

APPELLATE CIVIL.

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

VINAYAK VISHVANA'TH BHOPLE (ORIGINAL PLAINTIFF), APPLICANT,
v. BALU BIN BHIKU AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS.*

1895.
April 2.

Mámlatdár's Act (Bom. Act III of 1876)—Delivery of possession in execution of a decree of a civil Court—Subsequent lease to the judgment-debtor—Refusal of the Mámlatdár to restore possession after the expiration of the lease.

Vináyak obtained possession of land from Bálu in execution of a decree of a civil Court. After obtaining possession, Vináyak leased the land to Bálu. On Bálu's refusal to vacate the land on the expiration of the lease, Vináyak brought a possessory suit in the Mámlatdár's Court. The Mámlatdár rejected the plaint, holding that he ought not to order restoration of possession of the land again and again.

Held, that a fresh cause of action accrued to Vináyak on the refusal of Bálu to give possession on the expiry of the lease, and that the Mámlatdár was wrong in declining to accept the plaint.

THIS was an application under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order of Ráo Sáheb Rámchandra Vishnu Bakre, Mámlatdár of Mahád in the Thána District, rejecting a plaint in a possessory suit.

The applicant had obtained a decree in Suit No. 824 of 1892 of the file of the Subordinate Judge's Court at Mahád for possession of the land in dispute against the opponents. On the 20th October, 1893, he, in execution of the decree, got possession of the land together with the standing crop thereon. Subsequently he let out the land to the opponents under a kabuláyat dated the 27th October, 1893, which was to expire on the 6th May, 1894. The opponents having failed to restore possession to the applicant on the appointed day, he on the 10th October, 1894, presented a plaint in the Mámlatdár's Court praying for delivery of possession. The Mámlatdár rejected the plaint on the 16th October on the ground that he did not think it proper to restore possession of the land to the applicant in a summary suit, as he (applicant) let out the land to the opponents, who were his judgment-debtors in the civil suit, at his own risk. The Mámlatdár referred the applicant to a civil suit.

*Application No. 232 of 1894 under the extraordinary jurisdiction

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The applicant applied under the extraordinary jurisdiction urging (*inter alia*) that the Mámlatdár failed to exercise the jurisdiction vested in him by law. A rule *nisi* was issued calling on the opponents to show cause why the order of the Mámlatdár should not be set aside.

Dhondy P. Kirloskar appeared for the applicant in support of the rule:—Under the Mámlatdárs' Act (Bom. Act III of 1876) the only point to be considered is whether the tenancy had expired and whether the suit was instituted within six months from the determination of the tenancy.

There was no appearance for the opponents.

PARSONS, J.:—The fact that the opponent obtained possession on the 20th October, 1893, cannot affect the question as to the right of the opponent to be put in possession of the land leased to the opponent on the 27th October, 1893.

A fresh cause of action accrued to the applicant on the refusal of the opponent to give up possession on the expiry of that lease, and the Mámlatdár was wrong in declining to accept the plaint. We make the rule absolute and return the plaint to the Mámlatdár, for him to dispose of it according to law. Costs to abide the result.

Rule made absolute.

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

1895.
April 4.

KALA'PPA' BIN GIRIA'PPA' AND OTHERS, MINORS, BY THEIR GUARDIAN MOTHER TUNGA'VA (ORIGINAL DEFENDANTS), APPELLANTS, v. SHIVA'YA BIN SHIVLINGAYA (ORIGINAL PLAINTIFF), RESPONDENT.*

Mortgage—Mortgage with possession—Mortgagee to pay Government revenue—Sale for arrears of revenue—Purchase by mortgagee at sale—Subsequent suit by mortgagor for redemption—Government sale caused by default of mortgagee.

Where mortgaged property was sold at a Government sale for arrears of revenue,

Held, that if the sale took place owing to the mortgagee's default, it would not affect the mortgagor's right to redeem.

*Second Appeal, No. 36 of 1893.