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and, according to the plaintiffs, defendants Nos. 1 to 4 are not in the position of trustees at all. The case of *Subramania Pillai v. Krishnaswamy Somayajiar*⁽¹⁾, relied upon on behalf of the respondents, no doubt, supports the view taken by the lower appellate Court that the suit is within the scope of section 92, Civil Procedure Code. But generally for the reasons given by my Lord the Chief Justice, I am unable to agree with the view taken in that case. Unless the suit falls clearly within the scope of section 92, I do not think that the mere fact that it resembles in certain respects a suit which may properly be brought under section 92, can afford any good ground for holding that section 92 should apply to a suit like the present. I feel quite clear that a suit of this nature is not within the scope of section 92 of the Civil Procedure Code.

The *ratio decidendi* in *Miya Vali Ulla v. Sayed Bava Santi Miya*⁽²⁾, which was a case decided with reference to section 539 of the Code of 1882, appears to me to lend support to the view which we take of the scope of the corresponding section of the present Code.

*Decree set aside and
case remanded.*

J. G. R.

⁽¹⁾ (1919) 42 Mad. 668.

⁽²⁾ (1896) 22 Bom. 496.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

MAHADEO GOVIND SUKTANKAR (ORIGINAL PLAINTIFF), APPLICANT
v. RAMCHANDRA GOVIND SUKTANKAR AND ANOTHER (ORIGINAL
DEFENDANTS), OPPONENTS^a.

*Civil Procedure Code (Act V of 1908), section 16 (e)—Court—Jurisdiction—
Suit to recover mesne profits—Lands situated outside British India.*

^a Civil Extraordinary Application No. 70 of 1920.

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A suit to recover mesne profits of lands situated outside British India, can accordance with general principles of English law, be instituted in a Court in British India.

Section 16 of the Civil Procedure Code (Act V of 1908) has no application in the case of land outside British India, but there is no reason for thinking that the whole of the section (including the proviso) does not follow the English law with regard to jurisdiction in the case of suits of the nature therein described.

THIS was an application under the Extraordinary Jurisdiction of the High Court against a decree passed by F. Boyd, District Judge of Belgaum, confirming a decree passed by D. R. Norman, Assistant Judge at Belgaum.

Suit to recover mesne profits.

The lands of which mesne profits were sought to be recovered were situated in the State of Kurandwad, outside British India.

There was a dispute about family property between plaintiff and defendant who were brothers. Those disputes were settled by an award. A decree was passed in terms of the award by a Court in British India in 1915. Under this decree, the plaintiff became entitled to the Kurandwad lands. In March 1917, he obtained possession of the lands.

The plaintiff sued to recover mesne profits of the Kurandwad lands from the date of the award decree to the date of recovery of possession.

The trial Court held that a Court in British India had no jurisdiction over Kurandwad State in which the suit property was situated; the plaint was, therefore, returned for presentation in the proper Court under Order VII, Rule 10 of the Civil Procedure Code, 1908.

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The plaintiff appealed ; but his appeal was summarily dismissed, by the District Judge, on the following grounds :—

The claim is for mesne profits of land in Kurāhdwad State admittedly beyond the jurisdiction of the British Courts. Mesne profits mean profits which a person in wrongful possession of immoveable property actually received or might have received, section 2, sub-section 12, Civil Procedure Code. Now the British Courts have no means of ascertaining whether possession of land situate outside their jurisdiction is wrongful or not, nor what profits in respect of such land either have been received or might have been received. It is argued for plaintiff that the suit is one for money and no doubt in its ultimate aspect it is so, but the immense majority of suits could also be so described, e.g., suits for damages, on foreclosure of mortgage, for breach of contract, for account under the Dekkhan Agriculturists' Relief Act and so forth.

The plaintiff applied to the High Court.

G. S. Mulgaokar, for the applicant, original plaintiff :—Under the award decree I was entitled to the possession of the lands in suit. I got possession in 1917. But I am entitled to mesne profits for the two prior years, as the defendant wrongfully continued in possession. Such a claim is a money claim, and cognizable by the British Court even though the property may be outside British India : see Order VII, Rule 2, Civil Procedure Code ; section 16, proviso ; section 20 ; *Kashinath v. Anant*⁽¹⁾, observations of Jenkins C. J.

Nilkant Atmaram, for opponent No. 1, original defendant No. 1 :—Section 16, proviso, does not apply to this case, as the property there referred to is property situate in British India.

The first part of section 16 lays down the general law of local jurisdiction. It is that immoveable property is exclusively subject to the laws and jurisdiction of the Courts of the country in which it is situate : see *Ameer Ali and Woodroffe's Civil Procedure Code*, para. 159.

(1) (1899) 24 Bom. 407 at p. 410.

In the first place I would contend that the plaintiff has no title to the lands in respect of which the present claim is made. For the Belgaum Court had no jurisdiction to pass any decree for the lands in the Kurandwad State. The decree to that extent is a nullity and the plaintiff does not get any title to them.

Secondly, the present claim is in the nature of damages for trespass to land : *Girish Chunder Lahiri v. Shoshi Shikhareswar Roy*⁽¹⁾; *Dakshina Mohun Roy Chowdhry v. Saroda Mohun Roy Chowdhry*⁽²⁾ and *Kachar Ala Chela v. Sha Oghadbhai Thakarshi*⁽³⁾.

Suit for damages for trespass to land cannot be entertained by British Courts if the land be situate within foreign country : *British South Africa Company v. Companhia De Mocambique*⁽⁴⁾; *Keshav v. Vinayak*⁽⁵⁾; *Crisp v. Watson*⁽⁶⁾. No doubt, in certain cases, suits can be entertained by British Courts where the immovable property is situate within foreign territory. But those cases are cases of contracts or trusts, &c., made within the jurisdiction of British Courts in respect of properties situate outside those Courts. In these cases the cause of action arises within the jurisdiction of British Courts, and they are therefore governed by entirely different considerations.

D. R. Manerikar, for opponent No. 2.

MACLEOD, C. J. :—The plaintiff filed this suit in the Court of the Assistant Judge at Belgaum to recover mesne profits of certain land for the years 1915-16 and 1916-17. It is admitted that the land is situated in the Kurandwad State outside British India, and that the plaintiff bases his claim to mesne profits on the fact

⁽¹⁾ (1900) L. R. 27 I. A. 110 at p. 124. ⁽⁴⁾ [1893] A. C. 602.

⁽²⁾ (1893) L. R. 20 I. A. 160; 21 Cal. 142. ⁽⁵⁾ (1897) 23 Bom. 22.

⁽³⁾ (1892) 17 Bom. 35. ⁽⁶⁾ (1893) 20 Cal. 689 at p. 692.

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that he became entitled to such land by an award decree in 1915 and did not get possession of the lands until 1917. The defendants contended that, as the suit came under section 16 (e) of the Civil Procedure Code, the Court had no jurisdiction. This contention found favour with the learned Assistant Judge and also with the District Judge.

Now in the case of land outside British India section 16 has no application and we have to fall back upon general principles in considering whether this is a suit in which a personal relief is claimed against a defendant residing within the jurisdiction of the Court.

First, it may be as well to clear the ground by disposing of certain contentions which were raised in the course of the argument as to the proper scope of section 16 of the Civil Procedure Code, sub-section (e) and the proviso to the section. Sub-section (e) excludes from the jurisdiction of the Courts, outside whose local limits the property is situate, suits for compensation for wrong to such immoveable property; and the word "wrong" refers to torts affecting immoveable property such as trespass, nuisance, infringements of easements, &c. The proviso makes it clear that even although a wrong to immoveable property is alleged, yet, where the relief sought can be entirely obtained through the defendant's personal obedience, then the suit can be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain. So that assuming for the moment that the suit was one for mesne profits relating to land in British India, and the land had been outside the local limits of the jurisdiction of the Court at Belgaum, still if the

decree directed something to be done which could be done through the personal obedience of the defendant, such as the payment of money, then the Belgaum Court would have jurisdiction to entertain the suit.

It is admitted that the provisions of section 16 of the Civil Procedure Code are an embodiment of the provisions of the law of England on this subject. But it seems to have been suggested that the proviso enacted something different. In our opinion there is no reason for thinking that the whole section does not follow the English law with regard to jurisdiction in the case of suits of the nature described in section 16, and we see no reason to think that under the English law this suit would not lie in the Belgaum Court.

Fortunately the decision of Sir Lawrence Jenkins in *Kashinath v. Anant*⁽¹⁾ is directly in point, and from that decision it is clear that the principles enunciated by the English Courts of Equity apply to this case. The facts of that case were somewhat similar to these. The plaintiff sued in the Court at Nasik in British India to establish his right to a share in the income derived from certain grants of land situate outside of British India, but received by the defendant within jurisdiction of the Nasik Court; it was held that the suit was within the jurisdiction of the Court, there being no dispute as to title. Sir Lawrence Jenkins said:—

“The lower appellate Court seems to have thought that all property which had a foreign origin was outside the jurisdiction of the Court; this, however, is not a correct view of the law. The general principle is clearly stated by Lord Cottenham in *Ex parte Pollard*,⁽²⁾ where he says (pp. 250-251): ‘If indeed the law of the country where the land is situate should not permit or not enable the defendant to do what the Court might otherwise think it right to decree, it would be useless and unjust to direct him to do the act;’

⁽¹⁾ (1899) 24 Bom. 407 at p. 410. ⁽²⁾ (1840) Mont. & Chit. p. 239.

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but when there is no such impediment the Courts of this country, in the exercise of their jurisdiction over contracts made here, or in administering equities between parties residing here, act upon their own rules, and are not influenced by any consideration of what the effect of such contracts might be in the country where the lands are situate, or of the manner in which the Courts of such countries might deal with such equities."

It is not suggested that the law prevailing in Kurandwad State would not permit of the defendant being directed to pay the mesne profits of the land to the plaintiff to whom the lands belong. There appears to be an equity in favour of the plaintiff that the profits of those lands which were awarded to him in 1915 should not remain in the pockets of the defendant, and, therefore, there is no reason why the Belgaum Court should not have jurisdiction to administer that equity in favour of the plaintiff. We are not concerned here with the merits of the case. We think that the Court in Belgaum had jurisdiction to decide whether, on the facts that were placed before it, mesne profits of those properties should be ordered to be paid by the defendants to the plaintiff. The Rule, therefore, must be made absolute. The case must go back to the Court of the Assistant Judge to be dealt with on the merits. The plaintiff will be entitled to his costs in this Court and the Court below. Costs in the trial Court will be costs in the cause.

Rule made absolute.

R. R.