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entitled. Apparently no such request was made to those Courts, each of the parties being anxious only to establish his own right to exclusive possession and so to throw on the other the *onus* of bringing a partition suit.

In this Court the plaintiff has asked us to give him this relief, and his right to obtain it is not seriously disputed by the other side. Amending, therefore, the decree of the lower Appellate Court, we award the plaintiff joint possession of the property in suit. Had the defendant No. 1 not contended for his own right to exclusive possession, we should have given him his costs, but as it is, we think that plaintiff should bear his own, and pay a moiety of the costs of the defendant No. 1 throughout.

Decree amended.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Candy.

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July 26.

BA'MRA'O TA'TYAJI PA'TIL (ORIGINAL PLAINTIFF), APPLICANT, v.
BA'BA'JI DHONDJI BIBVE (ORIGINAL DEFENDANT), OPPONENT.*

Mamlatdars Act (Bombay Act III of 1876)—Jurisdiction of Mamlatdar—Irregular decree of Mamlatdar made by consent of parties—Subsequent refusal by Mamlatdar to order execution of decree—Extraordinary jurisdiction of High Court—Questions of fact—Practice—Procedure.

The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the recovery of certain pieces of land. By consent, decrees were passed in these suits, that unless the opponent paid a certain sum of money to the applicant within two months, the latter should get possession. After the expiration of two months the applicant, alleging that the money had not been paid as agreed, applied for execution of the decrees. The Mamlatdar found that the money had been tendered to the applicant, but had been wrongfully refused by him. He ordered execution to issue as to costs, but declined to make any order as to possession. The applicant thereupon applied to the High Court in its extraordinary jurisdiction and alleged that the money had not been duly tendered.

Held, that the decrees were such as the Mamlatdar could not legally make under the provisions of the Mamlatdars' Act (Bombay Act III of 1876), and the consent of parties could not give him power to do so.

* Applications Nos. 104 and 105 of 1895 under the extraordinary jurisdiction.

Held, also, that the High Court would not go into the question as to the due tender of the money. It was not open to the High Court, in the exercise of its extraordinary jurisdiction, to go into this question of fact, nor would it be proper to further the execution of an irregular decree, especially as the applicant had a clear remedy by suit.

APPLICATIONS under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the orders of Ráo Sáheb P. K. Shahane, Mámíatdár of Haveli, in the Poona District.

On the 5th September, 1891, the opponent sold two pieces of land to the applicant and subsequently leased them from him for a year under two rent-notes, dated 26th October, 1892. At the end of the year, however, he (the opponent) did not give up possession, and the applicant accordingly filed two possessory suits against him in the Mámíatdár's Court.

While the suits were pending, however, the parties made an agreement, that if the opponent (the defendant in the suits) should return to the applicant (the plaintiff) within two months the purchase-money which he had paid for the lands, and should also pay the amount of rent due under the rent-notes, he (the opponent) should keep the lands, but that, in default, the applicant should recover possession through the bhág kárkún.

Accordingly on the 17th February, 1894, a consent decree was passed in each of the above suits that "should the defendant fail to satisfy the plaintiff in two months from this day in accordance with the mutual understanding come to between them, steps for delivering possession should be taken through the bhág karkún. All costs on defendant (opponent)." The opponent failed to pay the amount within two months, and thereupon the applicant presented a *darkhást* for the execution of the decrees as to costs and possession. The Mámíatdár ordered execution to issue as to costs only, and declined to make any order as to possession.

The applicant thereupon applied to the High Court in its extraordinary jurisdiction praying that the Mámíatdár should be directed to give him immediate possession of the lands. A *rule nisi* was granted requiring the opponent to show cause why the execution of the decrees should not be allowed, and the Mámíatdár was called upon to report on the applications. The Mámíat-

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dár reported that the money offered by the opponent had been wrongfully refused by the applicant.

Mahádeo B. Chavbal (with *Náráyan M. Samarth*) appeared for the applicant in support of the rule :—The Mámlatdár having passed the decree with the consent of the parties, he could not refuse to execute it in its entirety. It was wrong to issue execution in part. The Mámlatdár does not say in his report which was called for by this Court, that the money was paid or even tendered to us within two months. It was incumbent on the opponent to pay the money within that time, and it is not alleged that he did so. If the money had been brought to us within the time agreed on, we could not have refused to accept it.

Shivráo V. Bhándárkar appeared for the opponent to show cause :—The Mámlatdár's decrees are illegal and, therefore, they cannot be executed. The decrees being illegal and inoperative, it was not necessary for us to comply with them by paying the amount within the prescribed time.

PARSONS, J. :—The decree is one that the Mámlatdár could not legally make under the provisions of the Mámlatdárs' Act—*cf. Shidlingápa v. Karibasapa*⁽¹⁾—and consent of parties could not give him power to make it. The complaint of the applicant, however, is, not that the decree is bad, but that the Mámlatdár has wrongly found that the money was paid within the two months' time allowed for its payment, and has wrongly, therefore, refused to give him the possession which was decreed to him if the money was not paid. He asks us to find that the full amount of money ordered to be paid was not duly tendered by the opponent, and to direct the Mámlatdár to put him into possession. We are of opinion that it is not open to us in the exercise of our extraordinary jurisdiction to go into this question of fact, and that it would not be proper for us to further the execution of the irregular decree, especially as the applicant has a clear remedy by suit. We, therefore, discharge the rule in both cases, but, under the circumstances, without costs.

Rule discharged.

(1) P. J., 1887, p. 109.