1896.

CHINAYA v. GANGAVA.

We reverse the order. If, however, the applicant has actually been dispossessed under that order, his remedy to recover possession is, as pointed out in *Kasam Saheb* v. *Maruti*(1), by suit either before the Mámlatdár or in a civil Court.

We give applicant his costs in this Court.

Order reversed.

(1) I. L. R., 13 Bom., 552.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

1896. March 3.

BHAU AND OTHERS (ORIGINAL DEFENDANTS), APPLICANTS, *v.* DADE KRISHNAJI BHAGVI (ORIGINAL PLAINTIFF), OPPONENT.*

Mámlatdár—Jurisdiction—Remedy as between joint owners.

In execution of the decree obtained in 1886 in a civil Court the plaintiff and the defendants were put into joint possession of certain land. The plaintiff subsequently brought this suit in the Mámlatdár's Court to recover possession of the said land, alleging that the defendants by taking cocoanuts from trees standing thereon had dispossessed him of the said land otherwise than by due course of law. The Mámlatdár held that the plaintiff had been thereby dispossessed, and passed a decree ordering the defendants to deliver up possession of the land to the plaintiff, together with the trees growing thereon.

Held, that the Mámlatdár had no jurisdiction to pass the decree. The Civil Court had passed a decree giving the parties joint possession of the land, and the Mámlatdár had no jurisdiction to override that decision and to place the plaintiff in exclusive possession. By the decree of the civil Court they were determined to be joint owners, and the remedy in case of unequal possession or taking of produce was a suit for an account or for partition.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Saheb M. S. Vinekar, Mámlatdár of Málvan in the Ratnágiri District, in a possessory suit under the Mámlatdár's Act (Bombay Act III of 1876).

The plaintiff sued the defendants in the Mámlatdár's Court to recover possession of certain land, alleging that the defendants had dispossessed him otherwise than by due course of law by taking cocoanuts from certain trees standing on the land on the 30th June, 1895.

* Application No. 243 of 1895 under the Extraordinary Jurisdiction.

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The defendants replied that under a decree in Civil Suit No. 571 of 1886, to which the plaintiff was a party, they were in the year 1888 put into possession of the land in suit jointly with the plaintiff, and that they had been in enjoyment of the said land and its produce ever since.

The Mámlatdár passed a decree directing the defendants to deliver up possession of the land together with trees standing thereon to the plaintiff, holding that the defendants had by taking the fruit of the trees dispossessed the plaintiff of the land.

The defendants applied to the High Court under its extraordinary jurisdiction and obtained a *rule nisi* to set aside the decision of the Mámlatdár, contending (*inter alia*) that the Mámlatdár had no jurisdiction to make a decree against the applicants (defendants) contrary to the order of the civil Court in the matter, and that joint possession of the whole *thikán* having been lawfully delivered to the applicants, they had as much right to enjoy the *thikán* and to take the fruit of the trees growing on it as the opponent (plaintiff) himself.

Manekshah J. Taleyarkhan appeared for the applicants (defendants) in support of the rule:—We rely on *Magan Manikchand* v. *Vithal valad Hari*[1]; *Mahadaji Karandikar* v. *Hari D. Chikne*[2].

Ghanasham N. Nadkarni appeared for the opponent (plaintiff) to show cause:—The Mámlatdár's order is correct. Plaintiff and defendants are co-parceners and they are in possession of different portions of the *thikán*.

PARSONS, J.:—The effect of the decree in Suit No. 571 of 1886 when executed, as it was on the 30th October, 1888, was to place the parties in joint possession of the property, the subject of that suit. The Mámlatdár has entirely overlooked this and has assumed to himself a jurisdiction to override that decree and to place the plaintiff in exclusive possession of the land in dispute, together with the trees standing thereon. This he had no jurisdiction to do. The rights of the parties must be held to be governed by the decree. By it they are determined to be joint owners, and the remedy in the case of unequal possession or

(1) P. J., 1890, p. 159. (2) I. L. R., 7 Bom., 332.

taking of produce must be remedied by a suit for account or a suit for partition. In such a case the Mámlatdár has no jurisdiction to interfere. The exercise by a joint owner of the right he has over the joint property is not a dispossession of the other joint owners.

We make the rule absolute, reverse the decree, and dismiss plaintiff's suit with costs throughout.

Rule made absolute.

ORIGINAL CIVIL.

Before Mr. Justice Fulton.

1897.
July 31.

YONOSUKE MITSUE AND ANOTHER (PLAINTIFFS) *v.* OOKERDA KHETSY (DEFENDANT).*

Costs—Right of successful plaintiff to costs—Plaintiff recovering less than Rs. 2,000*—Presidency Small Cause Court Act (XV of* 1882), *Sec.* 22*—Amending Act (I of* 1895)*—General Clauses Act (I of* 1868), *Sec.* 6*—Construction—Practice—Procedure.*

In this suit the plaintiffs recovered a total sum of Rs. 1,907 from the defendant for breach of contract. The suit was brought in 1894. It was contended for the defendant that section 22 of the Presidency Small Cause Court Act (XV of 1882), which was in force at the date of the institution of the suit, applied to the case, and that under that section the plaintiffs although successful were not entitled to their costs.

Held, that the plaintiffs were entitled to recover costs. The power to award costs is derived entirely from Acts of the Legislature, and in making the award the Court cannot base its decision on provisions which have been repealed and are no longer effective at the time its order is passed.

Held, also, that section 6 of the General Clauses Act (I of 1868) did not apply to this case.

Ismail v. *Leslie* (1) not followed.

THE plaintiffs, who were residents of Tokio in Japan, sued by their agent in Bombay to recover from the defendant two sums, *viz.*, Rs. 129-14-7 and Rs. 5,835-3-5.

The first sum (Rs. 129-14-7) was alleged to be due in respect of a consignment of cotton made by the defendant to the plaintiffs, the sale of which did not realize sufficient to cover the amount of the bill drawn by the defendant against it.

* Suit No. 187 of 1894.

(1) I. L. R., 24 Cal, 399.