Pratap's case is the better view and I prefer it to the view expressed in *Gopal Kristnayya's* case in *Karimallah* v. *Bapu* and in *Mehar* v. *Labh* and also the observations of Mr. Justice Wassoodew in *Alabhai* v. *Bhura*[1] to which I have made reference. I am, therefore, of the opinion that the learned District Judge was right in dismissing the application made by the petitioner.

The result is that the revision application fails. Rule discharged with costs.

Rule discharged.
M. W. P.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar and Mr. Justice Vyas.

DHONDI TUKARAM MALI, AND ANOTHER, (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS *v.* HARI DADU MANG, AND OTHERS, (HEIRS OF ORIGINAL PLAINTIFF), RESPONDENTS.*

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Bombay Tenancy and Agricultural Lands Act (LXVII of 1948), ss. 29, 70, 85, 89—Plaintiff suing for possession of agricultural lands—Defendant contending that he was a protected tenant—Whether Civil Court has jurisdiction to try the suit—Whether jurisdiction of Civil Courts is ousted by s. 85 in respect of pending proceedings—Construction—Bombay General Clauses Act (I of 1904), s. 7.

In a suit filed by the plaintiff to recover possession of agricultural lands the defendant contended that he was a protected tenant. On the question whether the Civil Courts had jurisdiction to try the suit,

Held, (1) that since under s. 70 (*b*) of the Bombay Tenancy and Agricultural Lands Act, 1948, it is the duty of the Mamlatdar to decide whether a person is a tenant or a protected tenant and s. 85 of the Act provides that the questions left for determination by the Mamlatdar under s. 70 cannot be tried by a Civil Court, the Civil Court had no jurisdiction to try the suit,

Trimbak Sopana v. *Gangaram Mhatarba*,[2] relied upon.

(2) that the proper procedure for the Civil Court in such cases is not to dismiss the suit but to direct the party who raises the plea of tenancy under the Bombay Tenancy and Agricultural Lands Act, 1948, to obtain a decision from the Mamlatdar within a reasonable time; and if the decision of the Mamlatdar is in favour of the said party the suit for possession has to be dismissed; if, on the other hand, the

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* Second Appeal No. 1381 of 1949.

[1] (1937) A. I. R. Bom. 401. [2] [1953] Bom. 586.

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Mamlatdar rejects the plea of the tenancy the Civil Court is entitled to deal with the dispute on the footing that the defendant is a trespasser, and

(3) that although under s. 89 of the Act legal proceedings in respect of vested rights which are instituted after the coming into operation of the Act are still governed by the provisions of the Act, proceedings which were pending at the commencement of the Act are saved from the operation of the Act and the jurisdiction of Civil Courts to try pending suits is not affected by the Act.

Rajgonda Appa Patil v. *Annu Appaji Chaugule*[1] and *Bhimaji Velji* v. *Pritamlal Bapubhai*,[2] relied upon.

Shiv Bhagwan v. *Onkarmal*,[3] referred to.

SECOND APPEAL against the decision of V. R. Shah, Extra Assistant Judge at Satara confirming the decision of Y. D. Desai, Second Joint Civil Judge (Junior Division) at Satara.

On June 26, 1946, ane Dadoo Piraji Jagadale (plaintiff) filed a suit against three defendants, Dhondi Tukaram Mali, Mora Tukaram Mali and Nathu Sakharam Pawar for possession of the suit lands on the allegation that the lands belonged to the plaintiff but had been leased to the third defendant for a period of three years in 1941 and were in his possession, that he failed to vacate and deliver possession of the lands, and that defendants Nos. 1 and 2 had no interest in the lands and had trespassed upon the lands.

Defendant No. 3 who was sued as a tenant did not contest the suit. Defendants Nos. 1 and 2 contended that they were either Mirasdars or permanent tenants on account of the origin of their tenancy having being lost in antiquity and the plaintiff was not entitled to possession of the lands. They also contended that they were entitled to the protection of the Bombay Tenancy Act, 1939, which was made applicable to the Satara District and that a decree for possession could not be passed against them by reason of s. 29 (*1*) (*A*) of the said Act.

The trial Judge held that defendants Nos. 1 and 2 were neither Mirasdars nor permanent tenants. He further held that defendants Nos. 1 and 2 were not entitled to the protection of the Bombay Tenancy Act, 1939, and that s. 29 (*1*) (*A*) of the said Act did not operate to bar the jurisdiction of the Court to decree possession against them.

(1) (1950) Civil Revision Application No. 686 of 1950, decided by Chagla C. J. on November 30, 1950; (unrep.).

(2) (1951) S. A. No. 666 of 1950, decided by Vyas J. on March 15, 1951; (unrep.).

(3) (1951) 54 Bom. L. R. 330.

On appeal, the Extra Assistant Judge at Satara confirmed the decision of the trial Court.

Defendants Nos. 1 and 2 appealed to the High Court and contended that the Civil Court had no jurisdiction to try the suit by reason of the combined operation of ss. 70 and 85 of the Bombay Tenancy and Agricultural Lands Act, 1948.

Mr. Justice Shah before whom the appeal came for final hearing referred the question regarding jurisdiction to a Division Bench, delivering the following judgment on November 18, 1952.

Shah J.—[After setting out the facts his Lordship proceeded:] It is true that an inference as to permanent tenancy is a mixed question of law and fact and could be raised in second appeal. But the facts found from which the inference in favour of a party claiming to be a permanent tenant is sought to be raised must be regarded as binding in second appeal, though the question as to what inference should be raised from those facts must be regarded as a question of law. In the present case on the facts found it is impossible to raise a presumption under s. 83 of the Land Revenue Code in favour of defendants Nos. 1 and 2. Admittedly there is no Miras Patra in favour of defendants Nos. 1 and 2, and the question that defendants Nos. 1 and 2 were Mirasdars was not argued before the learned appellate Judge. Even though the question as to the jurisdiction of the civil courts to entertain and decide a suit relating to tenancy and protected tenancy was not argued in the lower appellate Court, Mr. Sukhtankar on behalf of defendants Nos. 1 and 2 has contended before me that once defendants Nos. 1 and 2 raised a contention that they were tenants and not liable to be evicted, the Civil Court had no jurisdiction to decide the suit. The learned trial Judge held on the evidence that defendants Nos. 1 and 2 were trespassers in the year 1944, and not tenants as contended by them. He further held that defendants Nos. 1 and 2 not being tenants cannot be held to be protected tenants as defined under the Act, and the question of valid notice to them did not arise, and the Court's jurisdiction was not barred. As I stated earlier, the learned appellate Judge was not invited to consider the question as to the jurisdiction of the Civil Courts to entertain and decide the case once the defendants Nos. 1 and 2 raised a question as to tenancy and protected tenancy.

But the question being one as to the jurisdiction of the Court to proceed to hearing of a suit, even though not canvassed in the lower appellate Court must be decided by this Court. Mr. Sukhtankar relies upon the provisions of s. 70 of the Bombay Tenancy and Agricultural Lands Act, 1948, which provides *inter alia*:

"For the purposes of this Act, the following shall be the duties and functions to be performed by the Mamlatdar:

(*a*) to decide whether a person is an agriculturist;

(*b*) to decide whether a person is a tenant or a protected tenant;

Section 85 of the Act is also relied upon by Mr. Sukhtankar; and that section provides in sub-s. (*1*);

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"No 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."

Relying upon ss. 70 and 85, sub-s. (*1*) of the Act it is submitted that the combined effect of these two sections of the Act is to bar the jurisdiction of the Civil Courts in respect of any question which the Mamlatdar is entitled to settle, decide or deal with. Now, s. 85, sub-s. (*1*) is a provision which appears to exclude the jurisdiction of the civil courts and must be strictly construed. Under s. 70 of the Act the duties and functions of the Mamlatdar set out are expressly stated to be "for the purpose of this Act." It is true that the jurisdiction of the civil courts to decide, settle or deal with questions required to be decided by the Mamlatdar under the Act is excluded; and when s. 29, sub-s. (*2*) provides that a landlord shall not obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar the jurisdiction of the Civil Courts to pass orders in ejectment against tenants defined by the Act must be deemed to have been taken away. Undoubtedly by s. 70 of the Act the Mamlatdar is authorized to decide the question whether a person is a tenant or a protected tenant, provided it is a decision to be given *for the purposes of the Act*. If in proceedings under sub-s. (*2*) of s. 29 a contention is sought to be raised that the relation of landlord and tenant does or does not subsist between the parties, it would be for the Mamlatdar to decide the question whether a person alleged or claiming to be a tenant or a protected tenant is or is not such a tenant. Section 70 of the Act does not however profess to confer exclusive jurisdiction upon the Mamlatdar to decide questions set out in items (*a*) to (*o*) of that section, whatever the nature of the proceeding; it merely imposes duties and sets out the functions of the Mamlatdar to be performed for the purposes of the Act. It would therefore appear that if in a matter filed in a civil Court a question did arise which if it had arisen in proceedings instituted under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, it would be the duty and the function of the Mamlatdar to decide, the jurisdiction of the civil Courts to decide or deal with that question cannot be regarded as barred. There does not appear any provision in the Bombay Tenancy and Agricultural Lands Act, 1948, which lays down that a civil Court is not entitled to try a civil proceeding which involves the determination of any question falling within s. 70, cls. (*a*) to (*o*) which if it had arisen in a proceeding under the Act would have been settled, decided or dealt with by the Mamlatdar. Normally the jurisdiction of a civil Court depends upon its competence to decide a claim made by the claimant, and not upon the defence raised by the opponent; and the Court does not lose its jurisdiction merely by reason of a defence raised. In any case the cessar of jurisdiction can be effective only on proof of facts which deprive jurisdiction, and not merely by raising a plea of those facts.

I have an impression also that numerous cases have come before this Court, some of which have been decided by Division Benches of this Court, in which contentions have been raised by the defendants that

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they were tenants or protected tenants, and the Court decided that the defendants were mere trespassers and therefore not entitled to the status of protected tenants, and therefore the court was entitled to pass decrees in ejectment on the footing that they were trespassers: *see* the judgment of Weston and Dixit JJ. in *Ramchandra Atmaram Prabhukhanolkar* v. *Ramchandra Laxman*[1] and *Laxmibai Govind Pandurang Ambekar* v. *Maina,*[2] *Ibrahim Vajusaheb* v. *Noor Mahomed*[3] and *Jethalal Baber Bhatt* v. *Chhota Ranchhod Baria.*[4] If the contention advanced by Mr. Sukhtankar is correct, all those cases must be deemed not to be correctly decided. It is true that the contention was not raised in those cases in the form in which Mr. Sukhtankar is seeking to raise a contention before me in this case. Mr. Sukhtankar has after this judgment was commenced to be delivered sought to rely upon a decision of my Lord the Chief Justice in *Trimbak Sopana* v. *Gangaram*[5] in which an identical contention was sought to be raised, and it is claimed that it was decided that once a contention is raised by the defendant, in a civil suit filed against him on the footing that he is a trespasser, that he is a tenant as defined by the Bombay Tenancy and Agricultural Lands Act, the civil courts lost jurisdiction to try the suit.

In view of the importance of the question, I think that this is a fit case which should be referred to a division bench for deciding whether on a contention raised by the defendant in a suit filed against him on the footing that he is a trespasser that he is a tenant or a protected tenant, whether the civil courts lose jurisdiction to try the suit by reason of the combined operation of ss. 70 and 85 of the Bombay Tenancy and Agricultural Lands Act, 1948?

The appeal was heard by a division bench composed of Gajendragadkar and Vyas JJ.

K. B. Sukthankar, for the appellant.

K. N. Dharap, with *M. M. Virkar,* for respondent No. 1 (*a*) (*c*) (*d*) (*e*).

Gajendragadkar J. This appeal has been referred to a Division Bench by Mr. Justice Shah because he felt that the question of jurisdiction which had been raised before him by Mr. Sukthankar on behalf of the appellant was of some importance. The appeal itself arises from a suit in which the plaintiff claimed to recover possession of certain agricultural lands from three defendants. According to the plaint, defendants Nos. 1 and 2 were trespassers and defendant No. 3 was a

[1] (1949) S. A. No. 335 of 1948, decided by Weston and Dixit JJ., on October 14, 1949. (Unrep.).

[2] (1952) S. A. No. 1201 of 1950, decided by Gajendragadkar J., on July 15, 1952 (Unrep.).

[3] (1950) S. A. No. 874 of 1950 (with S. A. No. 875 of 1950) decided by Gajendragadkar J., on October 25, 1950 (Unrep.).

[4] (1952) S. A. No. 664 of 1952, decided by Shah J., on November 18, 1952 (Unrep.).

[5] (1953) 55 Bom. L. R. 56.

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tenant whose tenancy had been duly determined. The plaintiff's claim was resisted principally by defendants Nos. 1 and 2 who claimed to be Mirasdars or permanent tenants. This plea has been rejected by the Courts below and the plaintiff's suit has been decreed. Against this decree defendants Nos. 1 and 2 have preferred the present appeal. At the hearing of this appeal Mr. Sukthankar contended before Mr. Justice Shah that the plea of tenancy which had been raised by his clients in the present suit can be tried by the Mamlatdar alone under s. 70 of the Bombay Tenancy and Agricultural Lands Act, LXVII of 1949, and that the Civil Courts have no jurisdiction to entertain such a plea. This particular contention was not urged in the Courts below; but Mr. Justice Shah allowed it to be raised because it is a pure point of jurisdiction which arises on the pleadings themselves. It would appear that while Mr. Justice Shah had commenced to deliver his referring judgment, Mr. Sukthankar cited before him the decision of the learned Chief Justice in *Trimbak Sopana* v. *Gangaram*[1] which was in his favour. But Mr. Justice Shah was disposed to take the view that the question raised may with advantage be considered by a Division Bench and so he has referred this point to us.

The scheme of the Bombay Tenancy and Agricultural Lands Act, 1948, seems to be fairly clear. This Act was passed to confer some special benefits on the tenants of agricultural lands. Amongst these, the most important benefit has been conferred by s. 29 of the Act. Section 29 provides for the procedure for taking possession of agricultural lands. The effect of this section is that a landlord cannot obtain possession of agricultural lands which are let out to a tenant unless an order to that effect is passed by the Mamlatdar. An application can be made by the landlord to obtain this relief. An application can also be made by the tenant who has been dispossessed but who claims that he is entitled to possession of any agricultural land. When an application is made to the Mamlatdar in the prescribed form, the Mamlatdar has to make an inquiry into the respective rights of the parties and then pass an order on the application as he may deem fit. The section provides for a limitation of two years for making such an application, the starting point of the limitation being the date on which the right to obtain possession of the land is deemed to have

(1) [1953] Bom. 586, s.c. 55 Bom. L.R. 56.

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accrued to the applicant. Sub-section (*4*) of s. 29 is very important. It lays down that if any person takes possession of the land except in accordance with the provisions of sub-ss. (*1*) and (*2*) of s. 29, he shall be liable to forfeiture of crops, if any, grown in the land in addition to payment of costs as may be directed by the Mamlatdar or by the Collector and also to the penalty prescribed in s. 81. The penalty prescribed by s. 81 for contravention of the provisions of s. 29, sub-ss. (*1*) and (*2*), is the liability to pay a fine up to Rs. 1,000. It would thus be seen that under s. 29 the only procedure available to a landlord to recover possession of the property let out by him to his tenant is to move the Mamlatdar by an application and obtain his order for possession. If the landlord obtains a decree for possession from a civil Court and manages to get into possession in execution of his decree or otherwise, he would *prima facie* incur all the liabilities prescribed by sub-s. (*4*) of s. 29. Consistently with the spirit underlying the provisions of s. 29, s. 70 of the Act provides for the duties of the Mamlatdar. Sub-sections (*a*) to (*e*) of s. 70 mention different kinds of questions which it is the duty of the Mamlatdar to decide under this Act. Section 70 (*b*) makes it the duty of the Mamlatdar to decide whether a person is a tenant or a protected tenant. Thus it would follow that when an application is made before the Mamlatdar either by the tenant or by the landlord and a question arises as to whether the person in cultivation of the land is a tenant or a protected tenant, it is the duty of the Mamlatdar to decide that question. Section 85 shows that the questions which are left for determination of the Mamlatdar under s. 70 cannot be tried by a civil Court. Section 85 (*1*) clearly provides that 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 by the other Tribunals or authorities mentioned in this Act. There is, therefore, no doubt that s. 70 makes the Mamlatdar the forum of exclusive jurisdiction for the determination of the questions mentioned in that section. Therefore, whenever parties are at issue on the question as to whether a person is a tenant or a protected tenant, the only Tribunal that can decide this question is the Mamlatdar and no other. In other words, the Mamlatdar's jurisdiction to deal with the questions mentioned in s. 70 is absolutely exclusive.

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Mr. Justice Shah apparently felt that the opening words of s. 70, "For the purposes of this Act," impose a limitation upon the jurisdiction of the Mamlatdar. The Mamlatdar may have to decide the questions mentioned in s. 70; but that is only for the purposes of this Act. In other words, if a point as to whether a person is a tenant or a protected tenant arises in a proceeding not falling within the Bombay Tenancy and Agricultural Lands Act, the decision of the said point cannot be said to be for the purposes of this Act. That seems to be the effect of the argument. With respect, we do not see how these words can be said to affect the bar created by s. 85 against civil Courts entertaining any plea which falls to be decided by the Mamlatdar under s. 70. The purpose of the Act in the context is deciding the claim of the parties as to possession of an agricultural land. It may be, the landlord claims to recover possession of the agricultural land from his tenant or the tenant who is dispossessed claims to be restored to possession of the agricultural land. Whenever any such dispute arises between the parties the object of the party seeking relief is to take possession of the agricultural land, and that undoubtedly is one of the purposes of the Tenancy Act. Indeed, s. 29 makes it clear that possession of the agricultural land can be awarded only in execution of an order passed by the Mamlatdar and not otherwise. Therefore, in our opinion, even if a plea is raised by a defendant in a suit like the present that he is a tenant or a protected tenant, that plea is ultimately referable to the provisions of the Tenancy Act and the purpose of raising the plea is to claim the protection of the Act. If that be so, the decision of the plea must be held to be for the purposes of this Act.

In considering the provisions of s. 70 it must be borne in mind that the jurisdiction conferred on the Mamlatdar is not confined to cases where the relationship of landlord and tenant is admitted. In fact it is only where the said relationship is alleged by one party and denied by the other that the question falls to be considered and the decision of the question is left exclusively to be determined by the Mamlatdar under the provisions of ss. 70 and 85 of the Act. It is likely that a trespasser would thereby be able to prolong litigation between him and the owner of the property by frivolously raising a plea that he is a tenant or a protected tenant; but, on the other hand, a landlord may also frivolously allege that a tenant is a trespasser. We must, therefore, hold that the only

forum that can deal with this plea is the Mamlatdar. If he rejects the plea, the dispute between the owner and the trespasser would be triable by the ordinary civil Court; but otherwise, the Mamlatdar alone will decide the dispute in so far as it falls within the purview of the Act.

We may incidently point out that the unreported decisions of this Court which Mr. Justice Shah has mentioned in his referring judgment were all concerned with the earlier Tenancy Act of 1939. In the said Act exclusive jurisdiction had not been conferred upon the Mamlatdar to decide certain questions; and so there was no question of excluding the jurisdiction of civil Courts in respect of any class or category of questions between landlords and tenants. In fact, the material provisions of ss. 29, 70 and 85 were enacted for the first time in the present Act. Therefore, with respect, these decisions are not of any assistance in dealing with the question raised in the present appeal.

Therefore, we hold that in a suit filed against the defendant on the footing that he is a trespasser if he raises the plea that he is a tenant or a protected tenant, the civil Court would have no jurisdiction to deal with that plea. That is the view which has been expressed by the learned Chief Justice in *Trimbak Sopana* v. *Gangaram*, and with respect we agree with that view. We would, however, like to add that in all such cases where the civil Court cannot entertain the plea and accepts the objection that it has no jurisdiction to try it, it should not proceed to dismiss the suit straightaway. We think that the proper procedure to adopt in such cases would be to direct the party who raises such a plea to obtain a decision from the Mamlatdar within a reasonable time. If the decision of the Mamlatdar is in favour of the party raising the plea, the suit for possession would have to be dismissed, because it would not be open to the Civil Court to give any relief to the landlord by way of possession of the agricultural land. If, on the other hand, the Mamlatdar rejects the plea raised under the Tenancy Act, the civil Court would be entitled to deal with the dispute on the footing that the defendant is a trespasser. It would have been much better if Legislature had provided for the transfer of such cases as they have done in the B. A. D. R. Act. We would, therefore, like to invite their attention to this aspect of the matter in the hope that some suitable provision would be made in the Tenancy Act.

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There is another point which we must consider before we part with this case. It appears that when the appeal was argued before Mr. Justice Shah, it was assumed that the provisions of the Tenancy Act of 1948 applied to the present suit. But this assumption is challenged before us and we have come to the conclusion that the Tenancy Act of 1948 does not apply to the present proceedings. The material section for deciding this point is s. 89. This section provides for the repeal of the enactment specified in the Schedule and then it goes on to add in sub-s. (*2*):

"But nothing in this Act or any repeal effected thereby—......

(*b*) shall save as expressly provided in this Act, affect or be deemed to affect,

(*i*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(*ii*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of this Act,

and any such proceeding shall be continued and disposed of, as if this Act was not passed."

It is clear that rights which had vested in the landlord prior to this Act are intended to be saved. It is also clear that legal proceedings in respect of such rights and remedies in respect of them are also intended to be saved with the important proviso that these proceedings should have been commenced before the Act came into force. It is perfectly competent for the Legislature to affect vested rights retrospectively. It is also competent to them to save pending proceedings from the operation of the new Act. Mr. Sukthankar says that no party has a vested right in procedure and his argument is that this Act has merely substituted the forum of the Mamlatdar for the decision of certain questions instead of the ordinary civil Courts. In support of this argument Mr. Sukthankar has referred us to a decision of this Court in *Shiv Bhagwan* v. *Onkarmal.*[1] This contention is undoubtedly sound. But, on the other hand, if the Legislature has expressly provided that pending proceedings in respect of a right which had accrued to the landlord to evict a trespasser or a tenant whose tenancy has been duly determined should be continued and disposed of as if this Act had not been passed, we must give effect to that provision. S. 89 (*2*) (*b*) (*ii*) unambiguously lays down that any legal proceeding in respect of rights mentioned in s. 89 (*2*) (*b*) (*i*)

[1] (1951) 54 Bom. L. R. 330.

shall be continued and disposed of as if this Act was not passed. It would be noticed that what are saved are only pending proceedings. In other words, if a proceeding is instituted subsequent to the commencement of the Act, it would be governed by this Act notwithstanding the fact that the right itself had accrued to the party prior to the Act. In this connection it would be pertinent to point out that the last clause of s. 89 (*2*) differs in one material particular from s. 7 of the Bombay General Clauses Act. Section 7 of the General Clauses Act deals with the effect of repeal, and, broadly stated, it provides, *inter alia,* that the repeal of an Act would not affect a right which had vested in a party under the repealed Act and it safeguards any legal proceedings which the party may institute in assertion of the said right. This is how the material portion of s. 7 reads:

> "...........the repeal shall not—
>
> (*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be *instituted,* continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed."

Under the provisions of this section even if a proceeding is instituted subsequent to the repeal of an Act, it will be continued as if the repeal of the Act had not taken place. Section 89 of the present Act, however, does not seem to protect legal proceedings in respect of vested rights which may be instituted subsequent to the commencement of this Act, unlike s. 7 of the General Clauses Act. It does not refer to the institution of legal proceedings, but mentions merely their continuance and disposal, which clearly denotes pending proceedings. That is why we hold that it is only pending proceedings in respect of vested rights that are saved from the operation of this Act; so that even in respect of vested rights which are saved, if a suit to enforce them is filed subsequent to the commencement of the Act the provisions of this Act will apply and if any question mentioned in s. 70 arises between the parties it will have to be decided by the Mamlatdar. In the present case it is common ground that the suit was instituted much before the present Act came into force. The suit was in fact filed on June 26, 1946, and was decreed by the trial Court on June 29, 1948. The appeal against this decree was preferred on August 4, 1948, and it was disposed of on August 26, 1949.

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It was during the pendency of the appeal that the present Act came into force on December 28, 1948. Therefore, in our opinion, it would not be open to the appellant to contend that the civil Court has no jurisdiction to try the plea which he has raised. Our attention has been drawn to an unreported decision o tfhe learned Chief Justice in *Rajgonda Appa Patil* v. *Anna Appaji*[1] in which a similar view has been expressed. My brother Vyas has also taken a similar view in *Bhimji Velji* v. *Pritamlal Bapubhai Desai.*[2]

We would, however, like to add that in the present appeal we are not called upon to consider whether it would be open to the decree-holder to secure possession of the agricultural land by executing the decree, which may be passed in his favour by the Civil Court. Before answering the said question, the effect of s. 29 will have to be considered. We are at present concerned only with the question as to whether the civil Court's jurisdiction is ousted in pending proceedings on the ground that in these proceedings a plea under s. 70 (*b*) is raised, and we answer that question in the negative.

Since this matter has been referred to us for the decision of the point of jurisdiction, we must now send it back to Mr. Justice Shah for disposal of the appeal in accordance with law.

Answer accordingly.

K. B. S.

APPEAL FROM ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

1952 Dec. 16

BURJOR PESTONJI SETHNA, APPELLANT (ORIGINAL PLAINTIFF) *v.* NARIMAN MINOO TODIWALLA AND OTHERS, RESPONDENTS (ORIGINAL DEFENDANTS).*

Court-fees Act (VII of 1870), s. 7 (iv)—Suits Valuation Act (VII of 1887), s. 8—Plaintiff in possession of premises—Plaintiff's use and enjoyment of premises obstructed and interfered with—Suit for declaratory decree and consequential reliefs—Monthly rent of premises Rs. 302-8-0—Reliefs sought valued by plaintiffs at more than

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* O. C. J. Appeal No. 126 of 1952: Suit No. 135 of 1950.

(1) (1950) Civ. Rev. Appln. No. 686 of 1950, decided by Chagla C. J. on Nov. 30, 1950 (Unrep.).

(2) (1951) S. A. No. 666 of 1950, decided by Vyas J., on March 15, 1951 (Unrep.).