

FULL BENCH.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Jardine,
and Mr. Justice Candy.

RAMCHANDRA SUBRÃO (ORIGINAL DEFENDANT), APPLICANT, v. RAVJI
BIN VITHU PARIT (ORIGINAL PLAINTIFF), OPPONENT.*

1895.

March 4.

Execution—Decree—Decree for possession—Execution of decree—Dispossession of a third person not a party in execution—Possessory suit by third person against decree-holder—Cause of action—Mámlatdár's Act (Bom. Act III of 1876)—Jurisdiction of Mámlatdár—Civil Procedure Code (Act XIV of 1882), Secs. 263 and 632.

Where in execution of a decree a person not a party to the suit is dispossessed, his dispossession does not give him a cause of action within the jurisdiction of the Mámlatdár. Section 332 of the Civil Procedure Code (Act XIV of 1882) applies.

The delivery of possession under section 263 of the Civil Procedure Code contemplates the decree-holder being placed in actual possession by possibly dispossessing, in the eye of law, a third person who is not affected by the decree. The mere formal delivery of possession cannot of itself effect such dispossession unless the deprivation of possession be complete as a fact, a conclusion which the Court has to form on the whole of the evidence. It does not make any difference if such a decree is in a partition suit.

This was an application under the High Court's extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Sáheb K. B. Bhide, Mámlatdár of Chikodi in the Belgaum District.

The applicant Rámchandra Subráo obtained a civil Court's decree against Rámchandra Shripat and another for partition of certain lands and recovery of possession of a third share therein, and in execution of that decree recovered possession through the Collector of Belgaum.

The opponent Rávji bin Vithu Parit then brought a possessory suit against the applicant in the Mámlatdár's Court, alleging that he had been in possession and enjoyment of the lands for many years, and that the applicant (defendant) Rámchandra wrongfully obstructed his enjoyment thereof. He prayed for the removal of the obstruction.

*Application No. 50 of 1894 under the extraordinary jurisdiction.

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The Mámlatdár finding, on the evidence, that the opponent (plaintiff) had been in actual enjoyment of the lands, and was not present when possession was given to the applicant (defendant), awarded the claim and passed a decree for the plaintiff.

The applicant thereupon applied to the High Court under its extraordinary jurisdiction, and obtained a rule nisi calling on the opponent Rávji to show cause why the Mámlatdár's decree should not be set aside.

Báláji A. Bhágvat appeared for the applicant (defendant) in support of the rule.

Máneksáh J. Taléyákhán appeared for the opponent (plaintiff) to show cause.

The case came on for argument before a Division Bench composed of Bayley, Acting C. J., and Fulton, J., who referred the point involved in the case to a Full Bench with the following remarks:—

Judgment.—Entertaining some doubt whether in this case we ought to follow the decision in *Rámáji Govind v. Yaswada*⁽¹⁾ we refer to a Full Bench the following questions which appear to arise in this application:—

Whether a delivery of possession in execution of a decree for partition has the effect of dispossessing a third person not a party to the suit who was previously in possession, and was not present when the delivery took place?

If so, whether such dispossession constitutes a cause of action under the Mámlatdárs' Act?

Attention is called to the decisions in *Gulábbhai v. Jínábbhai*⁽²⁾ and *Vináyak v. Jánkibái*⁽³⁾

The point was argued before a Full Bench consisting of Sargent, C. J., and Jardine and Candy, J.J.

Báláji A. Bhágvat for the applicant (defendant):—Where a party is dispossessed in execution of a decree of a civil Court,

(1) P. J., 1878, p. 56.

(2) I. L. R., 13 Bom., 213.

(3) P. J., 1894, p. 195.

a Māmlatdār has no jurisdiction to entertain a possessory suit filed by that party. Even when a decree-holder is put in formal possession of the property, the remedy of the person in actual possession is under the Civil Procedure Code and not in the Māmlatdār's Court. The fact that the person dispossessed in execution of a civil Court's decree was not present at the time of the delivery of possession is immaterial;—section 332 of the Civil Procedure Code; *Rāmji Govind v. Yaswada*⁽¹⁾.

Māneshah J. Tubeyarkhān for the opponent:—We had nothing to do with the civil Court's decree, as we were not a party to that decree. We had been for a long time in possession of the land. Our possession was legal, and it was wrong to deprive us of our possession in our absence by proceedings of which we had no notice and with which we were in no way connected.

The judgment of the Full Bench was delivered by

SARGENT, C. J.:—The delivery of possession, which is directed to be given by section 263 of the Civil Procedure Code, contemplates the decree-holder being placed in actual possession, and the language of section 332 of the Civil Procedure Code shows that the possibility is assumed that in effecting such delivery a third person may become dispossessed, by which must be understood that such a state of things may have occurred as would amount to his dispossession in the eye of law, or what is sometimes called juridical dispossession. The mere formal delivery of possession, which consists in the reading by the officers on the land of the order for putting the decree-holder in possession, and taking a receipt from him, cannot of itself effect such dispossession. Whether what occurs on the occasion of giving such formal delivery has that effect, is a question of law and fact; but it is clear, we think, on the authorities, that there is no dispossession in the eye of the law, unless the deprivation of possession is complete as a fact, a conclusion which the Court has to form on the whole of the evidence—see *Lindley's Jurisprudence*, p. cxxiii—although what may occur may amount to a disturbance or obstruction of possession.

(1) P. J., 1878, p. 56.

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Again, he who occupies land in the absence of the possessor does not, according to Savigny, "at the moment acquire juridical possession." Savigny, page 261. In other words, it must be followed up by other acts of possession of which the third party has notice. This would seem to afford the only possible answer to the abstract question referred to us; for as regards a third person—assuming, as we do, that he was not affected by the decree—it cannot matter that the decree was in a partition suit. In *Rāmāji Govind v. Yaswada*⁽¹⁾ it is quite possible that the Court considered that the third person was present and did not obstruct.

With respect to the second question, we are of opinion that, in the case of dispossession of a third party in execution of a decree, section 332 of the Code of Civil Procedure applies, and that it does not constitute a cause of action within the jurisdiction of the Māmlatdār.

(1) P. J., 1878, p. 56.

FULL BENCH.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Jardine
and Mr. Justice Candy.*

1895.

March 12.

VENKAJI KRISHNA NADKARNI AND OTHERS (ORIGINAL PLAINTIFFS),
APPELLANTS, v. LAKSHMAN DEVJI KANDAR (ORIGINAL DEFENDANT
No. 1), RESPONDENT.*

*Landlord and tenant—Notice to quit—Land Revenue Code (Bom. Act V of 1879),
Sec. 84—Transfer of Property Act (IV of 1882), Secs. 111 and 117—Annual
tenancy—Denial of lessor's title prior to suit—Sufficient cause to enable lessor
to recover possession without notice to quit—Landlord's right of forfeiture.*

In cases not falling under section 117 of the Transfer of Property Act (IV of 1882), a denial of the lessor's title prior to suit is, notwithstanding section 84 of the

* Second Appeal No. 883 of 1892.

† Section 84 of the Land Revenue Code (Bom. Act V of 1879):—

"84. An annual tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

"An annual tenancy shall require for its termination a notice given in writing by the landlord . . . at least three months before the end of the year of tenancy, at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E, or to the like effect."