

1893

SEP. 19.

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[65] ORIGINAL CIVIL.

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Before Mr. Justice Parsons.

VIRBAJI (*Plaintiff*) v. THE WADIA MILLS COMPANY (*Defendants*).*
[19th September, 1893.]

Company—Indian Companies Act (VI of 1882), s. 134—Winding up—Suit against a company—Stay of proceedings when petition to wind up is pending—High Court Rules No. 10, cl. (r)—Practice—Procedure.

The plaintiff sued the defendant company to recover Rs. 10,000. The claim was not disputed, but shortly after the suit was filed another creditor filed a petition to wind up the company. This petition was pending when the suit came on for hearing, but no order to stay proceedings had been obtained by the defendants, and the plaintiff contended that under the circumstances he was entitled to obtain a decree having regard to the fact that no such order had been made, and that by the rules of the Court such order could only be made in chambers.

Held, on application by the defendants at the hearing, that the proceedings must be stayed.

SHORT cause. This suit, which was filed on the 19th August, 1893, came on for hearing on the 19th September. At that time a petition to wind up the defendant company was pending which had been filed by another creditor on the 19th August, 1893. The hearing of the petition to wind up was fixed for the 23rd September. No written statement was filed, and the plaintiff's claim was admitted by the defendants.

Defendants' attorneys on the 8th September, 1893, wrote to the attorneys for the plaintiff asking her (the plaintiff) to consent to the suit standing over until the disposal of the petition to wind up had been disposed of, and giving notice that otherwise an application would be made to the Court to stay further proceedings. The plaintiff's attorney declined to consent, on the ground that no order had been made to wind up the company, and stated that the plaintiff would proceed to obtain a decree on the day fixed for hearing.

The suit came for hearing on the 19th September, when

Lang (Acting Advocate General), for the defendants, applied that the proceedings should be stayed—Indian Companies Act (VI of 1882), s. 134. He admitted that the plaintiff was entitled to her costs of suit up to date, but submitted that the costs should not be increased by any further proceedings in the suit. He referred to s. 85 of the English Companies Act (Stat. 25 and 26 [66] Vic., c. 89); *In re The London and Suburban Bank* (1); *Lindley on Companies* (5th Ed.), pp. 674-676; *Buckley on Companies* (5th Ed.), p. 230.

Inverarity, for the plaintiff:—The plaintiff is entitled to a decree. By the rules of Court (Rule 10, cl. (r), all applications) in company matters must be made in chambers. No application to stay proceedings has been made, and no order to that effect has been obtained. The plaintiff is, therefore, now entitled to proceed and get her decree. The defendants may hereafter apply to have execution stayed.

ORDER.

PARSONS, J.—The application to stay proceedings is now made by the defendants, and under s. 134 of the Companies Act (VI of 1882) I

* Suit No. 404 of 1893.

(1) 19 W. R. 950.

have discretion to make the order. The proceedings must be stayed until the petition to wind up the company is heard and disposed of on the defendants giving the usual undertaking as to damages.

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Order to stay proceedings.

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Attorney for the plaintiff : Mr. Shamrao Pandurang.

Attorneys for the defendants : Messrs. Wadia and Gandhi.

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Before Mr. Justice Bayley and Mr. Justice Starling.

YESHWADABAI AND GOPIKABAI, WIDOWS (*Original Plaintiffs*),
Appellants v. RAMCHANDRA TUKARAM (Original Defendant),
*Respondent.** [18th August and 2nd September, 1893.]

Practice—Procedure—Evidence—Landlord and tenant—Terms of tenancy proved orally although contained in a document—Compensation for buildings erected by tenant—Estoppel.

The plaintiffs alleged that in 1866 the defendant's father had let land to their predecessor-in-title in perpetuity on fazendari tenure for building purposes, subject to a certain rent. They complained that the defendant sought to eject them, and they prayed for a declaration that they were entitled to the land in perpetuity subject only to payment of the yearly rent. In the event of its being held that they were not perpetual tenants, they prayed that the defendant might be ordered to pay them Rs. 7,000, the value of the buildings on the land. The plaintiffs made out a *prima facie* case without showing, or its being shown, that there was any agreement or lease. Before the case had concluded, however, a document was [67] produced which was said to be a counterpart of the agreement of letting made in 1866. It was not registered, and was, therefore, inadmissible in evidence. It was not tendered, but it was shown to the defendant in cross-examination, and he denied that it was a genuine document.

Held, that the plaintiffs, having made out a *prima facie* case without betraying the existence of a written contract relating to the subject-matter of the suit, were not precluded from obtaining a decree even though it afterwards appeared that a written contract had been made. If the defendant intended to rely upon a written contract it was for him to produce it as part of his evidence. In the present case, as the document was not referred to in the plaint, written statement or issues and was not before the Court, the evidence should be looked at to ascertain the terms of the tenancy by which the plaintiffs and their predecessors in title held the property.

Where a landlord had not objected to buildings erected by his tenant for a period of twenty-five years, and during that time had received rent from the tenant.

Held, that even if the Court were not justified in holding that the land had originally been granted for building purposes, the landlord would be precluded from ejecting the tenant without compensation.

[F., 22 C. 820 (826); R., 20 B. 1 (4); 22 B. 1 (14); 27 M. 211 (222) = 14 M.L.J. 25; 3 C.W.N. 255 (259); (1900) P.L.R. 203 (205); D., 16 A. 328 (332); 27 C. 570 (586); 1 Bom.L.R. 191 (197); 3 N.L.R. 72 (78).]

SUIT for a declaration that the plaintiffs were entitled to hold certain land situate at Foras Road in Bombay in perpetuity subject only to a certain rent payable to the defendant, and for an injunction restraining the defendant from executing a decree for possession obtained by him in the Small Cause Court,

* Suit No. 34 of 1882.