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and Nagapur High Courts on this point in *Kishan Lal* v. *King-Emperor*,[1] *Emperor* v. *Ajudhia Prasad*[2], *The Crown* v. *Phul Singh*,[3] and *Gopeshwar Mandal* v. *King Eperor*.[4].

In this case, the appellant had originally inquired into the complainant's case. Thereafter another Inspector was asked to look into the complainant's books. The complainant has stated that the appellant went to him subsequently and demanded a bribe. He has also stated that the appellant told him that he would see that the complainant did not have to pay much amount as sales tax. A representation was therefore made to the complainant that a favour would be shown to him in assessing the amount of tax to be paid by him. As the appellant was also an Inspector in the Sales Tax Department and as he had previously inquired into the complainant's case, the complainant had a reasonable ground for believing that the appellant might be in a position to show him favour or to do something for him. It is, therefore, immaterial whether the appellant was or was not actually in a position to assist the complainant at the time when he received the bribe. In accepting the bribe from the complainant, he has, therefore, committed an offence under s. 161 of the Indian Penal Code.

I, therefore, agree that the appeal should be dismissed.

Appeal dismissed

K B. S.

[1] (1904) 1 A. L. J. 207.
[2] (1928) 51 All. 467.
[3] (1941) 23 Lah. 402.
[4] [1947] Nag. 611.

APPELLATE CIVIL

Before Mr. Justice Bavdekar and Mr. Justice Chainani.

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SHIVAJI NARAYAN HABBU (ORIGINAL PLAINTIFF), APPELLANT *v.* PEEKU LOKAPPA GHADI (ORIGINAL DEFENDANT), RESPONDENT.*

Bombay Tenancy and Agricultural Lands Act (LXVII of 1948) s. 85—Suit by landlord to evict tenant on ground of personal cultivation—Whether jurisdiction of Civil Courts barred—Sections 29 (2) and (3), 70, 71, 72, 73 (2), 74 (1) (m) Effect of.

The jurisdiction of a Civil Court to entertain a suit by a landlord to recover possession of agricultural land from his tenant on the ground that he wants the land for personal cultivation is barred under s. 85 of the Bombay Tenancy and Agricultural Lands Act, 1948.

* Second Appeal No. 164 of 1951.

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Under s. 70 of the Bombay Tenancy and Agricultural Lands Act, 1948 certain duties are placed on the Mamlatdar. One of the duties is, as mentioned in clause (*o*) to that section, to decide such other matters as may be referred to him by or under that Act. If the application which a landlord is to make to a Mamlatdar under s. 29 (*2*) is an application of the nature of a suit seeking to evict the tenant, it is the duty of the Mamlatdar under s. 70, clause (*o*) to decide that application, and under s. 85 of the Act the jurisdiction of the Civil Court to entertain the suit will be barred.

Second Appeal against the decision of N. S. Shrikhande, District Judge at Karwar, reversing the decree passed by S. G. J. D'Costa, Civil Judge (J. D.) at Karwar.

Suit in ejectment by landlord.

The plaintiff-appellant who was the landlord gave a notice on March 15, 1948 to the defendant-respondent terminating the defendant's tenancy on the ground of requirement for personal cultivation and demanding possession on April 1, 1949. On September 27, 1949 the present suit was instituted by him for possession on the ground mentioned in the said notice. The defendant contended, *inter alia* that the civil Court had no jurisdiction to entertain the suit.

The trial Court held that the jurisdiction of civil Courts was not barred under section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948 and passed a decree for possession in favour of the plaintiff.

The defendant having appealed, the District Judge at Karwar held that the Civil Court's jurisdiction to entertain the suit was barred. As a result, the appeal was allowed and the plaintiff's suit for possession was dismissed. In the course of his judgment the learned District Judge observed :

"On a consideration of all these provisions, I feel no doubt that under the new Act the Mamlatdar is required to decide whether a landlord has or has not the right to get possession on the ground of *bona fide* requirement for personal cultivation. If so, it automatically follows that under s. 85 of the Act, Civil Court's jurisdiction to decide the question is barred".

The plaintiff appealed to the High Court.

N. M. Shanbhag, for the appellant.

G. N. Vaidya, for the respondent.

BAVDEKAR J. This is a second appeal arising out of a suit filed by the appellant for the recovery of possession of land from the respondent upon the ground that he wanted the land for personal cultivation. The tenant was protected by the present Tenancy Act and that was why the landlord filed a suit giving a reason which would enable him to obtain possession of the property from the tenant after the expiration of the contractual tenancy. The only contention taken up at the trial, which it is necessary to state for the purpose of the present appeal, is whether the Court had jurisdiction to try the suit. The objection was based upon s. 85 of the Bombay Tenancy and Agricultural Lands Act, 1948. That section says,

"No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a manager, the collector or the Bombay Revenue Tribunal in appeal or revision or the Provincial Government in exercise of their powers of control".

The words from this section which are relied upon were, required to be......decided......by the Mamlatdar." The contention of the respondent was that the Mamlatdar was required by or under the Act to decide the question as to whether the appellant was entitled to an order evicting the respondent under the provisions of the Act.

Sub-section (*2*) of s. 29 of the Bombay Tenancy and Agricultural Lands Act, 1948 provides that—

"No landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form."

If this application is an application of the nature of a suit stating the reasons for which the landlord claims that he is entitled to evict the tenant notwithstanding the provisions of the Tenancy Act, then the appeal must fail. The reason is that under s. 70 of the Act, there are certain duties placed upon the Mamlatdar. One of the duties is as mentioned in cl. (*o*) to decide such other matters as may be referred to him by or under this Act. If the application which a landlord is to make to a Mamlatdar under s. 29, sub-s. (*2*), is an application of the nature of a suit seeking to evict the tenant, then in that case it is the duty of the Mamlatdar under s. 70, sub-s. (*o*), to decide that application and give the landlord an order of possession or refuse the application. And in that case under s. 85 of the Act the jurisdiction of the civil Court to entertain the suit will be barred.

If, on the other hand, s. 29, sub-s. (*2*), means that a landlord has, before going to the Mamlatdar, to sue in the civil Court

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and obtain a decree for possession and then make an application to the Mamlatdar in the prescribed form under s. 29 (2) with a view to obtaining execution of the decree, then in that case the civil Court will have jurisdiction.

Now, the opening words of s. 29, sub-s. (*2*), are undoubtedly vague. They are capable of the interpretations sought to be placed on them by the appellant, that is, that the application which the landlord has got to make to the Mamlatdar is an application of the nature of an execution application. In this country, cases are not unknown in which after the civil Court has given a decree for possession, proceedings have got to be sent to a Revenue Officer for actual execution of the decree. But if we look at the other words of the same sub-section and other sections of the Act, the meaning sought to be placed by the appellant upon the words cannot be accepted. In the first instance for obtaining such an order he has got to make an application in the prescribed form. An application for execution has also got to be made in a prescribed form. That the application has to be in a prescribed form may not by itself be determinative of the nature of the application which a landlord has to make. But the form which has been prescribed after mentioning certain matters of a technical nature requires a landlord to state the circumstances in which he is entitled to possession. The Tenancy Act provides that notwithstanding any provisions of the general law, the landlord will not be entitled to secure possession from the tenant except under certain circumstances. And the circumstances which are referred to in the prescribed form have obvious reference to the circumstances in which the landlord says that he is entitled to the possession under the provisions of the Tenancy Act, because certain conditions requisite for obtaining possession have been fulfilled. For example, in the present case the condition is that the landlord wanted the land for personal cultivation. The same provision is to be found in s. 71. That section refers not only to applications under s. 29 but to all sorts of applications which may be made either to the Mamlatdar or to the Tribunal. Clause (*c*) of that section says however that an application to the Mamlatdar must contain the circumstances out of which the cause of action arose. Then we come to the provisions of s. 29 (*3*). It says :—

"On receipt of application under sub-s. (*1*) or (*2*) the Mamlatdar shall, after holding an enquiry, pass such order thereon as he deems fit."

The Mamlatdar has, therefore, got to hold an enquiry, and speaking generally, if the question is of executing a decree obtained from a civil Court, the only subject matter of enquiry would be whether without the landlord coming to the Court possession has been restored by the tenant to the landlord.

Then we come to the provisions of s. 72. It is to the following effect :

"In all enquiries and proceedings commenced on the presentation of applications under s. 71 the Mamlatdar or the Tribunal shall exercise the same powers as the Mamlatdar's Court under the Mamlatdar's Courts Act, 1906, and shall follow the provisions of the said Act, as if the Mamlatdar or the Tribunal were a Mamlatdar's Court under the said Act and the application presented was a plaint presented under s. 7 of the said act. In regard to matters which are not provided for in the said Act, the Mamlatdar or the Tribunal shall follow the procedure as may be prescribed by the Provincial Government. Every decision of the Mamlatdar or the Tribunal shall be recorded in the form of an order which shall state reasons for such decision."

It would appear, therefore, that a provision is made by s. 72 of the Bombay Tenancy and Agricultural Lands Act, 1948, for giving the Mamlatdar when dealing with among others an application for possession made by the landlord powers which he would have, if he was dealing with a matter he was entitled to deal with, under the provisions of the Mamlatdars' Courts Act. They are the powers of treating informal petitions as plaints, examination of plaintiffs on oath, power to issue summons to witnesses, power to add parties and power to decide the points which arise at the hearing. In an application for execution it is not likely that there would arise a question which has got to be determined after recording evidence. It is true that s. 71 has application to proceedings other than applications under s. 29, and an argument cannot be based upon the powers conferred by s. 72 alone. But, if there is any further doubt in the matter, it is found to be cleared in the provisions of s. 73, sub-s. (*2*), of the Act. That section provides that an order of the Mamlatdar or the Tribunal awarding possession or restoring the possession or use of any land shall be executed in the manner provided in s. 21 of the Mamlatdars' Courts Act, 1906, as if it was the decision of the Mamlatdar under the said Act. If the Mamlatdar was himself merely executing the decree which s. 29 contemplated was to be obtained first, then there would be no necessity for providing that the order of the Mamlatdar in awarding possession shall be executed in the manner provided in s. 21 of the Mamlatdars'

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Courts Act as if it was the decision of the Mamlatdar under the said Act. The learned advocate, who appears on behalf of the appellant, says that s. 73, sub-s. (2), merely deals with the manner in which the order was to be executed. He says that in case s. 29 is dealing with merely an application for execution, a provision would still be necessary for the manner in which the Mamlatdar has to deal with that application, and it is to provide for the manner in which execution was to be conducted that s. 73 (2) was enacted. But this ignores certain words of s. 73 (2). In the first instance, the section refers to an order of the Mamlatdar awarding possession. There are further words in that section with regard to restoring the possession having reference to s. 39. But the words "awarding possession" have obviously reference to cases where possession is awarded for the first time to the party applying for it, and if we hold that s. 29 does not empower the Mamlatdar to enterain an application for ejectment, there is no other provision to which a reference can be made to show that the Mamlatdar has got any power to award possession. What the Mamlatdar does under s. 29 therefore is that he awards possession, which words are inappropriate when he merely executes a decree of a civil Court. Nor is it clear why if s. 73 (2) was intended only to provide for the manner in which an execution application to the Mamlatdar was to be executed, it was felt necessary to add the words "as if it was the decision of the Mamlatdar under the said Act." The words, "as if it was the decision of the Mamlatdar under the said Act," seem to put an order which the Mamlatdar makes under s. 29 on a par with an order which is made by the Mamlatdar under the Mamlatdars' Courts Act, and that order is the order passed after the usual trial of a suit awarding possession to the party who applies for it. Of course there are other orders of the Mamlatdar which can be made under the Mamlatdars' Courts Act. But here the reference being to the order for awarding possession, it would not be out of place to ignore the other orders which can be made under the Mamlatdars' Courts Act and to hold that the order awarding possession made under the Tenancy Act is to be executed like an order awarding possession made by the Mamlatdar under the Mamlatdars' Courts Act.

Some force is given to this conclusion by the fact that s. 74, sub-s. (*1*), cl. (*m*), provides for an appeal against an order under s. 29 though by itself this fact would not be of much importance.

The learned advocate, who appears on behalf of the appellant, says that it can be seen from s. 70 (*n*) that the order which s. 29 contemplates that the Mamlatdar should make is really an order of execution. He says that s. 70 defines the various duties and functions of the Mamlatdar. Sometimes the section has reference to previous sections which provide that certain things have got to be done, for example, the value of the crop has got to be determined under s. 6. Section 6 itself, however, does not provide who is to determine the value, and sometimes s. 70 therefore has to deal with the question which is the authority for doing certain things which previous sections contemplate should be done. But s. 70 is not exclusively concerned with these cases. Sometimes, even when the previous section states that a certain thing is to be done and provides that it is the duty of the Mamlatdar to do it, s. 70 repeats when enumerating the duties of the Mamlatdar that it would be the duty of the Mamlatdar to do that particular thing. That may be conceded. The learned advocate then points out that under s. 70 (*n*) it is the duty of the Mamlatdar to take measures for putting the tenant or landlord into possession of the land or dwelling house under this Act. We are not prepared to accept the contention that this has necessarily a reference to s. 29, or that if it has a reference to it, it controls the meaning to be given to the words in that section. One possibility obviously is that the Legislature did not mention the duties of the Mamlatdar under s. 29 specifically in s. 70 because it has at the end a general clause, namely, "to decide such other matters as may be referred to him by or under this Act." Another possibility is that the words "to take measures for putting the tenant or landlord or agricultural labourer or artisan into the possession of the land or dwelling house under this Act" have reference not only to applications under s. 29 but also to subsequent execution proceedings.

Mr. Shanbhag has further argued that under s. 72 of the Act, the Mamlatdar in an inquiry under s. 29 has got the same powers as the Mamlatdars' Court under the Mamlatdars' Courts Act, 1906. He says that the powers necessarily connote jurisdiction and the only jurisdiction of the Mamlatdar under s. 29 is to do what the Mamlatdars' Court is entitled to do under the Mamlatdars' Courts Act. Under the Mamlatdars' Courts Act, the Mamlatdars' Court has got power to put certain persons into possession, including of course the landlords and tenants, when they are entitled to possession. He says that under

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the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, the landlord is not entitled to possession unless in the first instance he shows certain circumstances, for example, like, his wanting the land for personal cultivation for himself or the tenant having either sub-let the land or committed certain breaches of the tenancy agreement. He says that the Mamlatdar's Court under the Mamlatdars' Courts Act has no powers to go into the question, for example, whether the landlord requires the land himself for personal cultivation. And inasmuch as the powers of the Mamlatdar under the Tenancy Act are confined to the powers of the Mamlatdar's Court under the Mamlatdars' Courts Act, it could not have been contemplated that under the powers given to the Mamlatdar under s. 29 he should dispose of the question whether the landlord, for example, required the land for his own purpose. That shows, according to him, that s. 29 is concerned merely with applications for execution. But even though it is correct to say that whenever the question is whether a thing is within the power of a particular Court or tribunal a question of jurisdiction is involved, we do not think that when the word "powers" is used in s. 29, it has reference to these powers which give jurisdiction but has a reference to the powers which have got to be exercised by the Mamlatdar's Court in actually conducting an inquiry. It has reference not to the subject-matter of what the Mamlatdar's Court had power to deal with, but has a reference to the powers which the Mamlatdar's Court is entitled to exercise in dealing with the subject-matter. I have already enumerated what these powers are, and there is no substance therefore in the contention that the powers of the Mamlatdar are the same as the Mamlatdar's Court under the Mamlatdars' Courts Act, that he could deal only with what he could deal with under the Mamlatdars' Courts Act, that while dealing with an application of the landlord he has no power to decide whether a landlord required the land for personal cultivation and that s. 29 has reference therefore to an application for execution.

For the same reason there is no force in the contention that the Mamlatdar's Court under the Mamlatdar's Courts Act has got power to say that he would not decide the question. Mr. Shanbhag says that because of the provisions of s. 72 the Mamlatdar in dealing with an application under s. 29 may say that he would not decide an application between the landlord and the tenant, and if he were to say that and this Court holds that the jurisdiction of the civil Court is ousted, then there is

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nobody to whom the landlord can go in order to obtain the eviction of the tenant. But the obvious reply to that is that the Mamlatdar when dealing with an application under s. 29 has got no power to say that he would not decide the question. It is his duty to decide it under the provisions of s. 70 and he cannot say that he would not decide it because the reference to powers has got reference not to the subject-matter of the proceedings before the Mamlatdar under the Mamlatdars' Courts Act nor to the powers of the Mamlatdar to award possession or to refuse to award possession or refer the parties to the civil Court. Reference to the powers in s. 72 has a reference to the powers required for conducting the proceedings.

The appeal must, therefore, be dismissed with costs.

Appeal dismissed.

K. B. S.

APPELLATE CRIMINAL

Before Mr. Justice Bhagwati and Mr. Justice Vyas.

THE STATE OF BOMBAY *v.* RAMGOPAL GANPATRAI RUIA AND ANOTHER (ORIGINAL ACCUSED NOS. 1 AND 2).*

1951 *June 22*

Criminal Procedure Code (Act V of 1898), ss. 209, 210—Committal proceedings—Powers of Magistrate—Test for determining whether accused be committed or discharged—Presence or absence of credible evidence, the deciding factor.

A Magistrate in a committal proceeding is entitled to examine and weigh the evidence, not for the purpose of deciding whether it would definitely result in conviction, but with a view to see whether the evidence is such as would lead to an expectation of a probable conviction. He is to consider the evidence in order to see whether there is a prima facie case which would justify committal to the Court of Session, a prima facie case which should go to the jury for ultimate decision. In other words, he should approach the evidence and go into it to decide whether he should commit or not. The correct position is not that he should commit the case to the Sessions Court only if a conviction, in his opinion, is bound to follow. If there are circumstances for and against, if there are probabilities for and against, if there is evidence for and against with which there is nothing wrong prima facie, which on an appraisement by the jury may lead to a conviction or may not, his

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* Criminal Revision Application No. 1425 of 1950.