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nothing more than a right to call for a conveyance on payment of the balance of the purchase-money, and no right, title or interest in the land itself.

Under the circumstances I am of opinion that on the 10th February, 1891, Shricrishna and Pandharinath were the owners of their one-third share in the property in dispute, and that their share therein was capable of attachment and sale, and that by the sale on the 27th July, 1892, the ownership of that one-third passed to the plaintiff, who is consequently entitled to a decree for partition against the defendants. If I had not come to this conclusion I am of opinion that under the prayer for further and other relief I could have given the plaintiff a decree for Rs. 1,900, the balance of the purchase-money unpaid at the date of attachment, together with interest thereon, as the defendants have been in possession ever since the agreement according to their own account; and doubtless under the circumstances of this case, this is the decree which would have been most beneficial to the plaintiff.

Attorneys for plaintiff :—Messrs. *Nanu and Hormasji.*

Attorney for defendants:—Mr. *Khanderao Moroji.*

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18 B. 19.

[19] APPELLATE CIVIL.

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

NAGUSHA (*Original Plaintiff*), *Appellant v.* MUNICIPALITY OF SHOLAPUR (*Original Defendant*), *Respondent.** [17th November, 1892.]

Municipality—Suit against municipality for ejectment—The Bombay District Municipal Act Amendment Act (Bombay Act II of 1884), s. 48—The Bombay District Municipal Act (Bombay Act VI of 1873), s. 86.

The words "in the case of any such action for damages" in s. 48 (1) of the Bombay District Municipal Act Amendment Act (Bombay Act II of 1884) clearly show that it was contemplated that there might be actions of another description to which the provisions in the former paragraph would be applicable. The section does not contemplate only "suits to recover monetary compensation for a wrongful act." A suit in ejectment—not being a suit brought to recover damages "for an act done or intended to be done"—was excluded under s. 86 (2) of the

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* Second Appeal No. 827 of 1891.

(1) Section 48 of the Bombay District Municipal Act Amendment Act (Bombay Act II of 1884)—

No action shall be commenced against any municipality, or against any officer or servant of a municipality, or any person acting under the orders of a municipality, for anything done or purporting to have been done, in pursuance of this Act, or of the principal Act, without giving to such municipality, officer, servant or person one month's previous notice in writing of the intended action and of the cause thereof, nor after three months from the date of the act complained of;

and in the case of any such action for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered and shall pay all costs incurred by the defendant after such tender.

(2) Section 86 of the Bombay District Municipal Act (Bombay Act VI of 1873):—

No action shall be brought against the municipality, or any of their officers, or any person acting under their direction, for anything done or intended to be done under this Act, until the expiration of one month next after notice in writing shall have been delivered or left at the office of the municipality, or at the place of abode of the intended defendant, stating with reasonable particularity the cause of action, and the name and place of abode of the intended plaintiff;

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Bombay District Municipal Act (Bombay Act VI of 1873), but being an "action for an act done," that act, being the dispossession by the municipality with a view to being restored to possession, falls under the provisions of the first paragraph of s. 48 of Bombay Act II of 1884.

[Overr., 22 B. 289 (297) (F.B.); R., 19 B. 407 (418); 32 M. 371=4 Ind. Cas. 32=19 M.L.J. 333 (339)=4 M.L.T. 209; Cons., 25 B. 142 (148); D., 22 B. 283 (286).]

[20] SECOND appeal from the decision of S. Tagore, District Judge of Sholapur.

The plaintiff sued the municipality of Sholapur to recover possession of land and Rs. 15 as damages, alleging that the municipality on the 20th January, 1889, wrongfully pulled down certain huts on the land which belonged to him, and built new huts thereon and stored their materials therein. The plaintiff prayed that the municipality should be directed to remove the huts and the materials stored therein and to vacate the site and to deliver it to the plaintiff. It was further alleged in the plaint that the president of the municipality confirmed the order of the managing committee under which the huts originally standing were pulled down on the 15th May, 1889, and that the plaintiff gave notice to the municipality on the 25th May, 1889, of his intention to bring the present suit. The plaint stated that the cause of action accrued on the 20th January, 1889, and the suit was filed on the 15th July 1889.

The municipality claimed the property as its own.

The Subordinate Judge held that under s. 48 of the Amended District Municipal Act (Bombay Act II of 1884), which was applicable to the present suit, the claim was barred, as the action was not instituted within three months from the act complained of, as laid down in that section. He, therefore, rejected the claim.

The plaintiff appealed, and the District Judge concurring with the Subordinate Judge confirmed the decree.

Plaintiff preferred a second appeal.

Gokuldas K. Parekh, for the appellant:—The lower Courts were wrong in holding that the present suit was governed by s. 48 of Bombay Act II of 1884. The first paragraph of that section contemplates a suit for any act done or purporting [21] to have been done by the municipality. Our present suit is purely a suit in ejectment, and that being so, it is not a suit for any act done.

The second paragraph of that section is not applicable, because it relates to a suit for damages only. We, no doubt, seek to recover damages in the present case, and our claim for damages may be held barred under the clause, but not the claim for restoration of possession.

If s. 86 of the old Act (Bombay District Municipal Act VI of 1873) be read with s. 48 of the present Act, it will be found that s. 48 applies only to those cases in which monetary compensation for a wrongful act is claimed, and not to suits in ejectment.

Mahadeo Waman Bhat, for the respondent, was not called upon.

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and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action, except such as is stated in the notice so delivered, and unless such notice be proved, the Court shall find for the defendant; and every such action shall be commenced within three months next after the passing of the final order by the municipality or officer having power to pass such order, and not afterwards; and if any person to whom such notice is given shall, before action brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender.

JUDGMENT.

SARGENT, C. J.—We agree with the lower Courts in their construction of s. 48 of Bombay Act II of 1884, the language of which is very different from that of s. 86 of Bombay Act VI of 1873. The words "in the case of any such action for damages" show clearly that it was contemplated that there might be actions of another description, to which the provisions in the former paragraph would be applicable. In other words, there is no reason for concluding, as was done in *Sorabji Nassarvanji Dundas* v. *The Justices of the Peace for the City of Bombay* (1) upon the language of the corresponding section of the former Act, that the section only contemplates "suits to recover monetary compensation for a wrongful act."

A suit in ejectment—not being a suit brought to recover damages "for an act done or intended to be done"—was excluded under that Act, but being an "action for an act done," that act being the dispossession by the defendant with a view to being restored to possession, must be held to fall under the provisions of the first paragraph of the section of the Act of 1884. We must, therefore, confirm the decree, with costs.

Decree confirmed.

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18 B. 22.

[22] APPELLATE CIVIL.

Before Mr. Justice Bayley, Chief Justice (Acting), and Mr. Justice Candy.

SWAMIRAO AND ANOTHER (*Original Defendants*), *Appellants v.* PADAPA BIN BHUJANGRAV (*Original Plaintiff*), *Respondent.**
[18th November, 1892.]

Watan—*Watandar—Mortgage of* watan *property—Adverse possession of* watan *property—Limitation—Succession—Entry of* watan *in name of trespasser—Effect of Gordon Settlement effected with trespasser.*

Bhujangrav Desai died in 1847, leaving his two widows Kalova and Ramova. The plaintiff Padapa was born to Ramova in 1848, *i.e.*, the year after his death. Bhujangrav Desai's *watan* had been attached by Government in 1844, but in 1848 or 1849 Government restored a small portion of it, entering it in the name of Kalova and refusing to recognise the infant Padapa. In 1865 the Government restored the rest of the *watan*, again acknowledging Kalova as the holder, the agreement with her being under "the Gordon Settlement" (2). In 1865 Kalova mortgaged two villages (part of the *watan*) to one Shrinivas (father of the defendants), who was the *watani karkun*, for Rs. 9,900, which had been advanced by him to Kalova while the *watan* was under sequestration. Possession was given to Shrinivas, and the village officers were directed to pay him the revenues. Subsequently Kalova repented of her bargain, and directed the village officers not to pay the revenues to Shrinivas He accordingly brought a suit against her for the revenues of 1869-70 and obtained a decree, in execution of which he sold the villages and bought them at the sale. In 1878, however, the Collector cancelled the sale under the Watan Act (III of 1874).

In 1873 Shrinivas obtained a further decree against Kalova for the revenue of two years (1870-72) and for possession as mortgagee. He got possession through the Court in 1875.

Kalova and Padapa, who had been on good terms, quarrelled, and on 16th March, 1872, Kalova adopted one Balapa as a son to her deceased husband

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* Appeal No. 93 of 1889.

(1) 12 B.H.C.R. A. C. J. 250 (254).

(2) As to the nature of this settlement, see 15 B. 13.