

FULL BENCH.

APPELLATE CIVIL.

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

1895.
January 28.

GOMA AND OTHERS (ORIGINAL DEFENDANTS), APPLICANTS, v.
NARSINGRA'O (ORIGINAL PLAINTIFF), OPPONENT.*

Mámlatdárs' Act (Bom. Act III of 1876), Secs. 4, 15, Cl. (a), and 18†—Landlord and tenant—Dispossession of tenant—Possessory suit by landlord—Possession on behalf of landlord.

A landlord who has let out his land to tenants cannot, on the tenants being dispossessed, bring a possessory suit in the Mámlatdár's Court under the provisions of the Mámlatdárs' Act (Bombay Act-III of 1876). The tenants cannot be said to be in possession "on behalf" of the landlord under section 15, clause (a), of the Act.

* Application No. 123 of 1894 under the extraordinary jurisdiction.

† Sections 4, 15, clause (a), and 18 of the Mámlatdárs' Act (Bombay Act III of 1876) are as follows:—

4. Every Mámlatdár shall preside over a Court, which shall be called a Mámlatdár's Court, and which shall have power within such territorial limits as may from time to time be fixed by the Governor in Council to give immediate possession of lands, premises, trees, crops, or fisheries, or of any profits of the same, or to restore the use of water from wells, tanks, canals or water-courses to any person who shall have been dispossessed or deprived thereof otherwise than by due course of law, or who shall have become entitled to the possession or restoration thereof by reason of the determination of any tenancy, or other right of any other person in respect thereof.

The said Court shall also have power within the said limits, when any person is disturbed or obstructed, or when an attempt has been made to disturb or obstruct any person, in the possession of any lands, premises, crops, trees or fisheries, or in the use of water from any well, tank, canal or water-course, or of the use of roads or customary ways to fields, to issue an injunction to the person causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from causing or attempting to cause any such further disturbance or obstruction.

But no suit shall be entertained by a Mámlatdár's Court unless it be brought within six months from the date on which the cause of action arose.

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.

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 Bápúráv Janárdhan Shrotri, Mámлатdár of Koregaum in the Sátára District.

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This was a possessory suit brought by the opponent (plaintiff) Narsingráo against the applicants (defendants) under the Mámлатdárs' Act (Bombay Act III of 1876). He alleged that he had let the land in dispute to his tenants under a rent-note executed by them to him for ten years; that the defendants took wrongful possession of the same from his tenants; that as it was inconvenient for the tenants to file the suit he himself filed it, and that the tenants were cited as witnesses on his behalf.

The following is the translation of a portion of the rent-note:—

"This land we took in our possession about fifteen days ago agreeing to cultivate it for ten years from this year. So we shall till the land and take all the crop in it. We shall pay you rupees forty-five in cash by two Government instalments (that is, at the time when the instalments of assessment are paid to Government) without remission. We shall take your receipt. We shall keep in repairs the boundaries and the boundary marks. You shall pay the *judi* and the local fund for the land."

"* There are two mango trees and three bábul trees on the land. We shall take care of them. If the mango trees bear fruit, we shall take one-third part of them and give a two-thirds part. We will not cut any tree, &c. We shall thus cultivate the land for ten years and in the eleventh year we shall restore it to you."

The Mámлатdár found that the land was in the plaintiff's possession and that the defendants wrongfully obtained possession within six months before the institution of the suit. He, therefore, passed a decree for possession in plaintiff's favour.

The defendants applied under the extraordinary jurisdiction on the grounds (*inter alia*) that the Mámлатdár had no jurisdiction to entertain the suit, and that the plaint itself having disclosed that

(2) Whether the defendant is in possession at the time of the suit, and if so whether he obtained possession otherwise than by due course of law.

18. The party to whom the Mámлатdár shall give immediate possession, or restore a use, or in whose favour an injunction has been granted, shall continue in possession or use until ousted by a decree or order of a Civil Court.

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persons other than the plaintiff were in actual possession, the suit ought to have been dismissed. A rule *nisi* was issued calling on the plaintiff to show cause why the decision of the Mámlatdár should not be set aside.

Macpherson (with *Gangarám B. Rele*) appeared for the opponent (plaintiff) to show cause.

Lang (Advocate General) with *Báláji Abáji Bhágvat* appeared for the applicants (defendants) to support the rule.

The Court (Sargent, C. J., and Fulton, J.) referred to a Full Bench the point as to the Mámlatdár's jurisdiction to entertain the suit at the instance of the plaintiff who was not in possession. The case now came on for argument before Sargent, C. J., Farran and Fulton, JJ.

Macpherson:—We submit that the Mámlatdár had jurisdiction to entertain the suit, and that his decision is correct. When a tenant is dispossessed it is virtually the landlord who is dispossessed, because a tenant derives possession through his landlord. The first paragraph of section 4 of the Mámlatdárs' Act is that in the case of a possessory suit the plaintiff need not be in actual possession at the time of dispossession, the language used being "give immediate possession of lands, premises, trees, crops, fisheries, or of any profits of the same." Rent is profit of the land; and even supposing that rent is not profit, still under our rent-note we are to get the fruits of the mango trees standing on the land. We are thus entitled to the profits of the land, and that being so, our suit was clearly within the Mámlatdár's cognizance.

[FARRAN, J.:—The first paragraph of section 4 empowers the person who is entitled to immediate possession to bring the suit. You are not entitled to possession, because under the terms of the rent-note the tenants are to remain in possession for ten years.]

Our connection with the land is not wholly severed because under the rent-note we are entitled to the profits of the land in the shape of mango fruits. It is our interest to see that the tenants continue in possession of the lands and also give us the produce or profit in addition to the rent. Our contention is further strengthened by the second paragraph of the section. That

paragraph relates to suits for injunctions, and therein the words "any profits of the same" are omitted. The omission indicates that in a suit for injunction the plaintiff must be in actual possession--*Desai Málábhai v. Keshavbái*⁽¹⁾.

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Section 15 of the Mámlatdárs' Act has laid down certain sets of issues to be raised in cases of possession and in cases of injunction. The issues which relate to suits for possession also contemplate the case of the plaintiff who is not in actual possession, because the words are "whether the plaintiff or any person on his behalf or through whom he claims."

We contend that possession of the tenant is possession on behalf of the landlord, and that a suit instituted by the landlord for recovery of possession when his tenant is wrongfully ousted can be maintained in the Mámlatdár's Court under the provisions of the Mámlatdárs' Act.

Lang (Advocate General):—A possessory suit in the Mámlatdár's Court at the instance of a person who was not in actual possession at the time of dispossession cannot lie. A mortgagor out of possession cannot bring a suit to recover possession of the property when the mortgagee in possession is ousted by a third party. It has been held that the possession of the mortgagee is not possession on behalf of the mortgagor—*Khanderao v. Narsingrao*⁽²⁾. Similarly, possession of tenants cannot be possession on behalf of the landlord within the requirements of the Mámlatdárs' Act. A person in possession on behalf of the plaintiff means a person who is in possession with plaintiff's permission such as his servant or agent. The question whether the landlord can bring a suit for possession when his tenant is ousted, has been decided, and it has been held that he cannot—*Fohra Uka Dáda v. Bai Jivi*⁽³⁾.

The judgment of the Full Bench was delivered by

SARGENT, C. J.:—The Mámlatdár has found that the plaintiff was in possession of the land in dispute by his tenants to whom he alleged he had let it for ten years. The question referred to us is whether such constructive possession is sufficient to give the

(1) I. L. R., 12 Bom., 419 at p. 421.

(2) P. J., 1894, p. 130; I. L. R., 19 Bom., 289.

(3) *Ibid.*, p. 217.

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plaintiff the power to invoke the aid of the Mámlatdár's Court in the event of the tenants being dispossessed.

The issue which the Mámlatdár has to try where the plaintiff avers that he has been dispossessed, is, as provided by section 15, clause (a), of the Mámlatdárs' Act III of 1876, "whether the plaintiff or any other person on his behalf or through whom he claims was in possession." The real question, therefore, for consideration is, whether the tenants can be said to be in possession on behalf of their landlord. Now, no doubt, the owner is deemed to be constructively in possession through his tenants for certain purposes. But the tenants cannot be properly said to be in possession "on behalf" of their landlord. The expression in its plain and natural meaning refers to actual possession by a servant or agent, such as a steward or bailiff, and that this was the meaning in which it was intended to be used, derives confirmation from section 4, which shows that the object of creating the Mámlatdár's Court was to give "immediate" possession, and also from the language of section 18 which implies that the plaintiff, if successful, is to be put into immediate possession which is to continue until the plaintiff is ousted by a decree of the Court. The policy of the Act seems to have been to afford summary relief to the same persons as would have been entitled to sue in ejectment, that is, the persons legally entitled to the actual possession. We must, therefore, hold contrary to what would appear to have been held in Civil Application No. 81 of 1892⁽¹⁾, that the plaintiffs were not entitled to sue in the Mámlatdár's Court.

(1) Civil Application (under the extraordinary jurisdiction) No. 81 of 1892:—

This was an application under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Sáheb Janárdan Eknáth, Mámlatdár of Niphád in the Násik District.

Plaintiff Gopála Mahádu Fáli brought a possessory suit in the Mámlatdár's Court under the Mámlatdárs' Act (Bombay Act III of 1876) against one Bhimáji Jayáji Pátíl and three others. In order to prove that he was in possession of the lands in dispute the plaintiff produced three rent-notes, Exhibits A, B, C, passed to him by the tenants to whose possession obstruction was caused by the defendants. The Mámlatdár found that the possession of the tenants was the possession of the landlord (plaintiff), and that obstruction to the tenant's possession was obstruction to the landlord's possession. He, therefore, allowed the claim.

We must, therefore, make absolute the rule *nisi*, reverse the decree of the Mámlatdár, and dismiss the plaintiff's suit, with costs on plaintiff throughout.

Rule made absolute. Decree reversed.

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Before Mr. Justice Jardine and Mr. Justice Ranade.

IBRA'HIMJI ISSAJI AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, v. BEJANJI JAMSEDJI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

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Valuation of suit—Suit for account—Suit Valuation Act (VII of 1887), Sec. 8—Court Fees' Act (VII of 1870), Sec. 7 (iv), Cl. (f), and Sec. 11—Appeal—Bombay Civil Courts Act (XIV of 1869), Sec. 26—Practice.

In a suit for an account of partnership dealings, the plaintiffs valued the claim approximately at Rs. 600. The Subordinate Judge passed a decree awarding to the plaintiffs a sum of Rs. 30,830-9-2. The plaintiffs thereupon paid an additional court fee of Rs. 900 under section 11 of the Court Fees' Act (VII of 1870). The defendants appealed to the High Court from the decree of the Subordinate Judge. The plaintiffs objected that the appeal lay to the District Judge, and not to the High Court.

Held, that the value of the subject-matter of the suit exceeded Rs. 5,000; the appeal, therefore, lay to the High Court under section 26 of Act XIV of 1869.

APPEAL from the decision of Ráo Bahádur Chunilál Máneklál, First Class Subordinate Judge of Poona, in Suit No. 237 and 1888.

The plaintiffs sued for an account of partnership transactions from 1886 till the date of its dissolution on 13th December, 1887, and to recover what might be found due to them as their share of the profits.

* Appeal No. 6 of 1893.

The defendant preferred an application under the extraordinary jurisdiction, and obtained a rule *nisi* requiring the plaintiff to show cause why the order of the Mámlatdár should not be set aside on the ground (*inter alia*) that the Mámlatdár had no jurisdiction to entertain the suit, as the plaintiff was not in actual possession of the lands within six months before the institution of the suit.

Vásudeo G. Bhanárkar appeared for the opponent (plaintiff) to show cause.

Nagindás T. Marphatia appeared for the applicant (defendant) in support of the rule.

The Court (Parsons and Telang, JJ.) passed an order discharging the rule with costs. 13th September 1892.