877 was in force, I am of opinion that the change made in s. 331 in the Code of 1882 shows that the investigation is not now to be confined to possession. The procedure under the earlier Code was as in a suit under the Specific Relief Act, s. 9. The amending Act of 1879 substituted for that section chap. V. of the Procedure Code, and this substitution was re-enacted in 1882. The distinction between the two Codes is noticed in *Chinnasami Pillai* v. *Krishna Pillai* (3). The determination of the question under s. 331 of the Code of 1877 was held to be no bar to a later suit to try the title. The change of language leads to an inference that under the present Code the title may be tried. The case of *Govinda Nair* v. *Kesava* (4) shows that the claimant may set up title against the decree-holder. But if the decree-holder may not plead and prove a superior title to the obstructor defendant, why should the Legislature have given him the right to sue under s. 331? The claim which the obstructor makes is to be investigated, not as if he were the plaintiff, but "as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of chap. V." The Code of 1882 adds that the ultimate order is to have the force of a decree and to be subject to the same conditions.

In these words I see no indication that the Legislature intended to confine the plaintiff to any particular pleading or proof or to restrict him

(1) 8 M. 548.
(2) 11 B.H.C.R. 174.
(3) 3 M. 104.
(4) 3 M. 81.

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from showing any right superior to that of the defendant which he might wish to allege. It is apparently vexatious to require two suits to be brought between the same parties when the real questions at issue between them might be determinable at one trial. For these reasons I am of opinion that we should reverse the decree, and remand the case to the District Court, in order that the appeal may be determined on the merits.

Decree reversed and case remanded.