

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.

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DEC. 13.
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APPEL-
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18 B. 46.

THIS was an application under the extraordinary jurisdiction of the High Court, (s. 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Rao Saheb Rangnath Narayan, Mamlatdar of the taluka of Kopergaon in the Ahmednagar District.

The plaintiff by his mukhtyar Shankar Vaman Kulkarni brought a summary suit under the Mamlatdars' Act (Bombay Act [47] III of 1876) against the defendants for an injunction directing the defendants not to obstruct the plaintiff's possession of the lands in dispute. It was stated in the plaint that the plaintiff was in possession of the lands through his tenant.

The Mamlatdar passed a decree for the plaintiff as prayed for.

The defendants applied to the High Court and obtained a rule *nisi* to set aside the order.

Gangaram B. Rele, for the applicants.—The opponent (plaintiff) being in possession through his tenant, no obstruction was caused to him. In a suit for injunction under the Mamlatdars' Act the person in actual possession must bring the suit. The obstruction must be to physical possession and not constructive possession as that of a landlord. The present suit being brought by the landlord, the Mamlatdar had no jurisdiction to entertain it—*Desai Malabhai v. Keshavbhai* (1).

Mahadev Chimnaji Apte, for the opponent.

JUDGMENT.

SARGENT, C.J.—The decision in *Desai Malabhai v. Keshavbhai* (1), in which we concur, shows that 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, and, therefore, that the plaintiff, who was only in possession by his tenant *Gangaram*, could not sue in the present case.

We must, therefore, make the rule absolute and reverse the decree of the Mamlatdar. Applicants to have their costs of this application.

Decree reversed.

18 B. 48.

[48] APPELLATE CIVIL.

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

VIRCHAND LALCHAND (Original Plaintiff), Appellant v. KUMAJI AND ANOTHER (Original Defendants), Respondents.* [23rd December, 1892.]

Vendor and purchaser—Unpaid purchase-money, suit by vendor to recover—Evidence—Registration of bonds given for purchase-money—Limitation—Limitation Act (XV of 1877), sch. II, art. 132.

The defendants purchased land from the plaintiff, and gave bonds for the purchase-money. These bonds were not registered and were, therefore, not admissible in evidence.

Held, that the plaintiff, as vendor, was under no necessity to rely on the bonds in order to establish a charge on the property sold in respect of the unpaid purchase-money.

* Second Appeal No. 860 of 1891.

(1) 12 B. 419.