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— FAZAL  
v.  
MANGALDAS.

*Laha*<sup>(1)</sup> that the terms of the Indian Evidence Act did not enact as law in India anything different from the law of England on the subject of estoppel.

I have held that the plaintiff delivered the transfer forms and share certificates to the broker.

In my opinion, even if there was no contract between the plaintiff and the brokers and even if the brokers were not transmitting the plaintiff's title to the shares as the plaintiff's agents, the plaintiff, by signing the transfer forms and delivering the same and the share certificates to the brokers, placed them in a position to give a title to defendant No. 1, who was a *bona fide* purchaser for value without notice, and is estopped by his act from asserting any right to the shares. The result is that this suit and the other suits filed by the plaintiff will be dismissed with costs.

Solicitors for the plaintiff: Messrs. *Payne & Co.*

Solicitors for the defendant: Messrs. *Merwanji, Kola & Co.*

*Suit dismissed.*

G. G. N.

(1) (1892) 20 Cal. 296, r. o.

## ORIGINAL CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice.*

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October 1.

JAFFERJI IBRAHIMJI, PLAINTIFF AND APPLICANT v. MIYADIN MANGAL AND OTHERS, DEFENDANT AND OPPONENTS<sup>o</sup>.

*Civil Procedure Code (Act V of 1908), Order XXI, Rules 97, 99—Execution of decree—Obstruction by sub-tenant of judgment-debtor—Landlord and tenant—Whether sub-tenant can plead protection of the Bombay Rent Act (II of 1918), against original landlord.*

<sup>o</sup> O. C. J.: Application in execution in Suit No. 1427 of 1920.

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In execution of a decree for ejection obtained by a landlord against his tenant, the landlord was obstructed by the opponents claiming to be the tenants of the judgment-debtor and as such entitled to the protection of the Bombay Rent Act. The landlord having applied to the Court for the removal of the obstruction :—

*Held*, that the landlord was entitled to have the obstruction removed, for though the opponents were tenants with regard to their immediate lessor and so entitled to the protection of the Rent Act against him, there was nothing in the Act to protect them against the landlord of the premises, with whom there was no privity of contract.

APPLICATION under Order XXI, Rule 97 of the Civil Procedure Code, in execution of decree.

The plaintiff, Jafferji Ibrahimji who owned a house in Bombay, had filed a suit in ejection against his tenant the defendant, Miyadin Mangal. The suit terminated in a consent decree on 13th July 1920, whereby the defendant undertook to vacate the house on 31st December 1920.

The defendant having failed to comply with the decretal order, the plaintiff proceeded in execution against him but was obstructed by the opponents claiming to be the sub-tenants of the defendant.

The plaintiff thereupon applied to the Court and obtained a summons against the defendant and the opponents to show cause why they should not deliver up peaceful possession of the house to the plaintiff.

*Jinnah*, for the plaintiff (applicant).

*Setalvad*, for the defendant and opponents.

MACLEOD, C. J.—This is an application by the plaintiff for an order that certain persons should vacate the premises, the subject matter of Suit No. 1427 of 1920 filed against the lessee in which a decree was passed by consent that the defendant should vacate the premises and deliver up peaceful possession to the plaintiff on or before the 31st December 1920. When the plaintiff

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sought to execute his decree, he was obstructed by the present opponents and accordingly he had to make an application under Order XXI, Rule 97. Under Rule 99 where the Court is satisfied that resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court will make an order dismissing the application.

In this case the opponents do not say that they are in possession of the suit property on their own account or on account of some person other than the judgment-debtor. They have to admit that they are tenants of the judgment-debtor. The question whether they are servants or agents of the judgment-debtor and not tenants, is not really relevant to the question at issue because in either case they are not entitled to obstruct the decree-holder. The opponents apparently place some reliance on the Bombay Rent Act. But although they may be tenants with regard to their immediate lessor and so entitled to protection against him, there is nothing in the Act to protect them against the landlord of the premises, with whom there was no privity of contract. It seems to me that this conclusion must be obvious. Otherwise when his tenant has sub-let the premises a landlord would either have to make every sub-tenant a party to his suit against his tenant or, if he omitted to do that, he might have to file suits against all the sub-tenants after he had obtained a decree against his tenant. That certainly was not intended by the Act.

No doubt a plaintiff suing for possession may find it advantageous to join all the persons in possession of the suit premises, to avoid difficulties which may

otherwise arise when he attempts to execute his decree, but there is nothing in the Bombay Rent Act which gives persons in possession through the tenants a better right to obstruct the execution of the decree than they had apart from the Act.

The summons must be made absolute with costs.

Counsel certified.

Solicitors for the plaintiff: Messrs. *Chitnis, Kanga & Manbhoy.*

Solicitors for the defendant: Messrs. *Thakordas & Co.*

*Summons made absolute.*

G. G. N.

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## APPELLATE CIVIL.

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

MOTILAL HIRABHAI AND OTHERS (ORIGINAL OPPONENTS NOS. 1 TO 5),  
APPELLANTS *v.* BAI MANI WIFE OF SANKALCHAND HIMATLAL  
AND DAUGHTER OF GIRDHARLAL DALPATRAM (ORIGINAL APPLICANT),  
RESPONDENT<sup>a</sup>.

*Mortgage—Shares—Issue of fresh capital—Accretion.*

Question considered whether an accretion to mortgaged shares by the issue of fresh capital can be treated as belonging to the corpus.

FIRST Appeal against the decision of K. T. Desai,  
First Class Subordinate Judge at Ahmedabad.

The facts of this case appear sufficiently set forth in the judgment of the learned Chief Justice, the material portions of which are printed below.

<sup>a</sup> First Appeal No. 254 of 1918.

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