

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

SHIDLINGA'PA, (ORIGINAL DEFENDANT), APPLICANT, v. KARISBASA'PA,
(ORIGINAL PLAINTIFF), OPPONENT.*

1887.
March 15.

(Bombay) Act III of 1876, Sec. 4—*Jurisdiction of Mámlatdár's Courts in redemption suits—Construction of statutes.*

Under (Bombay) Act III of 1876(1), Mámlatdárs have no jurisdiction to take cognizance of suits arising out of disputed claims to redeem mortgages.

THIS was an application under section 622 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff filed a suit in the Mámlatdár's Court at Dhárwár to recover possession of certain land which had been mortgaged to the defendant under a mortgage-deed dated 5th March, 1879. The mortgage-deed provided that the mortgagee should hold the land for seven years, at the end of which period it was to be restored to the mortgagor on payment of the mortgage-money.

* Application, No. 135 of 1885.

(1) "Section 4.—Every Mámlatdár shall preside over a Court, which shall be called a Mámlatdár's Court, and which shall have power within such territorial limits as may from time to time be fixed by the Governor in Council to give immediate possession of lands, premises, trees, crops or fisheries, or of any profits of the same, or to restore the use of water from wells, tanks, canals or water-courses to any person who shall have been dispossessed or deprived thereof otherwise than by due course of law, or who shall have become entitled to the possession or restoration thereof by reason of the determination of any tenancy, or other right of any other person in respect thereof.

"The said Court shall have power within the said limits, when any person is disturbed or obstructed, or when an attempt has been made to disturb or obstruct any person, in the possession of any lands, premises, crops, trees or fisheries, or in the use of water from any well, tank, canal or water-course, or of the use of roads or customary ways to fields, to issue an injunction to the person causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from causing or attempting to cause any such further disturbance or obstruction.

"But no suit shall be entertained by a Mámlatdár's Court unless it be brought within six months from the date on which the cause of action arose.

"The cause of action shall be deemed to have arisen on the date on which the dispossession, deprivation, determination of tenancy or other right occurred; or on which the disturbance or obstruction, or the attempted disturbance or obstruction, first commenced."

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The plaintiff alleged that he had tendered the mortgage-money on the expiration of the mortgage term, but that the defendant refused to deliver up the land.

The defendant pleaded that the assessment of the land had been enhanced shortly after the date of the mortgage, that he had since paid the assessment at the enhanced rate, that the plaintiff had agreed to repay the same at the time of redemption, and contended that, until it was repaid, the plaintiff was not entitled to recover possession of the land.

The Mámlatdár of Dhárwár found that there was no reliable evidence that the plaintiff had agreed to repay the enhanced assessment. He passed a decree awarding possession to the plaintiff on payment of the original mortgage-money. The defendant applied to the High Court for a reversal of this order, on the ground that the Mámlatdár had no jurisdiction to entertain a suit for redemption.

A rule *nisi* having been granted,

N. G. Chandáwarkar showed cause :—The words “other right” in section 4 of Act III of 1876 are wide enough to cover a case like the present. Here the mortgage term has expired. The mortgagor has offered to pay the mortgage-money. The mortgagee is, therefore, bound to restore the land. The question of jurisdiction was not raised in the Court below.

Máneksháh Jehángirsháh, contra :—The words “other right” are to be construed with reference to the context, and means “other right resembling a tenancy.” A Mámlatdár has no jurisdiction in redemption suits.

WEST, J. :—In the present case, the opponent sued in a Mámlatdár’s Court for restoration to him of certain land on payment of the money stipulated for in a mortgage, of which the term (seven years) had recently been completed. The applicant (the mortgagee) resisted the suit, on the ground that the assessment had been raised by the Government, and that, in consequence, a new agreement had been entered into, under which a larger sum was payable than under the original mortgage.

The Mámlatdár ordered delivery up of possession on payment of the sum due under the original mortgage, and the question for

us is, whether he had jurisdiction in the case. It is urged for the opponent that the words in section 4 of Bombay Act III of 1876—"by reason of the determination of any tenancy or other right of any other person in respect thereof"—are wide enough to embrace a case like the present, and, literally taken, no doubt they are. But the words of a statute, though to be given their grammatical sense, are to be construed also with reference to the general purpose of the statute; and we do not think that, in passing Bombay Act III of 1876, the Legislature intended to give the Mámlatdárs jurisdiction in suits arising out of disputed claims to redeem mortgages. Such a purpose, had it existed, would have been very distinctly expressed as being something entirely new, and contrary to the generally received notions of the proper functions and competence of revenue officers.

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Again, the principle of "*noscitur a sociis*" is one of familiar application in the interpretation of statutes; and "other right" must, we think, be construed as "other right resembling a tenancy and coming to a termination as definite and clearly ascertainable as an ordinary tenancy." It would be an undue application of the words in such a context to make them give to the Mámlatdárs a widely extended jurisdiction in cases of ejection. The later general words must be taken in a sense congruous with the more specific ones which precede, not in a sense giving to them a range, which, had it been contemplated, would certainly have been the subject of express and detailed provisions. In a recent case—*Hettihevage Siman Appu v. The Queen's Advocate*⁽¹⁾—it was said: "It does not follow that, because the words are wide enough to include actions *ex delicto*, they must do so. They are not words adapted to confer a new right, or to establish a new kind of suit. They are only regulative of rights and proceedings already known, and they must be construed according to the state of things to which they clearly refer. They can, therefore, receive a full and sufficient meaning without extending them to actions *ex delicto*, but they cannot receive a full and sufficient meaning, indeed, it is difficult to assign them any substantial operation at all, unless they embrace actions *ex contractu*." A

(1) L. R., 9 App. Ca., at p. 586.

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similar principle applies here. In section 258 of the Civil Procedure Code the words "any Court" have been construed to mean only "any Civil Court"—*Queen Empress v. Bápuji Dayáram*⁽¹⁾; and in *Lion Insurance Association v. Tucker*⁽²⁾, Sir J. Brett, M. R., says: "It is not because the words of a statute or the words of any document read in one sense will cover the case that that is the right sense. Grammatically they may cover it; but whenever you have to construe a statute or document, you do not construe it according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which obliges you to read them in a sense which is not their ordinary sense in the English language as so applied. That, I take it, is the cardinal rule." In the Vagrant Act, (5 Geo. IV, c. 83), sec. 3, "every person wandering abroad or placing himself or herself in any public place.....to beg or gather alms," was construed as meaning only persons making this their habit and mode of life—*Pointon v. Hill*⁽³⁾.

From these examples it is clear that the context and the purpose of an Act are important factors in determining the sense of particular words and giving them due effect. Here, we think, the Mámlatdár had not jurisdiction, and reverse his order, but without costs.

Order reversed.

(1) I. L. R., 10 Bom., 288.

(2) L. R., 12 Q. B. Div., at p. 186.

(3) L. R., 12 Q. B. Div., 306.