1885.

MULCHAND RANCHHODDÁS v. CHHAGAN NÁRAN.

recognising the transfer of that decree by Ambárám to the petitioner, no application having ever been made to it for that purpose by any one entitled to make it—see section 21, Act XI of 1865, and section 623, Civil Procedure Code. We, accordingly, reverse its order of the 31st January, 1885, refusing execution which the petitioner complains of, and direct it to proceed to execute such decree.

Rule made absolute.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Sir W. Wedderburn, Bart., Justice.

1885. *August* 11.

GOVINDA BA'BA'JI, (ORIGINAL PLAINTIFF), APPLICANT, *v.* NA'IKU JOTI, (ORIGINAL DEFENDANT), OPPONENT.*

Mámlatdár's Act (Bombay) III of 1876, *Sec.* 15, *Cl.* (c), *suit under—Jurisdiction—Mámlatdár's power to try subsequent suit in respect of the same subject-matter—Practice—Parties.*

The applicant had been dispossessed of certain land, in execution of a decree obtained by the opponent in the Court of the Mámlatdár of Karád, under clause (*c*) of section 15 of the Mámlatdár's Act, III of 1876, to which he (the applicant) was not a party. The applicant thereupon brought the present suit against the opponent to recover possession. The Mámlatdár, relying on a Government circular, dismissed the suit as *res judicata*. The applicant applied to the High Court under its extraordinary jurisdiction.

Held, that the decree made by the Mámlatdár, in the former suit, under clause (*c*) of section 15 of the Mámlatdár's Courts Act III of 1876, was no bar to the exercise by him of jurisdiction in the present suit, the present plaintiff (applicant) not having been a party to the former proceedings, and that it was irregular for the Mámlatdár to refer to a Resolution of Government for the purpose of determining the effect to be given to his former decree.

The order of the Mámlatdár was reversed, and the case directed to be heard. *Nána Bayáji* v. *Pánduraug Vásudev*(1) referred to and distinguished.

THIS was an application under the extraordinary jurisdiction of the High Court, against the order of Ráv Sáheb Bálkrishna Náráyan Váidya, Mámlatdár of Karád, in the Sátára District.

The opponent, claiming to be entitled to unobstructed possession of the land in dispute, had obtained a decree to that effect in a suit in the Mámlatdár's Court at Karád, in the Sátára

* Application, No. 9 of 1885, under Extraordinary Jurisdiction.

(1) I. L. R., 9 Bom., 97.

District. The applicant was not a party to that suit. In execution of that decree the applicant was put out of possession of the land.

The applicant thereupon brought the present suit against the opponent, alleging that he had been in possession of the land under a registered deed of mortgage executed to him by one Nágo Rámchandra. The Mámlatdár of Karád, relying on a circular of the Executive Government, rejected the applicant's suit as *res judicata*[1] by the former suit in respect of the same land.

The applicant applied to the High Court under its extraordinary jurisdiction.

Pándurang Shridhár Páthak for the applicant.—The applicant could not be held bound by a decree obtained in a suit to which he was not a party. The Mámlatdár was wrong in rejecting the suit on the authority of the Government circular. Such a circular has been held not to be binding on a Court of Justice—see *Nána Bayáji* v. *Pándurang Vásudev*[2].

Dáji Abáji Khare for the opponent.—The applicant has a remedy in a separate suit, and should not be allowed to apply under the Court's extraordinary jurisdiction—see *Nána Bayáji* v. *Pándurang Vásudev*[3] and *Shiva Nathaji* v. *Jomá Káshináth*[4].

BIRDWOOD, J.—The decree made by the Mámlatdár, in the former suit, under clause (*c*) of section 15 of the Mámlatdárs' Courts Act, No. III of 1876, was clearly no bar to the exercise by him of jurisdiction in the present suit, inasmuch as the present plaintiff was not a party to the former proceedings. It was irregular for the Mámlatdár to refer to a Resolution of Government for the purpose of determining the effect to be given to his former decree. A similar irregularity was noticed by this

(1) "The provisions of sections 328 to 331 of the Code of Civil Procedure are not applicable to the decisions of the Mámlatdárs' Courts established under the provisions of Bombay Act III of 1876. * * * *
The decision of the Mámlatdár is good, not only against the defendant, but the whole world* * * * (Government Resolution 1673 of 11th March 1882.) See for Reference, pp. 319 and 320, General Rules in force in the Revenue Department."

(2) I. L. R., 9 Bom., 97. (3) I. L. R., 9 Bom., 97.

(4) I. L. R., 7 Bom., 341.

1885.

GOVINDA BÁBÁJI v. NÁIKU JOTI.

Court in *Mána Bayáji* v. *Pánduraug Vásudev*[1]. In that case, the circumstances of which were, to some extent, similar to those of the present case, this Court refused to exercise its extraordinary jurisdiction on behalf of the plaintiff, as, having regard to the close relationship existing between the defendants in the first suit and the plaintiff in the second, the Court was of opinion that, in all probability, an inquiry into the merits of the second suit would not really result in a decision in the plaintiff's favour. But no such relationship exists between the defendants in the former proceedings, in which the present defendant was the plaintiff, and the plaintiff in the present case; and, on such material as there is before us, it is impossible for us to form any opinion as to the probable success of the present suit, if it were now inquired into on its merits. We reverse the order of the Mámlatdár, and direct that the case be heard. Costs to follow the final decision.

Order reversed.

(1) I. L. R., 9 Bom. 97

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1885. *August* 13.

DHARMA' DAGU, (ORIGINAL DEFENDANT), APPELLANT, *v.* RAMKRISHNA CHIMNA'JI, (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Adoption of a married asagotra Bráhman—Validity of such adoption—Factum valet.

The adoption of a married *asagotra* Bráhman is not prohibited by the Hindu law in force in the Presidency of Bombay. The circumstance that there was a person better qualified than the adoptee would not by itself render such adoption invalid, or prevent the principle of *factum valet* from applying. Where a rule is in effect *directory* only, an adoption contrary to it, however blameable, is nevertheless, to every legal purpose, good.

THIS was a second appeal from the decision of M. B. Baker, District Judge of Dhulia.

The plaintiff, who was the adopted son of one Anpurnábái, sued the defendant upon a lease alleged to have been executed by the defendant to the adoptive mother of the plaintiff, on the

* Second Appeal, No. 286 of 1883.