

I have discussed the question specially with reference to the principal authorities of Hindu law accepted in this Presidency and to the decisions of this Court. I have considered the decisions of other High Courts; but as a matter of law I have not been able to find any basis therein for inferring any legal prohibition of such marriages, and, so far as they are based on usage, I do not think that they could be applied in their entirety to this Presidency. I have not, therefore, referred to them specifically. I may add that I do not see anything in these judgments which necessarily conflicts with my view. No other legal objection to the marriage is suggested. I am, therefore, of opinion that the marriage in question is valid.

I would affirm the decree appealed from and dismiss the appeal with costs. The costs to be payable by the next friend.

MACLEOD, C. J.:—I agree.

Solicitors for the appellants: Messrs. *Mantri & Co.*

Solicitors for the respondents: Messrs. *Ardeshtir, Hormasji & Dinshaw.*

*Appeal dismissed.*

G. G. N.

## ORIGINAL CIVIL.

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

JAIRAM JADOWJI (APPLICANT) v. NOWROJI JAMSHEDJI PLUMBER  
(OPPONENT)\*.

*Civil Procedure Code (Act V of 1908), Order XXI, Rules 97, 99—Execution of decree for possession of immoveable property—Obstruction by a sub-tenant—Whether a sub-tenant is a person claiming to be in possession "on his own account"—Landlord and tenant.*

\* O. C. J. Suit No. 381 of 1920.

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HARILAL.

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A sub-tenant cannot claim to be in possession of property "on his own account" within the meaning of Order XXI, Rule 99, Civil Procedure Code, and if his immediate landlord is the tenant and judgment-debtor he cannot be in possession "on account of some person other than the judgment-debtor".

*Held*, accordingly, that when a landlord gets a decree for possession against his tenant, and is resisted or obstructed in obtaining possession, it is open to him to apply to the Court to get possession under Order XXI, Rule 97, Civil Procedure Code, and if the person resisting or obstructing is in possession as a sub-tenant that person cannot claim under Order XXI, Rule 99, that the application should be dismissed.

*Jafferji Ibrahimji v. Miyadin Mangal*<sup>(1)</sup>, followed; *Ezra v. Gubbay*<sup>(2)</sup>, not followed.

Per MACLEOD, C. J.:—The words "on his own account" in Order XXI, Rule, 99, can only refer to a person who claims to be in possession on his own title, otherwise it would not be necessary to add the words "on account of some person other than the judgment-debtor". The person in possession may either claim to be in possession on his own title or as tenant of some person other than the judgment-debtor.

#### CHAMBER Summons.

The plaintiffs were the owners of a house situated at Bhandi Bazar in Bombay. The defendant was a monthly tenant in occupation of the house, part of which (a verandah) was sub-let by him to a fruit-seller.

By a consent-decree dated 18th August 1920 in a suit filed by the plaintiffs against the defendant it was ordered, *inter alia*, that the defendant should give to the plaintiffs possession of the whole house mentioned in the plaint, excepting the northern half of the ground floor in the occupation of the defendant as a shop and the verandah occupied by the fruit-seller on or before the 1st September 1920. As regards the verandah the order provided that the defendant should give vacant possession of the same on or before the 15th September 1920.

The defendant failed to give possession of the verandah which was in the occupation of the fruit-seller.

(1) (1921) 46 Bom. 526

(2) (1920) 47 Cal. 907.

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Accordingly the plaintiffs applied for execution of the decree and prayed that possession of the verandah should be delivered to them. An order for possession in execution was made by the Court.

Thereupon, correspondence passed between the plaintiffs' attorneys and the fruit-seller who ultimately refused to vacate the verandah on the plea that he was not a party to the suit in which the consent-decree was taken.

The plaintiffs accordingly proceeded to execute the order of the Court made in execution but was obstructed by the fruit-seller.

The plaintiffs then took out a summons against the fruit-seller under Order XXI, Rule 97, Civil Procedure Code, asking for an order that he should give vacant possession of the verandah and pay compensation at the rate of Rs. 50 per month from the 15th September 1920 till delivery of possession.

*B. J. Desai*, for the applicants.

*Jinnah*, for the opponent.

MACLEOD, C. J.:—The plaintiffs filed a suit against the defendant to recover possession of their property situated at Bhendy Bazar which was in the defendant's occupation as a monthly tenant. A consent decree was passed on the 18th of August 1920, whereby it was ordered that the defendant should give to the plaintiffs possession of the whole of the house mentioned in the plaint, excepting the northern half of the ground floor of the said building then in the occupation of the defendant as a shop and the verandah occupied by a fruit-seller, on or before the 1st September 1920. The defendant was also ordered to give vacant possession of the said verandah to the plaintiffs on or before the 15th September 1920. The defendant failed to give possession of the verandah occupied by the fruit-seller,

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so that the plaintiffs applied for execution of the decree and prayed for delivery of possession of the verandah, but the fruit-seller declined to vacate and consequently the plaintiffs were forced to take out this summons against the fruit-seller asking for an order that he should vacate the premises and pay compensation of Rs. 50 per month from the 15th September 1920 till possession was given.

The application is made by the plaintiffs in execution of their decree under Order XXI, Rule 97 (Civil Procedure Code) which says :—

“ Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction ”.

Rule 98 deals with the obstruction caused by the judgment-debtor or by some other person at his instigation. It is not suggested in this case that the fruit-seller is refusing to vacate at the instigation of the judgment-debtor. Rule 99, therefore, applies, which says :—

“ Where the Court is satisfied that the 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 shall make an order dismissing the application.”

It must follow that if the Court is not satisfied that the obstruction is being occasioned by a person 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 has the power to grant the application.

Now, the only justification for the fruit-seller being in occupation of the premises is the agreement of tenancy which originally existed between himself and

the judgment-debtor. He does not claim to be in possession on his own account, or to be holding on account of some person other than the judgment-debtor.

Under Rule 100 where a person other than the judgment-debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property or, where the property is sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. So that if the fruit-seller had been dispossessed by the plaintiffs under their decree, he could make an application under Rule 100. Then under Rule 101 if the Court was satisfied that he was in possession of the property on his own account or on account of some person other than the judgment-debtor, it could direct that he should be put back in possession of the property. It is curious that the words "in good faith" which appear in Rule 99, do not appear in Rule 101. But if the Court was satisfied that the applicant was not acting in good faith it would be most unlikely that the Court would make an order in his favour, for whether the applicant is the decree-holder or the person dispossessed the same issues arise.

However that may be, it seems to me clear that a sub-tenant cannot claim to be in possession of property on his own account, and, if admittedly his immediate landlord is the tenant and judgment-debtor, he cannot be in possession on account of some person other than the judgment-debtor. It is obvious, therefore, that the execution-plaintiff is entitled to get possession of the premises from the sub-tenant; and if any other construction were placed on Rules 97 and 99, obstruction could be caused to an execution-plaintiff in a suit for possession in a manner which was never contemplated by the Code.

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Mr. Jinnah for the fruit-seller relies upon the decision in *Ezra v. Gubbay*<sup>(1)</sup>. No doubt the learned Judge in dismissing the execution-plaintiff's application held on his construction of Rule 99 that the under-tenant could be said to claim to be in possession on his own account. That, with all due respect, appears to me to require explanation, for I cannot see how it can be said that an under-tenant is in possession of the premises on his own account. And, in my opinion those words can only refer to a person who claims to be in possession on his own title. Otherwise it would not be necessary to add the words "on account of some person other than the judgment-debtor". The person in possession may either claim to be in possession on his own title or as tenant of some person other than the judgment-debtor. But if he claims to be in possession as a tenant of the judgment-debtor, then it seems to me that the Court is bound to make the order in favour of the execution-plaintiff. Otherwise a landlord may get a decree for ejectment against his tenant but may find that decree an absolute nullity if his tenant had sublet the premises, as he may have again to file a suit against the sub-tenant. I have already held that sub-tenants, though they may claim the benefit of the Bombay Rent Act against their immediate lessor, cannot claim it against the owner of the premises: see *Jafferji Ibrahimji v. Miyadin Mangal*<sup>(2)</sup>. When a landlord gets a decree for possession against his tenant, and is resisted or obstructed in obtaining possession then it is open to him to apply to the Court to get possession under Order XXI, Rule 97, and if the person resisting or obstructing is in possession as a sub-tenant that person cannot claim under Rule 99 that the application should be dismissed.

The summons, therefore, will be made absolute with costs.

<sup>(1)</sup> (1920) 47 Cal 907.

<sup>(2)</sup> (1921) 46 Bom. 526.

As regards the summons of 3rd October 1921, it will be discharged. The defendant to pay by way of compensation the rent payable by the fruit-seller to him until vacant possession is delivered to him. No order as to costs on this summons.

Solicitors for the plaintiffs: Messrs. *Shroff & Lam*.

Solicitors for the defendant: Messrs. *Mulla & Mulla*.

Solicitors for Gulam Hossain: Messrs. *Tyabji Dayabhai & Co.*

*Summons made absolute.*

G. G. N.

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### CRIMINAL REFERENCE.

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

EMPEROR v. RAMCHANDRA BAPUJI DESHMUKH\*.

*Criminal Procedure Code (Act V of 1898), section 545—Compensation for injury caused by the offence—Compensation paid to a stranger.*

In convicting an accused person of the offence of cheating, the trying Magistrate sentenced him to pay a fine, and ordered that out of the fine, if recovered, a certain sum should be paid as compensation to a person with whom the accused had pledged a portion of the property obtained by the cheating :

*Held*, that the order for payment of compensation to the pledgee was beyond the scope of section 545 of the Criminal Procedure Code.

THIS was a reference made by C. W. A. Turner, District Magistrate of Ahmednagar.

The accused obtained some ornaments from the complainant Gangabai on the pretext of securing a bride for her son. He next pledged a portion of the ornaments with one Dalichand to secure an advance of Rs. 35.

\* Criminal Reference No. 59 of 1921.