

APPELLATE CIVIL.

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

NUSSERVANJI CAWASJI ARJANI (ORIGINAL DEFENDANT), APPLICANT
v. SHAHJADI BEGAM WIDOW AND HEIR OF NAWAB IMDAD ALI
KHAN GULAM JHILANI AND OTHERS (ORIGINAL PLAINTIFFS)
OPONENTS*.

1922.

February 6.

Civil Procedure Code (Act V of 1908), Order XXXIX, Rules 1 and 2—Injunction—Tenant—Sub-lease—Decree for possession obtained by tenant against sub-tenant—Suit by landlord in ejectment against tenant—Prayer for injunction restraining tenant from taking possession under decree—Jurisdiction.

The defendant, who was a tenant of the plaintiff, had obtained a decree in ejectment against his sub-tenant. The plaintiff filed a suit against the defendant for possession on the ground that the period of the lease had expired, and prayed for an injunction restraining him from taking possession under the decree obtained against the sub-tenant,

Held, that the plaintiff's suit was not a suit of the nature prescribed in either Rule 1 or Rule 2 of Order XXXIX, Civil Procedure Code, 1908, and therefore the Court had no jurisdiction to restrain the defendant from seeking to get the benefit of the decree he had obtained which had nothing whatever to do with the plaintiff's claim.

APPLICATION under Extraordinary Jurisdiction against the order passed by the Second Class Subordinate Judge at Wai.

Suit for possession and injunction.

The plaintiffs were the owners of a bungalow at Panchgani which was leased to defendant for a term of years expiring on 30th June 1920.

The defendant sub-leased the bungalow to one Tamboowala whose lease expired on 10th June 1920. Tamboowala sub-let to one Haji Ahmed to whom the plaintiffs had leased the bungalow from the 1st July 1920 on the expiry of the defendant's lease.

* Civil Extraordinary Application No. 212 of 1921.

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Possession was not restored to defendant by Tamboo-wala and Haji Ahmed and he brought Suit No. 375 of 1920 against them in the Second Class Subordinate Judge's Court at Wai, which was decided in his favour and the decision was confirmed on appeal on the 4th April 1921.

On the 3rd April 1921 defendant applied for execution and on the 14th April 1921 the plaintiffs as landlords filed the present suit for a declaration that they were entitled to possession and that the decree in Suit No. 375 of 1920 was not binding on them and for an injunction restraining the defendant from taking possession.

Pending the disposal of the suit a temporary injunction staying the execution of the decree in the former suit was granted by the Subordinate Judge.

On appeal the District Judge confirmed the order.

The defendant applied to the High Court.

G. N. Thakor, for the appellants.

A. G. Desai, for the opponents.

MACLEOD, C. J. :—The present plaintiffs were owners of a bungalow at Panchgani which had been let to the defendant on a lease, which the plaintiffs say expired on the 30th June 1920. Meanwhile the defendant had sub-let the premises, or part of them, and as he could not get possession from his sub-tenants a suit had to be filed in which there was a decree in his favour. The plaintiffs, as owners of the property, filed a suit against the defendant claiming that they were entitled to possession, and that the decree which the defendant had obtained against his sub-tenants was not binding upon them, and for an injunction against the defendant not to take possession. After the suit was

filed, an application was made by the plaintiffs for a temporary injunction restraining the defendant from executing his decree against the sub-tenants. The trial Court granted the injunction, and an appeal against that order was dismissed by the District Judge.

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In revision it is urged for the defendant that the Court had no jurisdiction to grant the temporary injunction asked for. Order XXXIX, Rules 1 and 2 prescribed in what cases the Court can grant a temporary injunction, and it is quite clear that the plaintiffs' suit is not a suit of the nature prescribed in either Rule 1 or Rule 2. The primary object of the plaintiffs' suit is to get possession of the property which they claimed as belonging to them, on the ground that the term of the defendant's lease had expired, and accordingly possession should be given to the owner. That is an entirely different question from that which had already been decided between the defendant and his sub-tenants. The Court has no jurisdiction to restrain the defendant from seeking to get the benefit of the decree he has obtained, which has nothing whatever to do with the plaintiffs' claim. What the plaintiffs ought to have asked for was the appointment of a Receiver, so that the Court might take charge of the property through its Receiver pending the settlement of the dispute between the plaintiffs and the defendant. The rule will be made absolute, and the order staying execution and restraining the applicant from executing his decree is set aside, with costs throughout.

Rule made absolute.

J. G. R.