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KHANDERA'O
v.
NARSINGRÁO.

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.

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1882) against the decision of Ráo Bahádur N. N. Nánávati, First Class Subordinate Judge of Dhulia, in a Small Cause suit.

One Govindsing Rámsing was prosecuted by the defendant Vishnu Mahádev Sonár upon a charge of cheating in respect of certain cloth, and was convicted and sentenced to imprisonment and a fine of Rs. 1,000, which sum was to be paid to Vishnu for his loss. Vishnu then filed a civil suit against Govindsing to recover the price of the cloth, obtained a decree, and applied for execution, but the execution proceedings were compromised on the 6th October, 1890, for Rs. 760 paid by Govindsing to Vishnu, who thereupon gave Govindsing a receipt in full discharge of the decretal amount and agreed to take steps to cancel the warrant for the recovery of the fine. The Magistrate, however, declined to cancel the warrant, and Rs. 483 were recovered under it and paid over to Vishnu.

Govindsing subsequently assigned to the plaintiff for Rs. 200 his right to recover this sum of Rs. 483 from Vishnu. The plaintiff gave due notice of the assignment to Vishnu and brought the present suit against him to recover the amount.

The defendant (*inter alia*) pleaded that the plaintiff under section 135 of the Transfer of Property Act (IV of 1882) could not recover more than he had actually paid for the assignment.

The Subordinate Judge in the exercise of his Small Cause Court powers awarded the plaintiff's claim on the ground that the amount of Rs. 483 was held by the defendant for and on behalf of Govindsing.

The defendant applied under the extraordinary jurisdiction, and obtained a rule *nisi* calling upon the plaintiff to show cause why the decree should not be set aside.

Dáji A'báji Khare appeared for the defendant in support of the rule:—Under section 135 of the Transfer of Property Act (IV of 1882) the plaintiff cannot recover more than Rs. 200 actually paid by him. There is a conflict of decisions on this point. The rulings of the Madras and Allahabad High Courts support our contention—*Nilakanta v. Krishnasámi*⁽¹⁾; *Jáni Begam v.*

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(1) I. L. R., 13 Mad., 225.

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Jahángir Khán⁽¹⁾; while the Calcutta High Court has held that, notwithstanding an assignment for a smaller amount, the assignee is entitled to recover the whole amount of the debt—*Grish Chandra v. Kashisauri Debi*⁽²⁾; *Khoshdeb Biswas v. Satar Mondol*⁽³⁾; *Rajendra Narain v. Watson & Co.*⁽⁴⁾.

Hormusji C. Koyáji appeared for the opponent (plaintiff) to show cause:—He relied upon the rulings of the Calcutta High Court referred to above.

SARGENT, C. J.:—The question in this case turns upon the proper construction of section 135, Transfer of Property Act, which says: "Where an actionable claim is sold, he against whom it is made is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it." After giving the section the best consideration in our power we have come to the conclusion that the view of the Calcutta High Court as expressed in *Grish Chandra v. Kashisanri Debi*⁽²⁾ and *Khoshdeb Biswas v. Satar Mondol*⁽³⁾ is the correct one.

In *Nilakanta v. Krishnasámi*⁽⁵⁾ the learned Chief Justice remarks that "if the debtor is wholly discharged in law by payment of a certain sum, it seems to follow that the creditor is only entitled to recover that sum." But if that were intended, surely the learned compilers of the Act might be expected to have said so; for the two propositions are quite distinct from a legal point of view. In *Jáni Begam v. Jahángir Khán*⁽¹⁾ Mr. Justice Straight arrived at the same conclusion by discussing the mischief at which he considered the section was aimed, and the impossibility of distinguishing, "as regards morality, between the status of the assignee after suit and decree than before."

But whatever truth there may be in the above remarks, we cannot, as Mr. Justice Willes says in *Fuentes v. Montis*⁽⁶⁾ in discussing the Factors' Act in England, which gave rise to so

(1) I. L. R., 9 All. 476.

(2) I. L. R., 13 Calc., 145.

(3) I. L. R., 15 Calc., 436.

(4) I. L. R., 18 Calc., 510.

(5) I. L. R., 13 Mad., at p. 229.

(6) L. R., 3 C. P., 268, at p. 283.

much difference of opinion, "from any notions of expediency" (or morality we may add) "which I may entertain, to go beyond that which I find written." We are "compelled to deal with the Acts of Parliament according to the expressions" we "find there." Applying this rule of construction we cannot, in the proper exercise of our function as a Court of construction, do more than give effect to the plain and unambiguous language of the section. We may add, however, that we agree with the Chief Justice of the Madras High Court in his opinion that clause (d) in the section applies only to a state of facts existing at the time of the purchase of the actionable claim. We must, therefore, discharge the rule, with costs.

Rule discharged.

MATRIMONIAL JURISDICTION.

Before Mr. Justice Farran.

W. G. MAYHEW (PETITIONER) v. SARAH ANNA MAYHEW
(RESPONDENT).*

*Divorce—Husband and wife—Suit against wife—Costs of wife—Practice—
Procedure.*

In a suit for a divorce instituted by a husband against his wife the Court has a discretion to make the husband pay the wife's costs already incurred, and to give security for her future costs.

Rule 158 (as amended 14th July, 1875) of the English Rules and Regulations in divorce cases which govern the practice of the Court in England⁽¹⁾, ought, having regard to section 7 of the Indian Divorce Act IV of 1869, to govern the practice of Indian Courts.

* Suit No. 407 of 1894.

(1) Rule 158.—After direction given as to the mode of hearing or trial of a cause or in an earlier stage of a cause by order of the Judge Ordinary, or of the Registrars, to be obtained on summons, a wife who is petitioner, or has entered an appearance as respondent in a cause, may file her bill or bills of costs for taxation as against her husband, and the Registrar, to whom such bills of costs are referred for taxation, shall, when directions as to the mode of hearing or trial have been given, ascertain what is a sufficient sum of money to be paid into the Registry, or what is sufficient security to be given by the husband to cover the costs of the wife of and incidental to the hearing of the cause; and shall thereupon issue an order upon the husband to pay or secure the said sum within a time to be fixed by the Re-

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