

case at the hearing as if it raised not only [522] a question between the plaintiff and defendants, but also one between the defendants, as his decree directs defendant No. 1 to pay defendant No. 2's costs. This distinguishes the case from cases of *Gudadhar Banerjee v. Mussamat Mun Mohunee Dossea* (1) and *Atma Ram v. Balkishen* (2).

But we think that we cannot accept the finding of the lower appeal Court on the issue whether the debt was for a family purpose. It has raised the issue in a form, and dealt with the evidence in a manner, which clearly implies that it considered the *onus* lay on the second defendant to show that the loan was not for a family purpose. This is a mistake, as there is no presumption, as the District Judge would appear to think, that a loan contracted by a manager of a Hindu family is for a family purpose. We must, therefore, without intending to express any opinion on the merits, reverse the decree and send back the case for a fresh decision by the lower appeal Court, having regard to the above remarks. Costs to abide the result.

*Decree reversed and case sent back.*

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APPELLATE CIVIL.

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

GOVIND BALVANT SHIVNEKAR (*Original Applicant*), *Applicant v.*  
LAKSHMAN BIN NANA TELI (*Original Opponent*), *Opponent.\**  
[5th September, 1893.]

*Civil Procedure Code (Act XIV of 1892), s. 335—Principal and agent—Joint managers—Mortgage by one of such managers—Sale by mortgagee in execution of decree on mortgage and dispossession of the other manager—Application for restoration of possession by other joint manager.*

Kushambhat, the owner of certain property, gave the management of it to his three nephews, Govind, Gajanan and Narayan. Gajanan mortgaged the property to Kamalchand, who sued on the mortgage and got a decree. In execution of the decree the property was sold and purchased by Lakshman who was put in possession by the Court. Govind, one of the managers, then applied for possession, under s. 335 of the Civil Procedure Code (Act XIV of 1892), alleging that he had been wrongfully dispossessed.

*Held*, that the mortgagee Kamalchand got no title to the property by his mortgage from Gajanan against the real owner Kushambhat; and Govind, who was in actual possession as his manager (whether or not there were others equally entitled to share in the management), was entitled to prevent the purchaser [523] Lakshman taking possession, and having been dispossessed had a claim to be restored to possession under s. 335 of the Civil Procedure Code (Act XIV of 1892).

APPLICATION under the extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882) against an order passed by Rao Saheb N. V. Atrs, Subordinate Judge of Baramati.

This was an application under s. 335 of the Civil Procedure Code (Act XIV of 1882) to be restored to the possession of certain land.

The land belonged to one Kushambhat, who gave the management of it to his three nephews, Govind, Gajanan and Narayan. Gajanan alone,

\* Application No. 29 of 1893 under extraordinary jurisdiction.

(1) 7 W.R. 366.

(2) 5 A. 266.

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however, mortgaged it to one Kamalchand Gujar, who obtained a decree on the mortgage against him, and in execution the land was sold and was purchased by Lakshman bin Nana Teli, the opponent, who obtained possession through the Court. The applicant Govind had originally been a party to the suit brought by the mortgagee Kamalchand, but his name was afterwards struck off. After the purchaser Lakshman was put in possession, Govind applied to the Subordinate Judge under s. 335 of the Civil Procedure Code (Act XIV of 1882), to be restored to possession, alleging that he had been in possession and had been wrongfully dispossessed. Lakshman answered that it was Gajanan, the judgment-debtor, and not Govind who had been in possession, and that Govind was not entitled to recover the land. The Subordinate Judge rejected Govind's application on the following grounds:—

"It seems that the petitioner was joined as one of the defendants in the suit brought against Gajanan on the mortgage-bond. The summons was served upon him. He was thus aware of the suit brought against him, and yet he has not taken any step to assert that the land did not belong to Gajanan. His name was struck off, and a consent-decree was passed against Gajanan alone. In execution of the decree the land was sold by the Collector. The petitioner did not urge his title to the land, as there is nothing to show that he put forward any objection to the sale. Subsequently to the sale, possession was given to the purchaser, and yet the petitioner seems to have remained quiescent. This conduct of the petitioner goes strongly against him.

[524] "It is alleged that the land belongs to one Kushambhat, uncle of petitioner. Petitioner and his brothers are equally entitled to the land of their uncle, and I see no reason why petitioner should have the preference.

"If the land does not belong to petitioner, he has no leg to stand upon. It is Kushambhat who is entitled to apply or sue for recovering the land. Kushambhat gave its management to his nephews, as would appear from the mortgage and rent-notes, and not to Govindbhat alone, as alleged by him. Thus I am of opinion that the three brothers have equal rights, and so one cannot claim to hold it exclusively. Kushambhat's rights, whatsoever they may be, would not be prejudiced by these proceedings.

"I, therefore, think it but just to hold that petitioner is not entitled to present possession."

Against this order Govind applied under the extraordinary jurisdiction of the High Court and obtained a *rule nisi*, calling upon the opponent Lakshman to show cause why the order of refusal should not be set aside.

*Dhondu Moroba Sanzgiri* appeared for the opponent to show cause.

*Daji Abaji Khare, contra*, in support of the rule. He relied upon *Balaji Anant v. Ganesh Janardan* (1).

#### JUDGMENT.

SARGENT, C. J.—The Court has found that the property belongs to Kushambhat, the applicant's uncle, and that it was given by him into the management of his three nephews, the applicant, the mortgagor Gajanan, and Narayan. The opponent, therefore, acquired no title to the property by his mortgage from Gajanan as against the real owner Kushambhat, and the applicant, who was in actual possession as his

manager (whether or no, there may be others equally entitled to share in the management), was entitled to resist the opponent's taking possession, and having been dispossessed had a claim to be restored to possession under s. 335. We must, therefore, reverse the order of the Court below and direct that applicant be put into possession. Applicant to have his costs of this application from the opponent.

*Order reversed.*

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**[525] APPELLATE CIVIL.**

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

**GANGADHAR HARI KARKARE (Original Defendant), Appellant v. MORBHAT PUROHIT AND ANOTHER (Original Plaintiffs), Respondents.\***  
**[6th September, 1893.]**

*Inamdar—Inam village—Suit by an inamdar against a khot to recover balance of land revenue—Assessment—Survey made by the British Government—Collector's certificate—Change in rate of assessment—Pensions Act (XXIII of 1871), s. 4†—Jurisdiction of Civil Courts—Revenue Jurisdiction Act (Bom. Act X of 1876), s. 4, sub-cl. (b)‡—Land Revenue Code (Bom. Act V of 1879), s. 216, cls. (a), (b) and (c)§—Village partially alienated.*

In a suit by an inamdar of a village against a khot to recover rent in kind (according to the market rate at the time of payment), the defendant (khot) contended (1) that he was only liable to pay cash assessment as fixed by the survey made by the British Government, which was at a lower rate than he had previously paid; (2) that the suit was barred for want of Collector's certificate under s. 4 of the Pensions Act (XXIII of 1871), and (3) that the Civil Court had [526] no jurisdiction to entertain the suit under the Revenue Jurisdiction Act (Bom. Act X of 1876), s. 4, sub-cl. (b), and the Land Revenue Code (Bom. Act V of 1879), s. 216, sub-cl. (b).

\* Second Appeal No. 96 of 1892.

† Section 4 of the Pensions Act (XXIII of 1871) :—

4. Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted.

‡ Sub-cl. (b) of s. 4 of the Revenue Jurisdiction Act (Bom. Act X of 1876) :—

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters.

(a)

(b) objections—  
to the amount or incidence of any assessment of land-revenue authorized by Government, or

to the mode of assessment, or to the principle on which such assessment is fixed, or to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement.

§ Section 216, cls. (a), (b) and (c) of the Land Revenue Code (Bom. Act V of 1879) :—

Save as is provided in s. 111 and hereinafter in this section, the provisions of chap. VIII to X of this Act shall not be applied to any alienated village except for the purposes of fixing the boundaries of any such village, and of determining any disputes relating thereto. But the provisions of the said chapter shall be applicable to—

(a) all unalienated lands situated within the limits of an alienated village;

(b) villages of which a definite share is alienated, but of which the remaining share is unalienated;

(c) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess, if any, above such amount belongs to Government.

But it shall be lawful for the Governor in Council, on an application being made by the holder of any such village to that effect, to authorize the extension of all or any of the provisions of the said chapters to any such village.