

1891
FEB. 16
APPEL
LATE
CIVIL.
15 B. 684.

Court Rs. 140-8-0 within one month from the date of its order, and on his failure to do so that the plaintiff should recover possession of the entire house; on payment of the said amount by the defendant, the plaintiff to recover possession of the house, except one *khana*.

Against the order passed by the Subordinate Judge the defendant appealed to the District Court, which confirmed the order of the Subordinate Judge.

Against the decree of the District Court, the defendant appealed to the High Court.

Ghanasham Nilkanth Nadkarni, for the appellant.

Daji Abaji Khare, for the respondent.

JUDGMENT.

SARGENT, C.J.—It is clear that after the defendant paid the Rs. 140-8-0 into Court in execution of the decree, the Court held the money on account of the plaintiff, and the plaintiff, who had not obtained a stay of execution, could not refuse to take it because an appeal was pending. The plaintiff's refusal, therefore, [684] to take the money out of Court did not justify the Subordinate Judge in treating the money as the defendant's and in ordering it to be paid to another judgment-creditor of the defendant without his having in any way expressed his assent to the money being so treated. The money should have remained in Court, *i.e.*, paid into the treasury as a civil deposit. Order reversed with costs.

Decree reversed.

15 B. 684.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

LONACHAND GANGARAM MARWADI (*Original Applicant*),
Appellant v. UTTAMCHAND GANGARAM MARWADI (Original
*Opponent), Respondent.** [17th February, 1891.]

Succession Certificate Act VII of 1889—Grant of a joint certificate—Object of the Act.

Under the provisions of the Succession Certificate Act (VII of 1889), a joint certificate to recover debts cannot be granted.

Madan Mohan v. Ramdiat (1) and *Jammabai v. Hastubai* (2), referred to.

[R., 19 M. 497=6 M.L.J. 90; 15 M.C.C.R. 288; U.B.R. (1897—1901), 563.]

THIS was an appeal against an order passed by M. B. Baker, District Judge of Nasik.

Application for a certificate to collect debts under Act VII of 1889.

One Lonachand Gangaram Marwadi presented an application to the District Court at Nasik for a certificate under the Succession Certificate Act (VII of 1889) to recover the debts due to his deceased brother Chotiram Gangaram.

Uttamchand Gangaram, another brother of the deceased Chotiram Gangaram, opposed the application of Lonachand on the grounds (*inter*

* Appeal No. 55 of 1890.

(1) 5 A. 195.

(2) 11 B. 179.

alia) that the bonds regarding which the applicant asked for a certificate were in his (opponent's) possession, and that, therefore, he alone was entitled to the certificate and not the applicant; that, in any case, a certificate should not be given to the applicant alone, and that as both the applicant [685] and the opponent were the brothers of the deceased Chotiram, a joint certificate should be issued to them.

The District Judge passed an order issuing a certificate in the names of both the applicant Lonachand and the opponent Uttamehand.

The applicant Lonachand appealed to the High Court.

Narayan Ganesh Chandavarkar, for the appellant :—It has been held that a joint certificate under Act XXVII of 1860 could not be granted—*Madan Mohan v. Ramdial* (1); *Jamnabai v. Hastubai* (2). The provisions of Act VII of 1889 are similar to the provisions of that Act. The District Court ought to have determined which applicant had a better right to the certificate.

There was no appearance on behalf of the respondent.

JUDGMENT.

SARGENT, C.J.—This Court, following *Madan Mohan v. Ramdial* (1), has expressed the opinion that to grant a joint certificate is to frustrate the object of the Act—*Jamnabai v. Hastubai* (2).

We must, therefore, reverse the order of the District Judge and send the case back for a fresh decision on the rival claims for the certificate. Costs to abide the result.

Order reversed.

15 B. 685.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

AMIRUDIN (*Plaintiff*) v. MAHAMAD JAMAL (*Defendant*)*

[23rd February, 1891.]

Specific Relief Act (I of 1877), s. 9—The Mamltdars' Courts' Act (Bombay Act III of 1876)—Suit by a trespasser to recover possession.

A trespasser who has been dispossessed is not entitled to bring a suit under s. 9 of the Specific Relief Act I of 1879 or under Bombay Act III of 1876 to recover possession.

[686] *Dadabhai Narsidas v. The Sub-Collector of Broach* (3), *Krishnarav Yashavant Vasudev v. Apaji Ghotikar* (4) and *Virjivandas Madhvasdas v. Mahomed Ali Khan Ibrahimkhan* (5), referred to.

[R., 12 C.L.J. 605 = 7 Ind. Cas. 700; 12 C.P.L.R. 52.]

THIS was a reference made by Rao Saheb Dwarkanath Narayan Banadive, Subordinate Judge of Panvel, under s. 617 of the Code of Civil Procedure (Act XIV of 1882).

Suit for possession under s. 9 of the Specific Relief Act I of 1877.

* Civil Reference No. 26 of 1890.

(1) 5 A. 195.

(4) 8 B. 371.

(2) 11 B. 179.

(5) 5 B. 208.

(3) 7 B.H.C.R. A.C.J. 82.