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1894.

IN RE
MARINE
INSURANCE
CERTIFICATE.

Order accordingly.

APPELLATE CIVIL.

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

PATEL KILA'BHAI LALLUBHAI (ORIGINAL PLAINTIFF), APPLICANT,
v. HARGOVAN MANSUKH AND OTHERS (ORIGINAL DEFENDANTS),
OPPONENTS.*

1894.

January 17.

*Landlord and tenant—Lease—Ejectment—Title—Tenant cannot dispute
landlord's title.*

The plaintiff sued for possession of a certain house, alleging the expiry of the lease (*kabulāyat*) on which the defendants held it as tenants. The Mámlatdár dismissed the suit, being of opinion that the plaintiff had no title to the house when he granted the lease, and that the house belonged to the defendants when they passed the lease.

Held, reversing the decree, that the defendants (tenants) having executed the *kabulāyat* could not deny the plaintiff's title as a ground for refusing to give up possession, and the Mámlatdár himself, therefore, could not go into the question.

Parbhudás v. Fulba⁽¹⁾ distinguished.

APPLICATION under the extraordinary jurisdiction—section 622 of the Civil Procedure Code (Act XIV of 1882)—against the decision of the Mámlatdár of Daskroi, in the Ahmedabad District.

The plaintiff sued under the Mámlatdárs' Act (Bom. Act III of 1876) to recover possession of a house from the defendants, alleging that they were his tenants under a lease which he had granted to them, and that although the term of lease had expired they refused to vacate.

* Application No. 134 of 1893 under extraordinary jurisdiction.

(1) P. J., 1892, p. 406. The case of *Parbhudás Lakshmidás v. Fulba* above referred to, was an application, No. 141 of 1892, under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code Act XIV of 1882) to reverse the decision of the Mámlatdár of Nadiád in the Ahmedabad District.

The plaintiff Parbhudás Lakshmidás sued the defendant Fulba, widow of Vansang Navalsang, for possession of a house, alleging that she was his tenant and that her term of tenancy had expired. In proof of her holding as his tenant he produced a rent-note signed by her.

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The defendants admitted the execution of the lease, but disputed the plaintiff's title, and claimed the house as their own.

The Mámíatdár dismissed the suit, holding that the plaintiff had no title, his predecessor having purchased the house at a Court sale without the permission of the Court, in contravention of section 294 of the Civil Procedure Code (Act XIV of 1882), and the purchase was, therefore, invalid. He also found that the plaintiff had not taken possession before granting the lease.

The plaintiff applied to the High Court under its extraordinary jurisdiction and obtained a rule *nisi* calling upon the defendants to show cause why the decision of the Mámíatdár should not be set aside.

Chimanlál H. Setalvad, in support of the rule, for the applicant (plaintiff).

Sitánáth Gopináth Ajinkya for the opponents (defendants) showed cause:—Though the Mámíatdár found that the lease was proved, still he did not give effect to it, because he considered it to be a merely nominal transaction. The principal issue in the case was whether we were in possession of the house through the plaintiff. The Mámíatdár found that we were in possession in our own right, and, therefore, he dismissed the suit. There being a conflict of title between the parties, the Mámíatdár could not award the claim—*Parbhudás v. Fulba*⁽¹⁾.

The defendant admitted execution of the rent-note, but denied that it had been acted upon, or that she was the plaintiff's tenant.

The Mámíatdár rejected the plaintiff's claim, finding that the rent-note had never been given effect to; that the defendant was not in possession of the house as the plaintiff's tenant, and that, therefore, he (the Mámíatdár) had no jurisdiction to give a decree against the defendant.

The plaintiff thereupon applied, as above, to the High Court.

SARGENT, C. J.:—We think the Mámíatdár's conclusion on the evidence, although it is not stated as clearly as might be desired, was that the rent-note was not intended to be acted on, but only to be used to resist a possible claim by the husband's relations. We think it was within his jurisdiction to come to that conclusion, and to hold that no tenancy was created.

Rule discharged with costs.

(1) See *supra*, p. 133, note 1.

SARGENT, C. J. :—The Mámlatdár has found that the defendants are not “in possession under a right derived from the plaintiff,” because he considers the lease to be a nominal one. He has come to that conclusion, because he is of opinion, on the evidence, that the property belonged to the defendants when it was passed by them. But the defendants, having passed the *kabuláyat* to the plaintiff, could not be heard to deny the latter’s title as a ground for refusing to give up possession, and the Mámlatdár himself, therefore, could not go into the question. The decision in *Parbhudás v. Fulba* ⁽¹⁾ referred to did not turn upon a conflict of title between the parties, but upon whether the lease was intended to be acted on.

We ought, therefore, under these circumstances, to exercise our extraordinary jurisdiction and make absolute the rule, and reverse the order of the Mámlatdár, and direct possession to be given to the plaintiff. Applicant to have his costs.

Rule made absolute.

(1) See *supra*, p. 133, note 1.

APPELLATE CIVIL.

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

KIRPA'RA'M JHUMEKRA'M MODIA, INSANE, BY HIS GUARDIAN HIS WIFE BA'I NA'THI (ORIGINAL PLAINTIFF NO. 2), APPELLANT, v. MODIA DAYA'LJI JHUMEKRA'M AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Practice—Procedure—Lunatic—Limitation—Striking out lunatic plaintiff's name—Restoration of name—Suit by person not adjudged to be of unsound mind under Act XXXV of 1858.

A plaint as originally framed contained the name of Kirpárám, stated to be of unsound mind, as first plaintiff and of his wife Náthi as his guardian and second plaintiff. When the plaint was actually filed, Kirpárám’s name was struck out by the pleader and Náthi. Subsequently his name was restored on his own application, but the period of limitation prescribed for the suit had then elapsed. The first Court held that under section 7 of the Limitation Act the plaintiff’s claim was not barred. On appeal, the Judge dismissed the suit, holding that the order of the first Court restoring Kirpárám’s name was bad, and that the suit was time-barred at the date of that order. On second appeal,

Held, reversing the decree, that the pleader and Náthi acted beyond their authority in striking out Kirpárám’s name, and that, therefore, the restoration of his name must relate back to the filing of the suit, which was, therefore, not barred.

* Second Appeal, No. 564 of 1892.

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January 18.