

APPELLATE CIVIL.

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

KHANDERA'O (ORIGINAL DEFENDANT), APPLICANT, *v.* NARSINGRA'O
(ORIGINAL PLAINTIFF), OPPONENT.*

1894.

April 3.

Mámlatdárs' Act (Bombay Act III of 1876), Sec. 15†—Possessory Suit—Mortgagee's possession not on behalf of the mortgagor—Jurisdiction.

The possession by a mortgagee is not possession on behalf of his mortgagor within the meaning of section 15 of the Mámlatdárs' Act (Bombay Act III of 1876) so as to give the Mámlatdár jurisdiction under that section.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Sáheb C. K. Hardikar, Mámlatdár of Koregaon, in the Sátára District.

The plaintiff brought a summary suit in the Mámlatdár's Court against the defendant to recover possession of certain lands. He alleged that he had been in actual possession up to within six months before the institution of the suit, and that the defendant had wrongfully dispossessed him on the 29th April, 1893. The suit was filed on the 27th October, 1893.

The Mámlatdár found that the plaintiff had been in actual possession of the lands up to the 14th November, 1892, and that from that date up to the date of dispossession by the defendant, plaintiff's mortgagee was in possession. He, however, held that the mortgagee was in possession on plaintiff's behalf, and, therefore, awarded the plaintiff's claim.

*Application No. 6 of 1894 under extraordinary jurisdiction.

† Section 15 of the Mámlatdárs' Act (Bombay Act III of 1876) :—

15. On the day appointed the Mámlatdár shall proceed to hear all the evidence that is then and there before him, and to try the following issues, *viz.* :—

(a) If the plaintiff avers that he has been unlawfully dispossessed of any property or deprived of any use :—

(1) Whether the plaintiff or any person on his behalf or through whom he claims was in possession or enjoyment of the property or use claimed up to any time within six months before the suit was filed :

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The defendant applied under the extraordinary jurisdiction of the High Court and obtained a rule *nisi* to set aside the decision, on the ground (*inter alia*) that the plaintiff having had no actual possession within six months prior to the institution of the suit the Mámlatdár had no jurisdiction to entertain it.

Inverarity (with *B. A. Bhágavat*) appeared for the applicant (defendant) in support of the rule.

Dáji A'báji Khare appeared for the opponent (plaintiff) to show cause.

SARGENT, C. J.:—The possession of the plaintiff's mortgagee after 14th November, 1892, cannot, we think, be regarded as a possession "on his behalf" within the meaning of section 15 of Bombay Act III of 1876, and, therefore, the plaintiff, upon the findings of the Mámlatdár, was not in possession six months before the suit, and the Mámlatdár had, therefore, no jurisdiction to entertain it. We must, therefore, make the rule absolute and reverse the decree of the Mámlatdár, and direct him to restore possession to the defendant.

Defendant to have his costs of this application.

Rule made absolute.

APPELLATE CIVIL.

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

VISHNU MAHADEV SONA'R (ORIGINAL DEFENDANT), APPLICANT, v.
DA'GADU VALAD MA'NA'JI (ORIGINAL PLAINTIFF), OPPONENT.*

Transfer of Property Act (IV of 1882), Sec. 135—Construction—Assignment of an actionable claim—Suit by the assignee—Recovery of the full amount of debt.

Vishnu owed a sum of Rs. 483 to Govíndsing, who assigned the debt to the plaintiff for Rs. 200. The plaintiff sued Vishnu to recover the whole amount.

Held, that under section 135 of the Transfer of Property Act (IV of 1882) the plaintiff was entitled to recover the whole amount of the debt.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of

*Application No. 185 of 1893 under extraordinary jurisdiction.

1894.

April 12.