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that the valuation for the computation of court fees is the same as the valuation for purposes of jurisdiction. This rule does not apply to account suits such as the present, where the subject-matter of the claim admittedly exceeded Rs. 5,000 in value.

The appeal in such cases lies to this Court, and not to the District Court.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1895. *January* 28.

KRISHNA'CHA'RYA (ORIGINAL DEFENDANT No. 2), APPELLANT, *v.* LINGA'WA (ORIGINAL PLAINTIFF), RESPONDENT.*

Possession—Ejectment—Title by possession—Mámlatdár—Finding by Mámlatdár as to possession—Subsequent contrary finding by civil Court—Mámlatdár's order not conclusive—Suit by party against whom Mámlatdár's order made—Limitation.

The plaintiff brought this suit to recover possession of certain land which had belonged to her nephew, and of which after his death in 1878 she had assumed the management. In 1881 she brought a possessory suit against the first defendant in the Mámlatdár's Court, which suit was dismissed in January, 1885, the Mámlatdár holding that she had not been in possession. In a civil suit, however, which (pending the proceedings in the Mámlatdár's Court) she had filed against the first defendant in the Court of the Subordinate Judge of Haveri, the Judge found that she had been in possession since 1880, and awarded her damages against the first defendant (who was held to be her farm servant) for crops which had been taken away by him. In 1887 the second defendant as mortgagee from defendant No. 1 obtained a decree against plaintiff in the Mámlatdár's Court awarding him possession of the land, and in execution of that decree the plaintiff was dispossessed in December, 1887.

In 1890 the plaintiff filed this suit to recover possession and for mesne profits since 1887. The defendant pleaded that the plaintiff had no title to the land and that the suit was barred by limitation, inasmuch as the plaintiff had not brought a suit to establish her right within three years after the Mámlatdár's order in 1885 dismissing her possessory suit.

Held, that the Mámlatdár's order of January, 1885, had no conclusive effect and was rendered ineffectual by the subsequent decree of the civil Court; and as the plaintiff continued in possession, notwithstanding that order, down to 1887, the present suit was not barred by limitation, and neither her remedy nor her right to the land was extinguished.

* Second Appeal, No. 327 of 1893.

Held, also, that the plaintiff's possession prior to 1887, confirmed as it was by the decree of the civil Court in 1885 and by the finding of the lower Court of Appeal in the present case, must prevail against the defendant, who claimed through plaintiff's farm servant only and whose possession commenced with the disturbance which compelled the plaintiff to bring the suit.

Possession is *primâ facie* evidence of title and is primarily exclusive, and it is for him who impugns this exclusive title to show that the possession originated in a way not to affect his own right.

SECOND appeal from the decision of Ráo Bahádur V. V. Wágle, First Class Subordinate Judge, A. P.

Suit to recover land. Neither the plaintiff nor the defendant could prove any title to the land other than that of possession. The plaintiff's claim arose under the following circumstances:—

The plaintiff was the maternal aunt of one Fakirápa to whom the land originally belonged. He died in 1878 and the plaintiff subsequently assumed the management of his property. The first defendant was her nephew and a cousin of Fakirápa, and the plaintiff filed a possessory suit against him (defendant No. 1) in the Mámlatdár's Court, which suit, however, was dismissed in January, 1885, the Mámlatdár holding that she (the plaintiff) had not been in possession of the property.

In a civil suit, however, (No. 14 of 1885) which (pending the proceedings in the Mámlatdár's Court) she had filed in the Subordinate Judge's Court at Haveri, it was held that she had been in possession since 1880, and a decree was passed in her favour against the first defendant (who was found to be her farm servant) for the value of certain crops which had been taken away by him.

There was thus the order of the Mámlatdár of January, 1885, holding that the plaintiff had not been in possession, and the later order of the Subordinate Judge holding that she had been in possession.

The second defendant had taken a mortgage of the property from the first defendant, and as a mortgagee he obtained a decree in 1887 against the plaintiff in the Mámlatdár's Court awarding him possession of the land and in execution of this decree the plaintiff was dispossessed on the 20th December, 1887.

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In 1890 the plaintiff filed this suit against defendants Nos. 1 and 2 to recover possession of the land with mesne profits from 1887 to 1890.

The first defendant did not appear. The second defendant pleaded that the plaintiff had no title, and that the suit was barred by limitation.

The Court of first instance dismissed the plaintiff's suit, holding that the plaintiff had no title to the land, and that as she had not brought a regular suit in the civil Court within three years from the date of the Mámlatdár's order of January, 1885, the suit was barred under article 47, Schedule II, of the Limitation Act (XV of 1877).

This decree was reversed on appeal by the District Judge. He held that the suit was not barred by limitation, and that as the plaintiff was in possession up to 1887, when she was dispossessed under the Mámlatdár's order in the second defendant's suit, she was entitled to eject the defendants, who had no right whatsoever to the land in dispute. He, therefore, awarded the plaintiff's claim.

The following extract from his judgment gives his reasons:—

"The Subordinate Judge has held that this suit is barred by limitation, as the plaintiff failed to bring a regular suit within three years of the Mámlatdár's decree of 1885 against her. But the plaintiff has based the present claim on a new cause of action which accrued in 1887 when she was dispossessed by the defendants under the Mámlatdár's order of 1887 till which she is found to have been in possession. Moreover, it may also be said that the aforesaid decisions in Suit No. 14 of 1885, which was instituted during the pendency of the dispute in the Mámlatdár's Court, virtually rendered the Mámlatdár's order ineffectual. I, therefore, hold that the present suit founded upon a cause of action in 1887 is not time-barred by the Mámlatdár's order of 1884. The respondent's vakil objected, in appeal, that the plaintiff ought to have sought for the recovery of possession in Suit No. 14, and that she having failed to do so, the present suit must be held to be barred by section 43 of the Civil Procedure Code. This objection also must fail for the same reasons."

Against this decision the defendant No. 2 preferred a second appeal to the High Court.

Bálájí A. Bhágvat for appellant:—The plaintiff brought a possessory suit in the Mámlatdár's Court in 1884. That suit was dismissed. She did not bring any suit in the civil Court

within three years from the date of that order of dismissal. Her present suit is, therefore, barred under section 21 of the Bombay Mámlatdárs' Court's Act (III of 1876). It is also barred under article 47, Schedule II, of the Limitation Act (XV of 1877). Under these Acts not only is her remedy barred, but her title too became extinct after the lapse of three years from the date of the Mámlatdár's order—*Nilo* v. *Ráma*[1]; *Bápu* v. *Báji*[2]; *Chinto* v. *Vishnu*[3]; *Annáji* v. *Dáji*[4]; *Badri Prasád* v. *Muhammad Yusuf*[5]. The lower appellate Court holds that the plaintiff's cause of action accrued in 1887, when she was dispossessed under the second order of the Mámlatdár. But limitation began to run from the date of the first order of the Mámlatdár of 1885. See *NGa Tha Yah* v. *Buru*[6]. The first order, not having been set aside within three years, became final and conclusive between the parties, and had the effect of extinguishing the plaintiff's title, if she had any. It is found that she had none, apart from her possession, which was not sufficiently long to give her even a prescriptive title.

Nárayan V. Chandávarkar for respondent (plaintiff):—The present case is distinguishable from the cases cited in this, namely, that shortly after the Mámlatdár's order in the possessory suit of 1884 the plaintiff obtained a decree in the civil Court awarding her damages for the crops taken away by defendant No. 1. This decree was based on the fact that the plaintiff was found to be in possession of the land at the time the proceedings in the Mámlatdár's Court were instituted. This finding renders the Mámlatdár's order ineffectual. Section 18 of the Mámlatdárs' Courts Act (Bombay Act III of 1876) expressly provides that the Mámlatdár's decision on the question of possession is not conclusive; see also *Lillu* v. *Anáji*[7]; *Basápa* v. *Lakshmápa*[8]; *Mudkápa* v. *Ningápa*[9]. It is found as a fact by the lower appeal Court that notwithstanding the Mámlatdár's order, plaintiff continued in possession down to 1887, when she

(1) I. L. R., 9 Bom., 35.
(2) P. J. for 1889, p. 305.
(3) P. J. for 1883, p. 131.
(4) P. J. for 1889, p. 161.
(5) I. L. R., 1 All., 381.
(6) 2 B. L. R. (F. B.), 91.
(7) I. L. R., 5 Bom., 387.
(8) I. L. R., 1 Bom., 625.
(9) P. J., 1877, p. 115.

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was dispossessed by defendant No. 2. It is this dispossession which constitutes our cause of action. And as it accrued within three years before suit, the suit is not time-barred. And neither our remedy nor our title is extinguished. Our title is founded on possession, and we can bring an action of ejectment against every person other than the rightful owner—*Pemráj* v. *Náráyan*[1]. The defendants have not established any title to the land. We are, therefore, entitled to eject them.

RA'NADE, J.:—The contest in this case turns entirely upon the decision of the question of possession, both parties to the suit having failed to prove any other title.

The land in dispute admittedly belonged to one Fakirápa, who died in 1878, leaving his sister Nandyáva as his heir. Nandyáva is also dead, but has left a son and a daughter, the last being the wife of the original defendant No. 1. Defendant No. 1, however, did not claim any interest in the land in right of his wife, but he set up an adoption of himself by Fakirápa, which both Courts have held to be not proved. Defendant No. 2, who is appellant before us, claims only under a mortgage-bond from defendant No. 1, executed in 1885. The respondent is maternal aunt of Fakirápa, and as such, she has no claim to succeed as heir of Fakirápa.

Both parties have thus failed to prove any other title save possession, confirmed in the case of defendant No. 1 by a decision of the Mámlatdár, passed in January, 1885 in his favour, and adverse to the respondent, while respondent claims that her possession was confirmed by the decree of a civil Court in her favour in a suit which she brought for the value of the crops raised by her in the land in dispute in 1884, about the same time that she applied, in November, 1884, to the Mámlatdár to remove defendant No. 1's obstruction to the land. The respondent brought no suit in a civil Court to establish her right to recover possession within three years from the date of the Mámlatdár's order of January, 1885, but in the civil suit for damages, her claim was allowed, on the ground that she had possession, and that defendant No. 1 was only her farm servant.

(1) I. L. R., 6 Bom., 215.

As a matter of fact, the lower Court of appeal has found in this case that the respondent (plaintiff) continued in possession till 1887, in which year she was unsuccessful in a second application to the Mámlatdár to remove the present appellant's obstruction. The present suit was brought by respondent within the time allowed by law from the date of this second order of the Mámlatdár, but the Court of first instance rejected the claim, on the ground that the suit was not brought within three years from the date of the first order of January, 1885. The lower Court of appeal held that the first order of the Mámlatdár was rendered ineffectual by the decision of the civil Court in the suit for damages, and that as respondent was proved to have been in possession down to 1887, she was entitled to succeed as against defendant who had no right whatsoever to the land, and whose possession was obtained solely under the Mámlatdár's order of 1887.

This statement of the respective contentions of the parties raises two question—(1) How far respondent's failure to bring a suit within three years from the date of the Mámlatdár's order of January, 1885, barred not only her remedy, but destroyed her right, even if she was found never to have as a matter of fact lost possession till 1887;—and (2) how far respondent's possession down to the date of the Mámlatdár's second order would avail to dispense with the proof of any other title as against the present appellant, and defendant No. 1 through whom he claims as mortgagee.

Both these points are not free from difficulties, as the case presents certain peculiar features not found in the authorities cited on both sides. On the one hand, the appellant's pleader Mr. Bhagvat argued that as the respondent failed to bring a suit within three years from the first order of the Mámlatdár, her right, as well as her remedy, became extinct under the combined effect of the provisions of the Mámlatdárs' Act and the Limitation Act (XV of 1877). Mr. Bhagvat cited the following authorities in support of his contention:—*Nilo* v. *Ráma*[1]; *Badri Prasad* v. *Muhammad Yusuf*[2]; *Bápu* v. *Baji*[3] and *Chinto* v. *Vishnu*[4]. The decisions

(1) I. L. R., 9 Bom., 35.
(2) I. L. R., 1 All., 381.
(3) P. J., 1880, p. 305.
(4) P. J., 1883, 131.

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in *Nilo* v. *Rama* and *Badri Prasad* v. *Muhammad Yusuf* had reference, however, to the provisions of section 278 of Act XIV of 1882, and are not direct authorities on the point now in issue. The case of *Annáji* v. *Báji*[1] was also decided on another ground. It is true that in *Bápu* v. *Báji* this Court held that the principles which governed the decision in *Nilo* v. *Ráma* were equally applicable to orders passed by Mámlatdárs in possessory suits under the Revenue Courts' Act of 1838, which on this point is at one with the Mámlatdárs' Act of 1876. The same point was more expressly decided in *Chinto* v. *Vishnu*, where it was held that a suit not brought within three years from an adverse order of the Mámlatdár was barred under article 47 of Act XV of 1877. Mr. Bhagvat contended that limitation began to be operative from the date of the first order of January, 1885, and not from the date of the second order of 1887, and cited *N Ga Tha Yah* v. *Buru*[2] in support of his contention.

Mr. Chandávarkar for the respondent, however, argued that the present case was distinguishable from those referred to as authorities by the appellant in that, in this case, the respondent was found by the lower appellate Court not to have lost possession till 1887, and there was a civil Court's decree in respondent's favour in the suit for damages brought about the same time that she applied to the Mámlatdár's Court to remove defendant No. 1's obstruction, and in this suit respondent was held to have been in possession in 1884, thereby virtually rendering ineffectual the Mámlatdár's finding on the point of possession in defendant No. 1's favour. Mr. Chandávarkar further argued that the law has expressly provided that a Mámlatdár's order is not conclusive on the point of possession.

In *Lillu* v. *Annaji*[3] it was held that a Mámlatdár's order is not conclusive on the point of possession, and that it was open to the party in subsequent proceedings to show that possession was not delivered or lost, notwithstanding the order.

In *Basápa* v. *Lakshmápa*[4] and *Mudkápa* v. *Ningápa*[5] the reasons are stated why the orders of the Mámlatdár in pos-

(1) P. J., 1889, p. 161.
(2) 2 Beng. L. R. (F. B. R.), 95.
(3) I. L. R., 5 Bom., 387.
(4) P. J., 1877, p. 58, S. C.; I. L. R., 1 Bom., 625.
(5) P. J., 1877, p. 115.

sessory suits were not intended by the Legislature to have a conclusive effect. The possession which is brought in issue in proceedings before the Mámlatdár is immediate possession, and the party thus dispossessed within six months is to be put in possession till the questions of possession and title are adjudicated upon in a regular suit. The purpose of the Act is temporary, and its procedure summary, and there is no appeal.

In the present case there were, as a matter of fact, two almost contemporaneous adjudications, one by a civil Court in the suit for the value of the crops, and the other by the Mámlatdár. Respondent succeeded in the civil Court on the strength of a finding in her favour on the point of her possession of the land, and her failure to remove defendant No. 1's obstruction in the possessory suit before the Mámlatdár was thus remedied by the decree of the civil Court, more especially when she is proved to have not lost possession till 1887. Section 28 of the Limitation Act (XV of 1877) does not apply to parties who rely on actual possession which has never been disturbed—*Hargovandás* v. *Dájibhai*[1] followed in *Orr* v. *Sundra*[2]. Article 47 only applies to ejectment suits, and there was no occasion to the respondent to bring such a suit if she continued in possession notwithstanding her failure in the possessory suit. On the whole, therefore, we must hold that the Mámlatdár's order of January, 1885, had no conclusive effect, and was rendered ineffectual by the decree of the civil Court, and that as respondent continued in possession notwithstanding that order down to 1887, the present suit was not time-barred, and neither her remedy nor her right was extinguished.

The next question relates to the point as to how far respondent's possession entitles her to succeed in this suit as against defendants.

The leading case on this subject is the Full Bench decision in *Pemráj* v. *Náráyan* [3], in which it was held that possession was a good title against all persons except the rightful owner, and entitled the claimant to maintain an ejectment suit against any other person than such owner who dispossessed him. In the

(1) I. L. R., 14 Bom., 222. (2) I. L. R., 17 Mad., 255.
(3) I. L. R., 6 Bom., 215.

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language of Westropp, C. J., the title of possession is good as against a person who seeks to disturb that possession, and who has not a colour of title to the land in dispute, and never had possession of it. The decision in this case has been followed in many subsequent cases, in which it was held that possession was *primâ facie* evidence of title, and is primarily exclusive, and it is for him who impugns this exclusive title, to show that the possession originated in a way not to affect his own right—*Sákalchand* v. *Sundarlál*(1); *Vithu* v. *Bápu*(2); *Vithoba* v. *Náráyan*(3). It is true Melvill, J., doubted the correctness of the Full Bench decision, which was in conflict with his own ruling in *Dádábhai* v. *The Sub-Collector of Broach*(4). That case was certainly not noticed in the judgment of the Full Bench, but the Judges who made the reference to the Full Bench noticed another unreported judgment of Sargent and Melvill, JJ., which was on the same lines as the decision in *Dádábhai* v. *The Sub-Collector of Broach*(4). The defendants in this case might indeed have pleaded an outstanding title in a third person, and if they had succeeded in doing so, they might have defeated the respondent-plaintiff. They, however, raised no such defence, and they set up a title by adoption, which they failed to prove. This title of a third party was successfully pleaded in the case of *Wise* v. *Ameeroonnissa*(5), to which Mr. Justice Melvill has referred in *Trimbak* v. *Báji*(6).

In the present case the respondent is distantly related to the last owner, and she is shown to have been in possession of the land for at least seven years before she lost it in 1887. Defendant No. 1 was held in the civil suit of 1885 to have been her farm servant, and he did not obtain possession of the land. His mortgagee, the present appellant, obtained possession in 1887 under the second order of the Mámlátdar. Under these circumstances, respondent's previous possession, confirmed as it is by the decree of a civil Court, and by the finding of the lower Court of appeal in this case, must prevail against the appellant who claims through respondent's farm servant only, and whose possession commenced with the disturbance which compelled the respondent to bring this suit.

(1) P. J., 1889, 309.
(2) P. J., 1875, 289.
(3) P. J., 1883, 262.
(4) 7 Bom. H. C. Rep., 82, A. C. J.
(5) L. R., 7 I. A., 73.
(6) P. J., 1882, 162.

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On a careful consideration of all the authorities, we feel satisfied that the decision of the lower Court of appeal must be upheld. We accordingly reject the appeal and confirm the decree with costs on appellant.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade

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CHENNAYA (ORIGINAL PLAINTIFF), APPELLANT, *v.* MALKA'PA (ORIGINAL DEFENDANT), RESPONDENT.*

Mortgage—Redemption—Decree for payment and redemption within six months—Application for execution of decree after six months had expired—Transfer of Property Act (IV of 1882), Sec. 93.

Section 93 of the Transfer of Property Act (IV of 1882), under which a plaintiff-mortgagor who has obtained a decree for redemption may show cause for extending the time allowed by the decree for redemption, does not apply to decrees made before the Act was put in force.

SECOND appeal from the decision of J. L. Johnstone, District Judge of Dhárwár, in Appeal No. 273 of 1893.

On the 30th August, 1892, the plaintiff obtained a decree for redemption of certain property on payment of Rs. 703-0-7½ within six months.

The plaintiff did not apply for execution of this decree until after the six months had expired.

This *darkhást* was rejected by the Subordinate Judge as being made too late.

On appeal, the District Judge confirmed the order of rejection, on the ground that the Court in execution had no power to enlarge the time mentioned in the decree.

The plaintiff thereupon preferred a second appeal to the High Court.

Shivrám Vithal Bhandárkar for appellant (plaintiff):—The plaintiff may redeem although the six months have expired under section 93 of the Transfer of Property Act (IV of 1882)

* Second Appeal, No. 604 of 1894.