

APPELLATE CIVIL.

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

1894.
January 18.

VINA'YAK JANA'RDAN (ORIGINAL PLAINTIFF), APPELLANT, *v.* MAINAT
AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Landlord and tenant—Mirási tenure—Ejectment—Trespasser—Suit by an inámdár to recover possession—Mirási tenure existing—Right of inámdár against trespasser.

An inámdár sued to eject the defendants from certain lands, alleging them to be trespassers. The Courts found that the lands were *mirási* lands, and that one Ganu was *mirásdár*. The defendants had redeemed a mortgage effected by Ganu and claimed to hold possession as against the plaintiff.

Held, that as the land was found to belong to Ganu as *mirásdár*, and as his *mirási* tenure was still subsisting, the plaintiff as inámdár was not entitled to eject the defendants, whether or not they had any rights as against the mortgagee.

THIS was a second appeal from the decision of J. W. Walker, District Judge of Sátára.

Suit to recover possession of land and arrears of rent.

This action was instituted by plaintiff, an inámdár, to recover possession of a certain field together with three years' rent. He alleged that he had leased it to defendant No. 1; that the other defendants were trespassers, and that defendants Nos. 2—4 held it in collusion with defendant No. 1.

Defendant No. 1 admitted the claim.

Defendants Nos. 2, 3 and 4 pleaded that their family held the land as *mirásdár*; that their uncle Ganu had mortgaged it to one Kondi, the husband of defendant No. 1; that they had redeemed the mortgage; that they were the heirs of Ganu, and they claimed to hold the land as *mirásdárs*. They alleged that defendant No. 1 was colluding with the plaintiff.

The lower Courts held that the plaintiff was not entitled to recover as against defendants Nos. 2, 3 and 4, who had redeemed the mortgage. They found that Ganu was *mirásdár* of the lands, and that defendants Nos. 2, 3 and 4 were not *mirásdárs*.

The plaintiff preferred a second appeal to the High Court.

* Second Appeal, No. 574 of 1892.

Vásudeo Rámchandra Joglekar for the appellant (original plaintiff):—The defendants are held not to be mirásdárs, but are mere trespassers as against the plaintiff, and he is entitled to eject them. The fact that they have paid off Ganu's mortgage cannot give them a right against Ganu's landlord.

Mahádeo Bháskar Chavbal for the respondents (original defendants):—The plaintiff sues us as trespassers. But he cannot do so unless he is entitled to immediate possession. He is not entitled to this, as the lower Courts have found that Ganu is mirásdár and his tenure still exists. As Ganu's heirs we have redeemed the mortgage and are now in possession—*Womesh Chunder v. Raj Narain*⁽¹⁾. A trespass during the continuance of the tenancy is no invasion of the landlord's title. Unless the plaintiff shows that he has the right of ejectment against Ganu, the original mirásdár, he is not entitled to evict us—*Cole on Ejectment*, pp. 287, 288. After we redeemed the land from Kondi we offered rent to the plaintiff, but he declined to take it. Even a mortgagor is not entitled to eject a trespasser without payment of the redemption money—*Chinto v. Jánki*⁽²⁾.

SARGENT, C. J.:—The plaintiff, as inámdár, seeks to obtain possession of the land from defendants Nos. 2, 3 and 4. But as the Courts below have found that the land belonged to Ganu as mirásdár, and that the tenure has not come to an end, the plaintiff can have no right to claim possession from defendants Nos. 2, 3, 4, whether or no they were the heirs of Ganu and entitled to redeem and obtain possession of the land from Kondi, to whom the Court has found it had been mortgaged by Ganu. The judgment of Sir B. Peacock in *Womesh Chunder v. Raj Narain*⁽¹⁾ and of Mr. Justice Telang in *Chinto v. Janki*⁽²⁾ shew that the inámdár will not be prejudiced by his not being able to do so by their possession as trespassers against the persons entitled under the mirási tenure. We must, therefore, confirm the decree of the Court below, with costs on appellant.

Decree confirmed.

⁽¹⁾ 10 W. R. Civil Rulings, 15. ⁽²⁾ P. J. for 1892, p. 453; I.L. R., 18 Bom., 51.

1894.

VINA'YAK
JANA'RDAN
v.
MAINAI.