

obtain a decree for partition, I doubt whether any plot of land divided off by metes and bounds, but not constituting a recognized sub-division of a *bhag*, could be assigned to him; for such an assignment would be within the mischief of the Act. But every sale of an undivided share does not necessarily result in an attempt on the part of the vendee to secure possession of a specific portion of the *bhag* lands. In many cases the purchasers of undivided shares must have been admitted to joint possession with the other shares, as in *Bai Kuvarbai's* case. They may be quite satisfied with such possession; and so long as they are, the integrity of the *bhag* will not be threatened any more than it ordinarily is by the possibility of any one of the original sharers seeking at any time to sue out a partition. The purchaser has no better right to ask for a partition than was possessed by the sharer whose share or part of whose share he purchased. The sale does not, therefore, introduce any new element of danger into the administration of the village. Nor, again, do I think that the Act contemplates the future retention of *bhags* in the hands only of persons settling hereditarily for the payment of the assessment, for there is nothing in the Act to prevent the sale of a whole *bhag* or a recognized sub-division of a *bhag*,—which I take to be a parcel of land divided off by metes and bounds,—to persons who are in no way connected with the families of the original *bhagdars*. For these reasons, I am unable to concur in the judgment of the learned Chief Justice and Mr. Justice Telang.

1890
MAY 1.
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FULL
BENCH.
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15 B. 172
(F. B.).

15 B. 177.

[177] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Candy.

NEMAVA AND ANOTHER (*Original Defendants*), *Applicants v.*
DEVANDRAPPA (*Original Plaintiff*), *Opponent*.*
[30th June, 1890.]

Mamlatdars' Act (Bombay Act III of 1876), s. 4, cl. 2—Injunction—Possession—Constructive possession—Right to sue—Constituted attorney.

A landlord who has only a constructive possession of lands through his tenant, cannot obtain relief by way of injunction under cl. 2 of s. 4 of the *Mamlatdars*, (Bombay) Act (III of 1876).

Desai Malabhai Bapubhai v. Keshavbhai Kuberbhai (1) followed.

D. sued in the *Mamlatdar's* Court, as A.'s constituted attorney, for an injunction restraining defendants from causing any obstruction to his possession of certain lands. The land belonged to A.'s husband, who was alleged to be a lunatic. But there was no adjudication of his lunacy, nor was A. appointed a manager of his estate under Act XXXV of 1858.

Held, that D. had no right to sue. A. not having been appointed a manager of her husband's estate, had herself no right to sue in respect of a disturbance of her husband's possession. She could not, therefore, authorize her agent to sue on her behalf.

[R., 16 B. 239.]

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

* Application No. 1 of 1890 under extraordinary jurisdiction.

(1) 12 B. 419.

1890
JUNE 30, One Devandrappa sued in the Mamlatdar's Court for an injunction restraining the defendants from causing any disturbance in his possession of certain lands.

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15 B. 177, Devandrappa sued as a recognized agent, holding a general power of attorney from Awaka, wife of Bharmappa.

It was alleged that Bharmappa was a lunatic, that he was the owner of the lands in suit, that they were demised to defendant No. 2, and that defendant No. 2 fraudulently attorned to defendant No. 1, and that this attornment constituted the cause of action.

The Mamlatdar passed a decision in plaintiff's favour granting the injunction sued for.

The defendants applied to the High Court under its extraordinary jurisdiction for a reversal of the Mamlatdar's decision.

[178] A rule *nisi* was granted, calling upon the plaintiff to show cause why the Mamlatdar's order should not be set aside.

Branson (with him *Mahadev Bhaskar Chaubal*), for applicants :—The Mamlatdar has no jurisdiction to grant an injunction in cases of constructive possession—*Desai Malabhai Bapubhai v. Keshavbhai Kuberbhai* (1) ; *Gulabhai Gopalji v. Jinabhai Ratanji* (2) ; *Keso Dinkar Ranade v. Moro Sakharan Josi* (3). Bharmappa is alleged to be a lunatic, but there has been no adjudication of his lunacy under Act XXXV of 1858. His wife is not, therefore, entitled to sue on his behalf. Nor has she obtained a certificate of administration to her minor son's estate. The plaintiff as her constituted attorney, has, therefore no right to bring this suit—*Jonnagaala Subbaya v. Thatiparthi Senadala Buthaya* (4) ; *Narayan v. Krishana* (5) ; *Uma Sundari Dasi v. Ramji Halder* (6).

Macpherson (with him *Ghanasham Nilkanth*.—The defendant No. 2 has attorned to defendant No. 1. This attornment puts an end to the tenancy. We are, therefore, entitled to relief under cl. 1 of s. 4 of the Mamlatdars' Act. It is true we have not prayed for such relief, but we may be allowed to amend the plaint. Awaka is a *de facto* manager. Defendant No. 2 paid rent to her. Plaintiff, as her constituted attorney, can, therefore, maintain the present suit.

JUDGMENT.

BIRDWOOD, J.—The opponent Devandrappa brought a suit in the Mamlatdar's Court for an injunction to the applicants requiring them to refrain from causing any disturbance in his possession of certain lands. He sued as the holder of a general power of attorney from Awaka, the wife of Bharmappa, an alleged lunatic and the owner of the lands in question, which had been let to the defendant Dhakya, who, however, it was said, had attorned to the defendant Nemaya. It was this attornment which constituted the disturbance of possession of which the plaintiff complained.

The Mamlatdar disallowed an objection taken by the defendants to the power of attorney given by Awaka to the plaintiff, and granted the injunction prayed for.

[179] As Awaka has not been appointed the manager of her husband's property under Act XXXV of 1858, and as it was only a disturbance of her husband's possession which could have furnished any cause of action,

(1) 12 B. 419.
(4) 6 M. 380.

(2) 13 B. 213.
(5) 8 M. 214.

(3) P. J. for 1883, p. 120.
(6) 7 C. 242.

she clearly would have had no authority herself to bring the present suit. She could not, therefore, give any authority to the actual plaintiff, Devandrappa.

The suit itself, however, was not within the Mamlatdar's jurisdiction. The decision of this Court in *Desai Malabhai Bapubhai v. Keshavbhai Kuberbhai* (1) shows that "only an interruption of physical possession or enjoyment was intended to be removed by the injunction" provided for by the second clause of s. 4 of the Mamlatdars' Courts' Act, 1876. Though immediate possession "of any profits" of lands can be given under the first clause of the section, yet no injunction is permissible under the second clause in respect of a disturbance in the possession of such profits. It is with a disturbance or obstruction in the possession of lands only or of premises, &c., that the second clause is conversant. A landlord, therefore, who has only a constructive possession of lands through his tenants cannot obtain relief under the clause.

It is contended, however, by the opponent's counsel that, as the defendant Dhakya, by attorning to Nemava, determined his tenancy under Bharmappa, he is no longer entitled to retain possession of the lands in dispute. In *Shridhar Narayan v. Bhagvant Mahadev* (2) it was held that a Mamlatdar can give immediate possession of lands not only on the expiry of a tenancy by efflux of time, but on its determination by any other cause agreed upon by the parties at the time of creating the tenancy. It is unnecessary for us, in the present case, to decide whether the determination of a tenancy by the attornment of the tenant to a new landlord is such a determination of a tenancy as is contemplated in the first clause of s. 4 of the Mamlatdars' Courts' Act, because the plaintiff did not seek relief under that clause; and, even if he had legal authority to bring this suit, he certainly [180] could not now be allowed, by any amendment of the plaint, to convert the suit into one of an entirely different character.

We, therefore, make absolute the rule nisi granted in this case and reverse the Mamlatdar's order. The claim is rejected. The plaintiff is to pay costs throughout.

Rule nisi made absolute.

15 B. 180.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Telang.

SHIDHU BIN SUBHANA JADHAV (*Original Plaintiff*), Applicant v. BALI BIN MURARI JADHAV (*Original Defendant*), Opponent.*
[15th July, 1890.]

Dekkhani Agriculturists' Relief Act (XVII of 1879), ss. 53, 54—Special Judge—Revisional powers—Question of fact—Criminal Procedure Code (Act X of 1882), s. 435.

Under ss. 53 and 54 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) the Special Judge can interfere with an improper as well as an illegal decree or order. His revisional jurisdiction resembles that possessed by the High Court under the Code of Criminal Procedure (Act X of 1882), and ought, if it be held

* Civil Application, No. 7 of 1890.

(1) 12 B. 419.

(2) P. J. for 1882, 370.