

APPELLATE CIVIL.

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

NINGAPA (ORIGINAL DEFENDANT NO. 1), APPELLANT, v. DODAPA (ORIGINAL PLAINTIFF), OPPONENT.*

1890,
January 28.

Jurisdiction—Mámlatdár—Head kárkún taking temporary charge of office of Mámlatdár—Decree made by him—Mámlatdárs' Courts Act (Bombay Act III of 1876), Sec. 3 (1) †—Bombay Land Revenue Code (Bombay Act V of 1879), Sec. 15 ‡.

A kárkún taking temporary charge of the office during the absence of the Mámlatdár on casual leave is not a revenue officer ordinarily exercising the powers of a Mámlatdár within the meaning of section 3 (1) of the Mámlatdárs' Courts Act (Bombay Act III of 1876). He is an officer exercising on an extraordinary occasion some such powers under the Bombay Land Revenue Code (Bombay Act V of 1879), section 15. Therefore a decree passed by him in a possessory suit is a decree made by an unauthorized person purporting to exercise a jurisdiction which no competent authority had conferred upon him.

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 Narayan Ganesh, Mámlatdár of Saunpgaon in the Belgaum District.

Suit in the Mámlatdár's Court to recover possession of certain land from the first defendant. The first defendant had got possession of the land in question under a decree (No. 2 of 1895), which had been obtained in the Court of the same Mámlatdár during his absence on leave, and while his head kárkún was in temporary charge of his office. The plaintiff had sued to get

* Application No. 204 of 1895 under the extraordinary jurisdiction.

† Section 3 (1) of the Mámlatdárs' Courts Act (Bombay Act III of 1876):—

3. In this Act, unless there be something repugnant in the subject or context, —

(1) The word "Mámlatdár" shall include any revenue officer ordinarily exercising the powers of a Mámlatdár and any other person who may be specially authorized by the Governor in Council to exercise the powers of a Mámlatdár under this Act.

‡ Section 15 of the Land Revenue Code (Bombay Act V of 1879):—

15. If a Mámlatdár or Mahálkari is disabled from performing his duties, or for any reason his táluka or mahál, or dies, such subordinate as may be designated by orders to be issued from time to time on this behalf by the Collector, shall succeed temporarily to the said Mámlatdár's or Mahálkari's office, and shall be held to be the Mámlatdár or Mahálkari under this Act until the Mámlatdár or Mahálkari resumes charge of his táluka or mahál, or until such time as a successor is duly appointed and takes charge of his appointment,

1896.

NINGAPA
v.
DODAPA.

back the lands, contending that the kárkún had no jurisdiction to try the former suit or to pass the decree, and that the decree was, therefore, illegal. The plaintiff joined the head kárkún and the village officers, who gave possession to the first defendant in execution of his decree, as co-defendants in the suit.

The Mámíatdár allowed the plaintiff's claim, holding that the decree obtained by the first defendant was passed without jurisdiction and was not binding, inasmuch as the head kárkún had not been appointed Mámíatdár by the Commissioner during his (the Mámíatdár's) temporary absence on casual leave, and, therefore, had no authority to decide the suit under the Mámíatdárs' Act (Bombay Act III of 1876).

The first defendant applied to the High Court under its extraordinary jurisdiction, and obtained a *rule nisi* calling on the plaintiff to show cause why the decision of the Mámíatdár should not be set aside.

Mahadeo V. Bhat appeared for the applicant (defendant No. 1) in support of the rule :—We ask that the decision of the lower Court in this suit be set aside. The Mámíatdár had no jurisdiction to entertain this suit, because we had obtained possession in due course of law by executing the decree which we had obtained in the previous suit.

[FARRAN, C. J.:—Your decree was not passed by the Mámíatdár. It was passed by his clerk while he himself was absent on casual leave.]

Section 3 of the Mámíatdárs' Act and section 15 of the Land Revenue Code invest the Mámíatdár's head clerk with authority to act for him in his absence. If the head clerk had no authority to pass a decree, the plaintiff ought to have applied to get the decree set aside. He allowed the proceedings to go on without objection and this is acquiescence on his part—*Vishnu Sakharam v. Krishnarao Malhar*⁽¹⁾. We were lawfully in possession, because it was given to us by the Pátíl and Kulkarni, who are the village officers empowered to execute the Mámíatdar's decrees. A third person in execution of a decree does not derive any right to sue—*Ramchandra Subrao v. Ravji*⁽²⁾.

(1) I. L. R., 11 Bom., 153.

(2) I. L. R., 20 Bom., 351.

Chitgupti (with *Dattatraya A. Idgunji*) appeared for the opponent (plaintiff) to show cause:—The decision of the lower Court restoring us to possession was right and should not be set aside. The head *kárkún* of the *Mámlatdár* was not a *Mámlatdár* under the *Mámlatdárs' Act*. See Rules compiled by the Legal Remembrancer, p. 518. During the absence of the *Mámlatdár*, the head *kárkún* was a revenue officer under section 15 of the Land Revenue Code, but he was not a *Mámlatdár* under section 3 of the *Mámlatdárs' Act*. A subordinate of a *Mámlatdár* put in charge of his office does not thereby become a *Mámlatdár*. The fact that we did not question his authority is of no importance. Our acquiescence could not give him jurisdiction — *Meenakshi Naidoo v. Subramaniya Sastrí*⁽¹⁾. Under section 44 of the Indian Evidence Act we have a right to show that the head *kárkún* had no authority to pass the decree.

FARRAN, C. J.:—We are of opinion that a *kárkún* taking temporary charge of the office during the absence of the *Mámlatdár* on casual leave is not a revenue officer ordinarily exercising the powers of a *Mámlatdár* within the meaning of section 3 of the *Mámlatdárs' Courts Act, 1876*. He is an officer exercising on an extraordinary occasion some of such powers under the Bombay Land Revenue Code of 1879, section 15. His so-called decree was, therefore, a decree made by an unauthorized person purporting to exercise a jurisdiction which no competent authority had conferred upon him. The dispossession which followed upon such a decree was a dispossession otherwise than by due course of law. We cannot, therefore, interfere in this case. We dismiss the rule with costs.

Rule dismissed.

¹⁾ L. R., 14 I. App., 160.