APPELLATE CIVIL.

Before Mr. Justice West and Mr Justice Birdwood.

1887. *February* 28.

SHRI BHAVÁNI DEVI, OF FORT PRATA'BGAD, BY THE MEMBERS OF THE COMMITTEE KRISHNA'JI SAKHA'RA'M AND OTHERS, (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* DEVRA'O MA'DHAVRA'O AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Decree—Construction—Decree for possession of a village—Right of the holders of such a decree to the possession of village account books and other papers relating to the management of the village—Title-deeds.

The plaintiffs, as managers of a temple, obtained a decree for the possession of a certain *inám* village. After taking possession of the village, they called upon the defendants to hand over to them the village account books and other documents relating to the management of the village. The defendants refused. Thereupon the plaintiffs presented a *darkhást* in execution, praying *(inter alia)* for the delivery of those books and documents. The Subordinate Judge rejected this application, on the ground that it was beyond the terms of the decree.

Held, on appeal to the High Court, that the plaintiffs were entitled to the possession of the account books and documents in question, as being essential to the proper and effectual enjoyment and management of the village awarded by the decree. Such books and documents were properly to be regarded as accessory to the estate, and as claimable by those to whom it had been awarded.

The title-deeds of an estate, counterpart leases, and other documents of the like kind, such as *kabuláyats* in India, ought to be regarded as accessory to the estate and to pass with it, whether the transfer is made by a conveyance, a decree, or a certificate of sale.

THIS was an appeal from an order of Ráv Bahádur Purshotamráv Sidheshwar, First Class Subordinate Judge of Thána, in *darkhást* No. 976 of 1884.

The plaintiffs, as managers of the temple of Shri Bhaváni at Fort Pratábgad, obtained a decree, in 1882, awarding possession of the *inám* village of Charái together with the *dhárá* land and all *khoti* rights, including *mán páns*, as also mesne profits for certain years.

In accordance with this decree the plaintiffs obtained possession of the village on the 11th July, 1882, and they subsequently called upon the defendants to hand over to them the village account books and other documents connected with the management of the village. The defendants refused. Thereupon the plaintiffs

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presented a *darkhást* in execution, praying *(inter alia)* that the defendants should be ordered to deliver up all the papers and documents relating to the management of the village.

The Subordinate Judge rejected this *darkhást*, on the ground that the delivery of the papers in question was beyond the terms of the decree.

Against this order the plaintiffs appealed to the High Court.

Dáji Abáji Khare for the appellants.

Nagindás Tulsidás and *Vásudev G. Bhándárkar* for respondent No. 2.

WEST, J.:—The possession of the village of Charái was awarded to the plaintiffs by this Court. Possession was given accordingly in July, 1882. In order to realize the profits of the village and to manage it properly and without undue remission or exaction, the plaintiffs called on the defendants to hand over to them the village account books and other documents relating to the management of the estate. The defendants refused. The plaintiffs then, in seeking further execution, added to their application a clause asking that the defendants might be ordered to make over those books and documents. The Subordinate Judge has rejected this part of the plaintiffs' prayer; and in the present appeal the plaintiffs seek a reversal of this order, and a direction that the accounts and documents may be delivered over to them.

The account books of an *inám* village are not certainly the title-deeds of the estate. Were they so, there could be no doubt of the right to possession of them being generally accessory to the ownership of the estate—*Tinniswood* v. *Pattison*[1]; *Lord Buckhurst* v. *Fenner*[2]. Counterpart leases also and other documents of the like kind, such as *kabuláyats* in India, ought to be regarded as accessory to the estate and to pass with it, whether the transfer is made by a conveyance, a decree, or a certificate of sale. They are as necessary to the right enjoyment of the property as the key of a house. In the case of temporary possession given by a Court for the realization of the amount of a decree, delivery of the title-deeds and documents may not in

(1) 3 C. B., 243. (2) 1 Coke's Rep., p. 1.

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all instances be necessary. It may suffice to order that the judgment-creditors have access to them at all reasonable times. Even this may sometimes not be necessary. The rule is, that when the principal thing is awarded, the subsidiary or accessory is implicitly ordered, too. It is a recognized rule of the interpretation of Statutes—*Clark* v. *School Board for London*[1]; *Bagshaw* v. *Buxton Local Board of Health*[2]—that a principal command implies and includes the incidental minor commands necessary for giving it effect[3]; and a decree which is the command of the law in a concrete case is subject to the same mode of construction, as is also a contract between parties—*Henderson* v. *The London and North-Western Railway Company*[4].

If, now, we apply this principle to the case of a decree giving possession of a village, in order to satisfy a judgment, it is obvious that, generally, the village account books and the other documents relating to its enjoyment and management must be essential to the due fruition, by the decree-holder, of the award in his favour. They, moreover, have generally no value or significance apart from the possession and enjoyment of the village or estate to which they relate. They are properly to be regarded, therefore, as accessory to the estate, and as claimable by him to whom it has been awarded, at least in so far as they are necessary to his effectual and proper enjoyment of it.

In the present case, the plaintiffs ought to have the account books for three years prior to 1882 and such other books and documents bearing on the management of the village of Charai as are in the possession or under the control of the defendants. If the defendants have special reasons to assign why in any particular instance this general right is to be deemed extinguished or overridden, they can adduce it as an excuse for not delivering up the documents. In such a case, or if the books, &c., are deposited in a Court of Justice, an order for access to them by the plaintiffs at reasonable times may suffice. The plaintiffs, in getting possession of the books, may be put on terms, if necessary,

(1) See *per* Lord Selborne, 9 Ch., 120.
(2) *Per* Sir G. Jessel, M. R., 1 Ch. Div. at p. 224.
(3) Dwarris on Statutes, 517, 518.
(4) 5 Ex., 90.

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of allowing perusal of them by the defendants at proper times, and of giving them up uninjured after the full execution of their decree or on the order of the Court.

We reverse the decree of the Subordinate Judge, and direct that it be replaced by one giving effect to this judgment. Costs in both Courts to be paid by the respondent.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887. *March* 1.

AMRITRA'V KRISHNA DESHPA'NDE, (ORIGINAL DEFENDANT), APPLICANT, *v.* BA'LKRISHNA GANESH AMRA'PURKAR, (ORIGINAL PLAINTIFF), OPPONENT.*

Civil Procedure Code (Act XIV of 1882) Sec. 622—High Court's power of revision—Res judicata—Jurisdiction, meaning of the term.

The plaintiff sued the defendant to recover arrears of an annual allowance to which the plaintiff claimed to be entitled under a *sanad* dated 1846. The defendant in his defence raised certain points, most of which he had raised in a previous suit brought against him by the plaintiff for the recovery of arrears of the same allowance, and which in that suit had been decided against him. The lower Court held that the decision of the former suit operated as *res judicata*, and refused to allow the defendant to put forward any new matter which might and ought to have been urged as a defence in the former suit. A decree was made in favour of the plaintiff. The defendant applied to the High Court under section 622 of the Civil Procedure Code (Act XIV of 1882).

Held, (following *Hari Bhikáji* v. *Náro Vishvanáth*(1)), that the decision, even though wrong, of a question of *res judicata* was not a failure, or a cause of failure, to exercise jurisdiction, and did not warrant the interference of the High Court under section 622 of the Civil Procedure Code (Act XIV of 1882).

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

The plaintiff sued to recover three years' arrears of an annual allowance of Rs. 50 granted by the defendant's father, Krishnáráv Amritráv Deshpánde, under a *sanad* dated 24th October, 1846. The allowance in question had been regularly paid by Krishná-

*Application under Extraordinary Jurisdiction, No. 66 of 1886.

(1) I. L. R., 9 Bom., 432.