

Regulation IV of 1818, section 52, was repealed long ago. Regulation XXII of 1827, Chapter 7, only applies to military forces on the march. As remarked by the Subordinate Judge, the rules about impressment of carts found in Chapter I of Nairne's Revenue Hand-book were held in *In re the petition of Rakhmaji*<sup>(1)</sup> not to have the force of law. It is not clear that these rules actually order the village pátel to impress carts against the owner's will, neither is it clear what officers are to be supplied. There is nothing to show that any law ever imposed this duty on a kulkarni, or that provision was made after the repeal of the Regulation of 1818, as regards pátels, except for military bodies. The decision in *Rakhmaji's case* was passed in 1885; and we think we must treat the law as generally known, and hold that the defendants pátel and kulkarni did not act with due care and attention or under colour of office in seizing the plaintiff's bullocks. The Court reverses the decree of the District Judge and restores that of the Subordinate Judge, with costs of both appeals on the respondents.

*Decree reversed.*

(1) I. L. R., 9 Bom., 553.

## APPELLATE CIVIL.

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

CHINAYA (ORIGINAL APPLICANT), APPLICANT, *v.* GANGAVA AND ANOTHER (ORIGINAL PLAINTIFF), OPPONENT.\*

1896.

March 3.

*Execution—Decree—Mámlatdár—Dispossession of a third person not a party to suit—Jurisdiction of Mámlatdár—Remedy of person so dispossessed—Civil Procedure Code (Act XIV of 1882), Sec. 622—Practice—Procedure.*

G. got a decree for possession against P. in a Mámlatdár's Court. In execution the Mámlatdár directed the ouster of C., who was in possession and who was not a party to the decree.

*Held*, that the Mámlatdár's order for the execution of the decree by the ouster of C. was without jurisdiction, and that it should be set aside under section 622 of the Civil Procedure Code (Act XIV of 1882).

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order of Ráo Sáheb S. V. Mensenkai, Mámlatdár of Belgaum.

\* Application No. 235 of 1895 under the Extraordinary Jurisdiction.

1896.

CHINAYA  
v.  
GANGAVA.

**SUIT for possession.** One Gangava kom Nagappa Pujari sued Parapa bin Irama for possession of certain land. At the hearing of the suit, the present applicant Chinaya bin Sidapa applied to be made a party on the ground that the suit was collusive and brought in order to deprive him of the land which was his and in his possession. The Mámlatdár rejected his application and on the same day (20th June, 1895,) allowed the claim on the defendant's admission and passed a decree for the plaintiff. On the 8th August the Mámlatdár issued an order to the village officers to execute the decree, but the applicant successfully resisted execution and informed the Mámlatdár to that effect on the 13th August, 1895, submitting that he was not liable to be dispossessed in execution of the decree. On the 31st August, 1895, the Mámlatdár again issued an order to the village officers to execute the decree, and they having proceeded to execute it, the applicant applied to the High Court under its extraordinary jurisdiction and obtained a *rule nisi* to set aside the order of the Mámlatdár. The rule now came in for hearing.

*Vasudeo G. Bhandarkar* appeared for the applicant in support of the rule:—We ought not to be dispossessed. The decree was passed in a suit to which we were not a party. We are, therefore, not bound by it. The Mámlatdár made an order for delivery of possession by any person who might be in possession. He had no jurisdiction to pass such order (*Nathekha v. Abdul Alli*<sup>(1)</sup>), and the High Court may set the order aside under section 622 of the Civil Procedure Code (Act XIV of 1882).

*Balaji A. Bhagavat* appeared for opponent No. 1 (plaintiff) to show cause:—This rule must be discharged. If the applicant has been wronged, his remedy is by suit, not by application under section 622—*Kasam Saheb v. Maruti*<sup>(2)</sup>; *Govinda v. Naiku*<sup>(3)</sup>.

PARSONS, J.:—The order of the Mámlatdár of the 31st August, 1895, directing execution of the decree obtained by the opponent in a suit against his tenants by the ouster of the applicant who was no party to that suit, was beyond the jurisdiction of the Mámlatdár—*Nathekha v. Abdul Alli*<sup>(1)</sup>.

(1) I. L. R., 18 Bom., 449.

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

(3) I. L. R., 10 Bom., 78.

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*<sup>(1)</sup>, 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.*

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

1896.

March 3.

*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 Rao 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.