

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.

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to include the power of setting aside the decision of a lower Court on the facts, to be exercised only in very exceptional cases.

[Diss., 19 B. 236 (288) ; R., 23 B. 321 (326).]

THIS was an application presented to the High Court in its extra-ordinary jurisdiction, under s. 622 of the Code of Civil Procedure (Act XIV of 1882), against an order passed by Rav Bahadur M. G. Ranade, Special Judge under the Dekkhan Agriculturists' Relief Act.

Suit to redeem lands.

The plaintiff Shidhu bin Subhana sued for the redemption of certain lands, alleging that about eight years before suit he had mortgaged them with possession to defendant Bali bin Murari for Rs. 20, and that the net profits received by the defendant had discharged the mortgage-debt.

The defendant Bali bin Murari alleged that he himself was the owner of the lands, and he denied that the plaintiff had mortgaged them to him. He also pleaded limitation.

[181] The Court of first instance found that the mortgage was proved and it allowed the plaintiff's claim to redeem on payment of Rs. 20 to the defendant.

The defendant presented an application for revision to the Special Judge under the provisions of the Dekkhan Agriculturists' Relief Act. The Special Judge held that the evidence adduced by the plaintiff to prove the mortgage was not satisfactory, and reversed the decree of the Court of first instance.

The plaintiff applied to the High Court.

*Dhondu Moroba Sanzgiri*, for the applicant :—The Special Judge was wrong in reversing the decision of the Subordinate Judge on a question of fact. Under ss. 53 and 54 of the Dekkhan Agriculturists' Relief Act (1), the Special Judge can only interfere if the lower Court's decree or order be illegal [182] or improper, and not otherwise. The Subordinate Judge found, on the evidence, that the plaintiff's mortgage was proved, and he

(1) Section 53.—“The District Judge may, for the purpose of satisfying himself of the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under chap. II or chap. IV of this Act, and as to the regularity of the proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit ; and any Assistant Judge or Subordinate Judge appointed by the Local Government under section fifty-two may similarly, in any district for which he is appointed, call for and examine the record of any such suit or matter, and, if he see cause therefor, may refer the same, with his remarks thereon, to the District Judge, and the District Judge may pass such decree or order on the case as he thinks fit :

“Provided that no decree or order shall be reversed or altered for any error or defect, or otherwise, unless a failure of justice appears to have taken place.

Section 54.—“The Local Government from time to time may, and if the Government of India so direct shall, appoint an officer, as Special Judge, to discharge in the place of the District Judge all the functions of the District Judge under this Act in respect of the proceedings of all Subordinate Judges, Village Munsifs and Conciliators, and may cancel any such appointment.

“Such Special Judge shall not, without the previous sanction of the Government of India, discharge any public function except those which he is empowered by this Act to discharge.

“If any conflict of authority arises between the Special Judge and the District Judge, the High Court shall pass such order thereon consistent with this Act as it thinks fit.

“No appeal shall lie from any decree or order passed by the District Judge under this chapter, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under section fifty-two, or by a bench, in any suit or proceeding under this Act.”

allowed redemption. There was no impropriety or illegality in the finding arrived at by the Subordinate Judge. The Special Judge had, therefore, no jurisdiction to interfere with the finding of the Subordinate Judge.

*Vasudev Ramchandra Joglekar*, for the opponent:—The wording of ss. 53 and 54 of the Dekkhan Agriculturists' Relief Act is wide enough; and under them the Special Judge can interfere if he finds that the decision of a lower Court is wrong on a question of fact.

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#### JUDGMENT.

BIRDWOOD, J.—We think that the Special Judge has exceeded his powers of revision under ss. 53 and 54 of Act XVII of 1879 by reversing the decision of the Subordinate Judge on a question of fact, *viz.*, whether the plaintiff had mortgaged his land to the defendant. Under those sections he can interfere with an improper as well as an illegal decree or order. His revisional jurisdiction resembles, therefore, that possessed by the High Court under the Code of Criminal Procedure; and ought, if it be held to include the power of setting aside the decision of a lower Court on the facts, to be exercised only in very exceptional cases. The Subordinate Judge's decision in the present case was based on evidence which appeared to him to satisfactorily establish the mortgage; and the case was not an exceptional one in which the interference of a revisional Court was necessary in the interests of justice.

We, therefore, reverse the decision of the Special Judge and restore that of the Subordinate Judge. Costs throughout on the defendant.

*Order reversed.*

15 B. 183.

#### [183] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.*

VENKATESH SHETTI BIN SANTYA SHETTI (*Original Plaintiff*),  
*Appellant v. NARAYAN SHETTI BIN TAMANA SHETTI AND OTHERS*  
(*Original Defendants*), *Respondents*.\* [11th August, 1890.]

*Bonds creating interest in land, construction of—Mortgage—Limitation Act (XV of 1877), sch. II, art. 147—Charge on immoveable property.*

Bonds by which the property mentioned therein is declared to be a security for a loan, have been always regarded in the Bombay Presidency as creating the relationship of a mortgagor and mortgagee, and fall under art. 147 of sch. II of the Limitation Act (XV of 1877).

[F., 20 B. 408; R., 17 C.P.L.R. 26 (31).]

THIS was a second appeal from the decision of Gilmour McCorkell, District Judge of Kanara.

The plaintiff sued the defendants to recover money due to him under two bonds passed in his favour by one Tamana, the manager of the defendant's family, in the years 1858 and 1866. The bond of the year 1858 was for Rs. 400 and was registered. The suit was filed in the year 1885.

\* Second Appeal, No. 564 of 1889.