

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

RAKHMA VALAD JAVJI, DECEASED, BY HIS HEIRS HIS SONS HANMANTA AND OTHERS (ORIGINAL DEFENDANTS), APPLICANTS, v. TULA'JI VALAD RA'MJI AND OTHERS (ORIGINAL PLAINTIFFS), OPPONENTS.*

1894.

August 27.

Mámlatdár—Decree passed by Mámlatdár—Execution—Execution of Mámlatdár's decree by Mámlatdár under directions of Collector—Mámlatdárs' Act (Bom. Act III of 1876), Sec. 17 †.

A Mámlatdár having under the direction of the Collector executed a decree passed by himself directing the removal of a dam,

Held that though it might be improper for the Collector to issue such a direction, which legally could only issue from the High Court, the High Court would not set aside the execution if otherwise valid. Section 17 of the Mámlatdárs' Act (III of 1876) is imperative, and leaves to the Mámlatdár no discretion as to the duty of enforcing the decree. The Act does not purport to provide detailed rules as to applications for execution, and a Mámlatdár's Court is not governed as to execution of decrees by the ordinary rules of procedure; and provided the procedure followed gives effect in the end to the intention of section 17, the Court will not interfere.

Held also that under section 17 of the Mámlatdárs' Act III of 1876 a Mámlatdár was not precluded from himself supervising the execution of a decree in a case in which the village officers were from interest or other cause unlikely to give proper effect to it.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order of Ráo Sáheb N. V. Bhat, Mámlatdár of Sinnar, in the Násik District, passed in the execution of a decree in a possessory suit.

The applicants built a dam across the river Mahálungi in the Násik District and obstructed the flow of water, whereupon the

* Application No. 120 of 1893 under the extraordinary jurisdiction.

† Section 17 of the Mámlatdárs' Act (Bom. Act III of 1876) :—

17. If a Mámlatdár's decision be for awarding possession or restoring a use he shall issue an order to the village officers to give effect thereto.

If it be for granting an injunction, he shall cause the same to be prepared in the form of Schedule C, and shall deliver or tender the same then and there to the defendant, if he be present, and if he be not present, shall send it to the village officers to be served upon him.

When the Mámlatdár awards costs, such costs, together with the costs of execution, shall be recovered from the party in person, and in the event of non-payment, by the attachment and sale of his property.

1894.

RAKHMA
v.
TULÁJI.

opponents sued them in the Court of the Mámíatdár at Sinnar, and on the 24th June, 1885, obtained a decree directing that an opening should be made in the dam so as to give the opponents (plaintiffs) the same amount of water as they had previously enjoyed.

The applicants then filed a suit in the Subordinate Judge's Court of Sinnar to set aside the Mámíatdár's decree, but this suit failed, and the order was confirmed.

On the 15th June, 1891, the opponents applied to the Mámíatdár to execute his decree of 24th June, 1885, and to have the dam opened. The Mámíatdár referred them to the Civil Court for an order to that effect, whereupon they (opponents) applied to the Collector of the district on the 5th April, 1892, requesting him to direct the Mámíatdár to make an opening in the dam and allow the water to flow in accordance with the Mámíatdár's decree. The Collector on the 15th April made the following endorsement on the application, and forwarded it to the Assistant Collector :—

“ It appears from the reply received by the applicant from the Court on his application, and placed with the proceedings, that the prohibitory order passed by the Civil Court enjoining the Mámíatdár not to execute the order passed by him came to an end when the suit pending in the Civil Court was disposed of. Therefore there appears to be no objection to the execution of the order of the Mámíatdár's Court from the táluka (office). May this be known.”

On the 27th May, 1892, the Mámíatdár instead of issuing orders to the village officers under section 17 of the Mámíatdár's Act (III of 1876) to execute the decree, went himself to the place and had a portion of the dam removed under his own supervision.

The applicants now applied to the High Court under its extraordinary jurisdiction, contending that the Collector and the Assistant Collector had no jurisdiction to move in the matter; that the Mámíatdár acted with material irregularity in acting upon orders, and that the execution had been illegal and had caused them serious loss and damage. They obtained a rule *nisi* calling upon the plaintiffs to show cause why the portion of the dam removed by the Mámíatdár should not be restored.

Bagnson with *Mahádev B. Charbal* appeared for the applicants (defendants) in support of the rule:—The Collector had no authority to interfere in the matter. When the *Mámlatdár* refused to execute the decree, the proper remedy of the plaintiffs was to apply to the High Court and not to the Collector. The *Mámlatdár's* powers are limited entirely by the *Mámlatdárs' Act*. The *Mámlatdár* having refused to execute the decree, he was *functus officio* and had no power either to review his order or to do anything in the matter under the Collector's order. Further, the action of the *Mámlatdár* was in obedience of the order of his superior officer the Collector. It was not a judicial act. The Collector had no authority to issue an order to the *Mámlatdár* in a matter arising under the *Mámlatdárs' Act*—*Rávlojiráo v. Satu* ⁽¹⁾. Moreover, the Collector ought to have issued notice to us and to have heard us before acting. His order was *ex parte* and illegal. Section 17 of the *Mámlatdárs' Act* lays down certain procedure in execution of a decree. It provides that the execution of the *Mámlatdár's* decree should be entrusted to the village officers. Here the *Mámlatdár* himself executed his decree. He had no authority to do this under the Act.

Jang (Advocate General) with *Dáji Abáji Khare* appeared for the opponents (plaintiffs) to show cause:—The Collector appears to have advised the *Mámlatdár* to execute his decree, the *Mámlatdár* having been under an erroneous impression that the decree in the civil suit prevented him from doing so. No harm or injustice of any kind has been done. It was not necessary for the Collector to give to the defendants notice of our petition to him. The Collector did not himself take any action in the matter. What the *Mámlatdár* did was justifiable, and the fact that he did it under the advice of the Collector cannot make any difference. It is urged that the *Mámlatdár* ought to have ordered the village officers to execute the decree. It appears, however, from our petition to the Collector that the village officers were interested in maintaining the dam and would put obstacles in our way. Owing to this circumstance the *Mámlatdár* himself supervised the execution of the decree. Even

(1) P. J., 1879, p. 5.

1894.

RAKHMA
v.
TULÁJI.

1894.

RAHMA
v.
TULAJI.

supposing that the Mámlatdár has committed an error in law, still that would not be a sufficient ground for interference under section 622 of the Civil Procedure Code—*Hari Bhikáji v. Naro Vishvanáth*⁽¹⁾. If the defendants are aggrieved by the execution of the decree, they can seek redress by an independent proceeding, but not by an application under the extraordinary jurisdiction—*Motilal Káshibhai v. Nána*⁽²⁾.

FULTON, J.:—We do not think we should interfere in this case. The Collector doubtless was not legally justified in giving directions in a case under the Mámlatdárs' Act, but we agree with the learned Advocate General that as his intervention merely resulted in the Mámlatdár's taking steps to give effect to the decree, it furnishes no ground for action on our part. Section 17 is imperative, and left the Mámlatdár no discretion as to the duty of enforcing the decree. The Collector's memorandum at most merely directed him to obey the law; and though it may have been improper for the Collector to issue such a direction, which legally could only issue from this Court, we cannot on account of the impropriety set aside the execution if otherwise valid. The argument that because the Mámlatdár had, owing to a misapprehension, at first refused to execute the decree he was precluded from enforcing it afterwards when the misapprehension had been removed, will not, we think, hold good. The Act does not purport to provide detailed rules as to applications for execution. It does not even prescribe any application at all. It simply requires the Mámlatdár to issue orders to give effect to his decree, and the fact of his failing at first to do so does not seem to render the obligation any less binding. Cases such as *Manjunáth v. Venkatesh*⁽³⁾, *Mungul Pershad v. Grija Kant*⁽⁴⁾, *Rám Kirpal v. Mussumat Rup Kuar*⁽⁵⁾ and *Bani Ram v. Nanku Mal*⁽⁶⁾ do not appear applicable to Courts, like the Mámlatdárs, which are not governed as to execution of decrees by the ordinary rules of procedure; and provided the procedure followed gives effect, in the end, to the intention of section 17, we ought not, we think, to interfere.

(1) I. L. R., 9 Bom., 433.

(4) L. R., 8 I. A., p. 123.

(2) I. L. R., 18 Bom., 35.

(5) L. R., 11 I. A., p. 37.

(3) I. L. R., 6 Bom., p. 54.

(6) *Ibid.*, p. 181.

Next it was urged that the Mámlatdár's action was at variance with the provisions of section 17, inasmuch as instead of issuing orders to the village officers to give effect to the decree he went himself to the spot and got the dam cut under his own supervision. This procedure may perhaps have been unusual, but the allegation contained in the 11th páragraph of the opponents' petition of 5th April, 1892, that the village officers of Thangaon were interested in the proceeding, has not been contradicted by affidavit or in argument, and if true, would probably justify the execution of the decree otherwise than through their agency. Section 17 prescribes the ordinary method to be adopted, but ought not, we think, to be read so literally as to compel the Mámlatdár to employ interested parties to give effect to the decree. In all cases the law must be construed in a reasonable manner, but it would defeat the intention of the Act to hold that a Mámlatdár was precluded from himself supervising the execution of a decree in a case in which he thought the village officers were from interest or other cause unlikely to give proper effect to it. Under the circumstances, then, we do not think that we are in a position to hold that in going to the spot to enforce the decree the Mámlatdár acted erroneously.

Lastly, it was said that in cutting the masonry dam the Mámlatdár had exceeded the limits of the decree, but as the existence of this dam had been adjudged to be incompatible with the customary supply of water to the opponents it is difficult to see how else he could give effect to the decree. Whether the applicants may now restore their old kutchá dams in such a way as not to interfere with the due supply of water to the opponents, is a point on which we can offer no opinion, and in respect of which, so far as we are aware, no orders have been issued by the Mámlatdár. But the applicants must take care that, if they take any such steps, they must not deprive the opponents of the supply of water awarded to them by the decree, which the Civil Courts have refused to set aside. Under the circumstances we discharge the rule with costs.

Rule discharged.

1894.

RAKHA
v.
TULAJI.