

v. *Bawa Ramcharandas* (1). The law is well settled that valuation for purposes of Court fees is quite distinct from valuation for purposes of jurisdiction. Section 8 of Act VII of 1887 has no application to the present case. Nor would s. 9 of the Act apply in the absence of any rules made by the High Court.

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JUDGMENT.

TELANG, J.—The plaintiff sued for an account, and in the plaint valued the relief sought at Rs. 130, stating at the same time that he would pay Court fee on any larger amount that might be decreed. The First Class Subordinate Judge rejected the claim, with costs. The plaintiff has now appealed to this Court, but a preliminary objection has been taken that, as the relief sought was valued at Rs. 130, the appeal lies not to this Court, but to the District Court. The appellant's pleader relies on the statement in the plaint that at the time of filing it there were no means of ascertaining the amount due, but that it was a very large sum, and that temporarily the relief sought was valued at Rs. 130. It was contended that this valuation was made merely for the purpose of ascertaining the Court fee payable, but we are unable to accept this view. In *Khushalchand v. Nagindas* (2), it was held that, in a suit for account, the valuation entered in the plaint for purposes of Court fee determined the question of jurisdiction, and the law thus laid down has been embodied by the Legislature in s. 8 of Act VII of 1887 which was in force at the time this suit was instituted. We must, therefore, direct that the memorandum of appeal be returned to the appellant for presentation in the proper Court. The appellant must pay the costs incurred in this Court.

18 B. 40.

Appeal rejected.

18 B. 43.

[43] APPELLATE CIVIL.

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

DADABHAI DAJIBHAI (*Original Defendant No. 2*), Applicant v. DIOGO SALDANHA (*Original Plaintiff*), Opponent.* [13th December, 1892.]

Jurisdiction—Contract—Performance of contract—Making of contract—Goods to be shipped at Bombay to the plaintiff at Karwar—Contract entered into and intended to be performed at Bombay.

The plaintiff residing at Karwar sent a sum of money to Kemp & Co. (defendant No. 1), a firm at Bombay, asking them to send him certain goods. Kemp & Co. informed the plaintiff that they had not the goods required by him. The plaintiff thereupon telegraphed to them to pay the amount to defendant No. 2, a resident of Bombay, provided he shipped the goods. On the failure of defendant No. 2 to ship the goods, the plaintiff brought a suit against the defendants in the Court at Karwar to recover the amount. He claimed against Kemp & Co. (defendant No. 1) because they had paid the money to the second defendant before the goods were shipped, and against the second defendant because he had not shipped the goods, although he had received the money. The Court at Karwar was of opinion that Karwar was the place where the contract was to be performed, and that, therefore, it had jurisdiction to entertain the suit, and it passed a decree against defendant No. 2. The claim as against defendant No. 1 was dismissed.

* Application under Extraordinary Jurisdiction, No. 169 of 1892.
(1) 2 B. 219. (2) 12 B. 675.

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18 B. 43.

Held, reversing the decree, that the understanding on which the money was paid to defendant No. 2 by Kemp & Co., and which was the agreement on which the plaintiff sued, was that the second defendant would ship the goods at Bombay to the plaintiff at Karwar. The contract, therefore, as between defendant No. 2 and Kemp & Co., acting on behalf of the plaintiff, was both entered into and intended to be performed at Bombay. The cause of action arose, therefore, in Bombay, and the Court at Karwar had no jurisdiction.

APPLICATION under the extraordinary jurisdiction of the High Court, under s. 622 of the Civil Procedure Code, Act XIV of 1882, against the decision of Rao Bahadur Raghavendra Ramchandra, Acting First Class Subordinate Judge of Karwar, in a Small Cause Suit.

The plaintiff resided at Karwar. The first defendant was the firm of Messrs. Kemp & Co., which carries on business at Bombay. The second defendant (the appellants) was one Dadabhai Dajibhai, who also resided in Bombay.

The plaintiff alleged that he had sent to Messrs. Kemp & Co. (defendant No. 1) at Bombay a sum of Rs. 300 to pay for goods [44] which he ordered from that firm. Kemp & Co., however, informed him that they could not supply the goods, whereupon the plaintiff telegraphed to them requesting them to pay the money to the second defendant, provided he shipped the goods to Karwar. The goods did not arrive, and the plaintiff brought this suit against Kemp & Co. (defendant No. 1), because they had paid the money to the second defendant before the goods were shipped, and against the second defendant because he had not shipped the goods, although he had received the money.

The plaintiff filed this suit in the Court at Karwar.

The second defendant pleaded (*inter alia*) that the Court had no jurisdiction. The Court, however, held that Karwar was the place where the performance of the contract was to be completed, and that, therefore, the plaintiff's cause of action arose within its jurisdiction. The claim was awarded against defendant No. 2 only, defendant No. 1 being held not liable.

In coming to the above conclusion the Subordinate Judge relied upon (1) a telegram which plaintiff had sent to defendant No. 1 (Kemp & Co.) and which ran as follows:—"Otherwise pay Dadabhai Dajibhai Baria, provided he ships goods;" and also upon (2) the evidence given by Mr. Tate, the accountant of defendant No. 1 (Kemp & Co.) "that the plaintiff's telegram was shown to defendant No. 2 and the contents thereof made known to him; that the money was paid to defendant No. 2 under a contract that he should ship the goods required by the plaintiff to Karwar, that it was paid for no other purpose, that defendant No. 2 promised to send the goods, and that on that condition the money was paid to him."

Against the decree the second defendant applied to the High Court on the ground that the Court at Karwar had no jurisdiction. He obtained a rule *nisi* to set aside the decree.

Manekshah J. Taleyarkhan, for the applicant (defendant No. 2):—The lower Court erred in holding that the plaintiff's cause of action arose at Karwar. When the defendant No. 1 (Messrs. Kemp & Co.) paid the money to defendant No. 2 at Bombay [45] under the plaintiff's instructions, defendant No. 1 acted as the plaintiff's agent, and the distinct understanding then was that the goods were to be shipped at Bombay. These circumstances show that the contract was entered into and was to be performed at Bombay. The cause of action, therefore, arose

at Bombay, and that being so the Court at Karwar had no jurisdiction to entertain the suit.

Shamrao Vithal, for the opponent, *contra*.

JUDGMENT.

SARGENT, C.J.—The Subordinate Judge [has held that Karwar was the place where the contract was to be performed by the second defendant. If that had been so, the cause of action would have been at Karwar and the Subordinate Judge would have had jurisdiction. But it is plain from the telegram which plaintiff sent to Kemp & Co., and from the evidence of Mr. Tate that the understanding on which the money was paid to the second defendant, and which is the agreement upon which the plaintiff is suing, was that he would ship goods consigned to the plaintiff at Karwar. The contract, therefore, between the second defendant and Kemp & Co., acting on behalf of the plaintiff, was both entered into and intended to be performed in Bombay. The cause of action was, therefore, in Bombay, and the Subordinate Judge had no jurisdiction to try the case against the second defendant.

We must make the rule absolute, and reverse the decree with costs throughout.

Rule made absolute.

18 B. 46.

[46] APPELLATE CIVIL.

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

ABA BIN SADOBA AND ANOTHER (*Original Defendants*), *Applicants v.*
PARVATRAO BIN GANPATRAO (*Original Plaintiff*), *Opponent*.^{*}
[13th December, 1892.]

Mamlatdars' Act (Bombay Act III of 1876), s. 4 (1), cl. 2—Suit for disturbance of possession—Possession by tenant—Physical possession—Jurisdiction.

There must be physical possession to enable an aggrieved person to invoke the Mamlatdar's assistance in a case falling under the second clause of s. 4 of the Mamlatdars' Act (Bombay Act III of 1876).

A person who is in possession through his tenant cannot sue for an injunction for disturbance of possession under the Act.

Desai Malabhai v. Keshavbhai (2) approved and followed.

^{*} Application under Extraordinary Jurisdiction, No. 150 of 1892.

(1) Section 4 of the Mamlatdars' Act (Bombay Act III of 1876):—

(1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall have powers within such territorial limits as may from time to time be fixed by the Governor in Council to give immediate possession of lands, premises, trees, crops, or fisheries, or of any profits of the same, or to restore the use of water from wells, tanks, canals or water-courses to any person who shall have been dispossessed or deprived thereof otherwise than by due course of law, or who shall have become entitled to the possession or restoration thereof by reason of the determination of any tenancy, or other right of any other person in respect thereof.

(2) The said Court shall have also power, within the said limits when any person is disturbed or obstructed, or when an attempt has been made to disturb or obstruct any person in the possession of any lands, premises, crops, trees or fisheries, or in the use of water from any well, tank, canal or water-course, or of the use of roads or customary ways to fields, to issue an injunction to the person causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from causing or attempting to cause any such further disturbance or obstruction.

(2) 12 B. 419.