

## APPELLATE CIVIL.

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

AMAROHAND HINDUMAL AND ANOTHER (ORIGINAL PLAINTIFFS), APPLICANTS, v. SAVALYA AND OTHERS (ORIGINAL DEFENDANTS), OPPONENTS.\*

*Mámlatdár—Jurisdiction—Lease—Death of lessee during the term—Possessory suit against lessee's heirs after the determination of the term.*

If heirs succeed to their fathers' rights under a lease, the jurisdiction of the Mámlatdár in a suit for possession arises on the determination of that lease against such heirs as though the original tenant were then alive.

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 Sáheb G. L. Killedar, Mámlatdár of Párner, in the Ahmednagar District.

The plaintiffs sued in the Mámlatdár's Court to recover possession of land which they alleged they had let to one Bhagu (father of defendants Nos. 1 and 2) and his brother Khandu (defendant Nos. 3) in lease for five years. Bhagu had died during the term, which expired on the 27th June, 1895. The defendants refused to vacate, and the plaintiff filed this suit on the 5th September, 1895.

The Mámlatdár ordered the plaint to be returned to the plaintiffs on the ground that the lease was not passed in the names of defendants Nos. 1 and 2, but in the name of their father and that of defendant No. 3; and that under the Mámlatdár's Act (Bombay Act III of 1876) he could not receive a suit against heirs.

The plaintiffs applied to the High Court, and a *rule nisi* was issued, calling upon the defendants to show cause why the order of the Mámlatdár should not be set aside.

*Ghanasham N. Nadkarni* appeared for the applicants (plaintiffs) in support of the rule:—The Mámlatdár refused to entertain the plaint on the ground that a suit will not lie in his Court against the heirs of a deceased tenant. The Mámlatdár wrongly refused to exercise jurisdiction. Defendants Nos. 1 and 2 stood in the place of their father and were liable to be evicted after the expiration of the term mentioned in the kabuláyat.

\* Application No. 210 of 1895 under Extraordinary Jurisdiction.

*Mahadev B. Chavhal* for *Dhondu M. Sanzgiri* appeared for the opponents (defendants) to show cause:—Section 15, clause (b), of the Mámlatdár's Act is applicable to the present case. It shows that the plaintiff can succeed only if the defendant is in possession or enjoyment by a right derived from the plaintiff. Defendants Nos. 1 and 2 derived their right from their father. Therefore the plaintiff cannot succeed against them in the present suit. The suit is wrongly framed. The plaintiffs ought to have proceeded against defendant No. 3 alone. Bhagu's heirs, that is, defendants Nos. 1 and 2, are not plaintiffs' tenants.

FARRAN, C. J.—The Mámlatdár is in error in supposing that he has no jurisdiction against heirs. If heirs succeed to their father's rights under a lease, the jurisdiction of the Mámlatdár arises on the determination of that lease against such heirs just as though the original tenant were then alive. The rule must be made absolute. Costs to be costs in the cause.

*Rule made absolute.*

## APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Ranade.*

MADHAVRAM MUGATRAM (ORIGINAL PLAINTIFF), APPELLANT, v. DAVE TRAMBAKLAL BHAWANISHANKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

1896.

February 20.

*Hindu law—Inheritance—Succession—Widow—Widow's estate—Heirs after widow's death—Female heirs—Widow of gotraja sapinda—Stridhan.*

Narotam and Harjivan were divided brothers. Harjivan died first, leaving a son named Tulsidas. Narotam afterwards died childless, leaving his widow Jasoda, who took possession of Narotam's property. Tulsidas died childless, leaving only his widow Bai Mani, who succeeded to the property on Jasoda's death. After the death of Bai Mani the plaintiff, who was the son of Tulsidas's sister, sued to recover the property from the defendants, who were distant *samanodaka* relations of Narotam. It was contended on the plaintiff's behalf that, on Jasoda's death, Bai Mani took the property as her *stridhan* acquired by inheritance, and that the plaintiff as *bandhu* of her husband Tulsidas was heir to Bai Mani, who died without issue.

*It is* (confirming the decree dismissing the suit) that on Jasoda's death (Narotam and Harjivan being divided), Bai Mani succeeded to the property as a *gotraja sapinda*, being the widow of Tulsidas, the nephew of Narotam. As such she took only a life-interest in the property, and had no absolute interest in it as in her *stridhan* proper.

\* Second Appeal, No. 76 of 1895.