

as amounting to findings. We must, therefore, send down the following issue to the Court below :—

1. Whether the contract, the subject of the suit, had, at the date of the institution of the suit, become on any ground voidable or terminable by the plaintiff?

Finding to be returned within two months.

Issue sent down.

1893
JUNE 15.
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APPEL-
LATE
CIVIL.
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18 B. 343.

18 B. 347.

[347] APPELLATE CIVIL.

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

RAYACHAND MAYACHAND (*Original Plaintiff*), Appellant v. SULTAN RAHIMBHAI AND ANOTHER (*Original Defendants*), Opponents.*
[19th June, 1893.]

Dekkhan Agriculturists' Relief Act (Bombay Act XVII of 1879)—Special Judge—Finding of fact—Civil Procedure Code (XIV of 1882), s. 622—Practice—Procedure.

When the Special Judge under the Dekkhan Agriculturists' Relief Act (Bombay Act XVII of 1879) entertains a clear opinion that the findings of the Subordinate Judge on the questions of fact are erroneous, and exercises his discretion in setting aside the decree, the High Court will not in its extraordinary jurisdiction, interfere with that discretion, except under most exceptional circumstances.

[R., 19 B. 286 (288).]

APPLICATION under the extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Rao Bahadur Mahadeo Govind Ranade, Special Judge under the Dekkhan Agriculturists' Relief Act (XVII of 1879).

The plaintiff sued the defendants, Sultan, Sakkar and their surety Sakharam to recover seventy-seven rupees alleged to have been due under an oral agreement.

Defendants Sultan and Sakkar denied their liability. Defendant Sakharam admitted the claim.

The Subordinate Judge found the claim proved, and passed a decree for the plaintiff and against all the defendants.

Sultan and Sakkar being dissatisfied presented an application for revision to the Special Judge under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The Special Judge examined the evidence, and varied the decree by rejecting the claim against Sultan and Sakkar.

The plaintiff applied to the High Court under its extraordinary jurisdiction, and contended that the Special Judge had no jurisdiction, in his revisional powers, to interfere with the findings of fact of the Court of first instance.

Vishnu K. Bhatavdekar with *G. L. Chandorkar*, appeared for the applicant (plaintiff). They relied on *Shidu v. Bali* (1).

JUDGMENT.

[348] SARGENT, C. J.—When the Special Judge entertains a clear opinion that the findings of the Subordinate Judge on the questions of

* Application No. 46 of 1893 under extraordinary jurisdiction.

1893
JUNE 19.
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APPEL-
LATE
CIVIL.
—
18 B. 347.

fact are erroneous, and exercises his discretion in setting aside the decree on that ground, we think it would be most inconvenient if this Court were to allow itself, in the exercise of its extraordinary jurisdiction, to interfere with that discretion, except under most exceptional circumstances. We must, therefore, reject the application.

Application rejected.

18 B. 348.

APPELLATE CIVIL.

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

BAPU BIN MAHADAJI (*Original Defendant*), Appellant v.
MAHADAJI VASUDEO (*Original Plaintiff*), Respondent.*
[21st June, 1893.]

Landlord and tenant—Right of possession claimed by tenant against landlord—Mortgage by landlord—Possessory suit in the Mamlatdar's Court by the tenant against the mortgagor—Decree in favour of the tenant—Assignment of mortgage by mortgagee—Purchase of the equity of redemption by the assignee—Merger—Suit brought by the assignee to recover possession—Assignee bound by Mamlatdar's order against mortgagor—S. 15† of the Mamlatdar's Act (Bombay Act V of 1864)—S. 18‡ of the Mamlatdar's Act (Bombay Act III of 1876)—Art. 46, sch. II of the Limitation Act (IX of 1871).

One Ramji Chikne, who was the owner of the land in dispute, mortgaged it to Baji in July, 1870. In October, 1876, Bapu, a tenant of the land, obtained an injunction against Ramji restraining him from interfering with his (Bapu's) possession, in a possessory suit which was filed in the Mamlatdar's Court in May, 1876. In July, 1877, Baji obtained a decree on his mortgage, and in execution he got possession of the property from Ramji (the mortgagor) in June, 1879. The plaintiff, who was the assignee of both Baji and Ramji (mortgagee and mortgagor), sued Bapu in ejectment in September, 1888. Both the lower Courts allowed the claim. On second appeal by Bapu, the plaintiff (*inter alia*) contended that [349] having taken an assignment of the mortgage from the mortgagee, he was not bound by the proceedings in the Mamlatdar's Court in 1876 against the mortgagor. But

Held, that when the plaintiff, having previously taken an assignment of Baji's mortgage, purchased the equity of redemption from Ramji, the mortgage was extinguished, there being no circumstance from which an intention could be presumed to keep it alive. The plaintiff could not stand in a better position than Ramji, and was bound by the proceedings in the Mamlatdar's Court,

* Second Appeal No. 972 of 1891.

† Section 15 of the Mamlatdar's Act (Bombay Act V of 1864) :—

The party to whom the Mamlatdar shall give immediate possession, or whose existing possession he shall maintain, shall continue in possession until ejected by a decree of a Civil Court.

‡ Section 18 of the Mamlatdar's Act (Bombay Act III of 1876) :—

The party to whom the Mamlatdar shall give immediate possession, or restore a use, or in whose favour an injunction has been granted, shall continue in possession or use until ousted by a decree or order of a Civil Court.

Provided that nothing in this section shall prevent the party against whom the Mamlatdar's decision is passed, from recovering by a suit in the Civil Court mesne profits for the time he may be kept out of possession of any property, or out of enjoyment of any use :

Provided further that in any subsequent suit or other proceeding in the ordinary Civil Court between the same parties, or other persons claiming under them, the Mamlatdar's decision respecting the possession of any property, or the enjoyment of any use, shall not be held to be conclusive.