

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

NEMAVA v. DEVANDRAPPA.*

1891.
April 21.

Mámlatdár's Act (Bombay Act III of 1876), Sec. 17—Mámlatdár's power to levy costs—Costs—Costs of litigation in High Court.

A Mámlatdár acting under section 4 of Bombay Act III of 1876, issued an injunction to A, restraining him from obstructing B's possession of certain land

On A's application, the High Court, in the exercise of its revisional jurisdiction, set aside the injunction order, and directed B to pay A's costs of the application

A thereupon applied to the Mámlatdár to levy the costs decreed by the High Court. The Mámlatdár rejected the application for want of jurisdiction.

Held that under section 17 of Bombay Act III of 1876 the Mámlatdár had the same power to levy costs decreed by the High Court as he had regarding costs decreed in his own Court. The litigation in the High Court was a continuation of the suit in the Mámlatdár's Court, and any costs incurred were subject to the rules laid down in the Act.

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

In a suit filed by one Devandrappa Patel in the Mámlatdár's Court, an injunction was granted against Nemava, restraining her from disturbing Devandrappa in his possession of certain lands.

Upon Nemava's application the High Court set aside this order with costs (I. L. R., 15 Bom., 177).

Thereupon Nemava applied to the Mámlatdár, praying that the lands should be restored to her possession and that the costs awarded by the High Court should be recovered from the opponent Devandrappa.

The Mámlatdár rejected this application and, further, held that he had no power under the Mámlatdár's Act (Bombay III of 1876) to execute the High Court's order for costs.

Against this decision Nemava applied to the High Court under its extraordinary jurisdiction.

A rule *nisi* was issued calling upon the opponent to show cause why the Mámlatdár should not be directed to levy the costs decreed by the High Court.

* Application under Extraordinary Jurisdiction, No. 39 of 1891.

Mahadeo Bhásker Chaulal for applicant.

Ghanashám Nilkánt for opponent.

BIRDWOOD, J.—The applicant asks us to set aside an order by the Mámlatdár refusing to restore to her certain land and the value of crops thereon, which had been taken by the opponent in execution of a decision in his favour in the Mámlatdár's Court which was reversed by this Court. The case referred to is that of *Nemava v. Devandrappa* ⁽¹⁾.

It is unnecessary for us to determine whether a reversal by this Court of a Mámlatdár's decision for awarding possession carries with it a right to the restoration of any property taken in execution of the decision, as the Mámlatdár in this case granted an injunction only, ordering the present applicant not to disturb the opponent's possession, and that order only was reversed by this Court. No order by the Mámlatdár under the first part of section 17 of Bombay Act III of 1876 has been produced, or could legally have been made. This Court set aside the injunction granted by the Mámlatdár because the opponent claimed to be in possession of the land through his tenants, who had attorned to the present applicant, and in such a case no injunction could legally be granted. If the opponent, under colour of the injunction obtained by him, ejected his tenants, or if the Mámlatdár ordered them to give up possession to him, it does not appear how his order could be regarded as one made under the Act, with which we could interfere. It is clear that the present applicant has had no physical possession of the land in dispute of which she has been or could have been deprived by the Mámlatdár. The order now applied for by her cannot, therefore, be made.

As regards the Mámlatdár's refusal to levy the costs ordered by this Court in the case referred to, on the ground that he had no jurisdiction to do so under section 17 of Bombay Act III of 1876, we are of opinion that he has the same power as regards costs decreed by this Court as he has as regards costs decreed in his own Court. The litigation in this Court was a continuation of the suit in the Mámlatdár's Court, and any costs incurred are subject to the rules laid down in the Act. We reverse so much of the Mámlatdár's order as refuses to levy the applicant's costs

1891.

NEMAVA

v.
DEVAN-
DRAPPA.

1891.

NEMANA

v.

DEVAN-
DRAPPA.

in the litigation in question and reject the other prayer contained in the present application. Each party to bear her and his own costs of this application.

Order as to costs reversed.

APPELLATE CIVIL.

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

1891,
August 30.

RÁMCHANDRA HARI, PLAINTIFF, v. BĀ'PU, DEFENDANT.*

Succession certificate Act VII of 1889—Undivided Hindu family—Death of one of two undivided brothers—Debt due to family—Suit by surviving brother and manager—Arbitration—Award—Filing award—Certificate under [Act VII of 1889 not necessary.

Rámchandra and Náráyan were undivided brothers; Náráyan was the elder, but Rámchandra was the manager of the family property. Náráyan died leaving a widow and three sons, and after his death Rámchandra sued the defendant to recover certain debts due to the family.

The parties referred the dispute to three arbitrators appointed by them without the intervention of the Court and applied to the Court to have the arbitrators' award filed.

A question having arisen whether the award could be filed without a succession certificate under Act VII of 1889,

Held that there was nothing in Act VII of 1889 to prevent the award being filed without a certificate.

THIS was a reference made by Ráo Sálieb Dinánáth Atmárám Dalvi, Subordinate Judge of Kada and Karjat in the Ahmednagar District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff sued the defendant on two mortgage-bonds and on certain khatas. One of the mortgage-bonds was executed to the plaintiff and to his deceased brother Náráyan, and the other bond was executed to the deceased Náráyan alone. The khatas were in the plaintiff's name.

The plaintiff and Náráyan lived together as undivided brothers, Náráyan being the elder, but the plaintiff being the manager of the family property after Náráyan's death, his family and the plaintiff continued to live together as an undivided family, the plaintiff continuing to manage the property. Disputes arose

* Civil Reference, No. 3 of 1891.