The English cases cited by appellants' counsel—*Prance* v. *Sympson* [1] and *Banner* v. *Berridge* [2]—seem to be more in point, and they may be safely followed. The suit must be regarded as one based on a written instrument, and, as such, falls under clause (*a*), the instrument being registered. We must, therefore, reverse the decree of the Court below and remand the case for fresh decision on the merits. Costs will follow the final decision.

Decree reversed and case remanded.

(1) (1854) Kay's Rep., 678. (2) (1881) 18 Ch. Div., 254 at p. 273.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Candy.

NINGAPPA (ORIGINAL PLAINTIFF), APPLICANT, *v.* ADEVEPPA AND OTHERS (ORIGINAL DEFENDANTS), OPPONENTS.*

1900.
February 1.

Mámlatdár's Court—Decree—Execution—Person ousted in execution no party to the decree—Suit for possession in Mámlatdár's Court by person ousted—Jurisdiction.

A person ousted in execution of a decree of the Mámlatdár's Court, to which he was no party, can himself bring a suit for possession in the Mámlatdár's Court against the person by whom he was ousted, and the defendant in such a suit cannot rely on the fact of his having obtained possession in execution of a decree against other parties as a bar to the jurisdiction of the Mámlatdár.

APPLICATION under the extraordinary jurisdiction, section 622 of the Civil Procedure Code (Act XIV of 1882), against the decision of Ráo Sáheb B. W. Dhume, Mámlatdár of Sampgaon in a possessory suit.

The plaintiff sued the defendants in the Mámlatdár's Court to recover possession of certain land, alleging that defendant No. 1, in collusion with defendants Nos. 2 and 3, got a decree against them in a possessory suit in the Mámlatdár's Court and in execution obtained possession, although as a fact the plaintiff was in possession at the time and not defendants Nos. 2 and 3.

The Mámlatdár found that the plaintiff was in possession within six months prior to the institution of the suit and that defendant No. 1 had not obtained possession otherwise than by due course of law, inasmuch as he acquired it in execution of

* Application, No. 216 of 1899 under extraordinary jurisdiction.

1900.

NINGAPPA v. ADEVEPPA.

the decree against defendants Nos. 2 and 3. He, therefore, dismissed the suit.

The plaintiff applied to the High Court under its extraordinary jurisdiction, urging (*inter alia*) that the dispossession by defendant No. 1 was not in due course of law, as the previous decree was not against plaintiff, and that the Mámlatdár failed to exercise jurisdiction vested in him by law. A rule *nisi* was issued requiring the defendants to show cause why the decision of the Mámlatdár should not be set aside.

Balaji A. Bhagavat appeared for the applicant (plaintiff):—The only question is whether the dispossession by defendant No. 1 of plaintiff in execution of a decree of the Mámlatdár's Court obtained against third parties was a dispossession in due course of law. We submit it was not. As the plaintiff was not a party to the previous suit before the Mámlatdár, he could not be bound by the decree in that suit. The dispossession was illegal, because the decree under which the plaintiff was dispossessed had nothing to do with him. A stranger thus ousted has his remedy in the Mámlatdár's Court—*Antu* v. *Vishnu*[1]; *Chinaya* v. *Gangava*[2]; *Kasamsaheb* v. *Maruti*[3]; *Mulchand* v. *Chhagan*[4].

Manekshah J. Taleyarkhan appeared for opponent No. 1 (defendant No. 1):—We submit that the Mámlatdár having once decided on the ground of possession, the plaintiff should seek his remedy in a Civil Court on the basis of his title if he has any. It has been held that dispossession under a wrong decree cannot give rise to a cause of action in a Mámlatdár's Court—*Ramchandra Subrao* v. *Ravji*[5]; *Manikchand* v. *Daji*[6].

Bhagavat in reply:—The dispossession in the cases relied on was in execution of the Civil Court's decrees and not in execution of a Mámlatdár's decree as in the present case. There is a distinction in the execution under the Mámlatdár's Courts Act and the Civil Procedure Code. In the latter if a stranger is ousted he has his remedy under the Code. In the Mámlatdár's Courts Act there is no such remedy, and, therefore, a fresh suit before the Mámlatdár is the only remedy.

(1) P. J., 1896, p. 488.
(2) (1897) 21 Bom., 375.
(3) (1889) 13 Bom., 552.
(4) (1886) 10 Bom., 75.
(5) (1896) 20 Bom., 351.
(6) P. J., 1896, p. 665.

JENKINS, C. J.:—The sole question in this case is whether the defendant No. 1 obtained possession otherwise than by due course of law. He obtained that possession by the execution of a decree which had the result of ousting the present plaintiff then in possession and who was not a party to the suit in the Mámlatdár's Court. That decree expressly directed that possession should be obtained from the defendants in that suit and handed over to the then plaintiff (now defendant No. 1). It has been decided and repeatedly recognised by the cases—*Mulchand* v. *Chhagan*[1]; *Kasam Saheb* v. *Maruti*[2]; *Chinaya* v. *Gangara*[3] and *Antu* v. *Vishnu*[4]—that under such circumstances a person ousted in execution of a decree of the Mámlatdár's Court, to which he was no party, can himself bring a suit for possession in the Mámlatdár's Court against the person by whom he was ousted, and the defendant in such a suit cannot rely on the fact of his having obtained possession in execution of a decree against other parties as a bar to the jurisdiction of the Mámlatdár. This course of procedure has been so long sanctioned that we think it would not be right for us now to depart from it notwithstanding the decisions in the cases of *Ramchandra Subrao* v. *Rarji*[5] and *Manikchand* v. *Daji*[6], which possibly can be distinguished.

We must, therefore, make the rule absolute, and, as the Mámlatdár found the facts in favour of the plaintiff, we reverse the order dismissing the suit and pass a decree in favour of plaintiff, with costs throughout.

Rule made absolute.

(1) (1886) 10 Bom., 75.
(2) (1886) 13 Bom., 552.
(3) (1886) 21 Bom., 775.
(4) P. J., 1896, p. 488.
(5) (1896) 20 Bom., 351.
(6) P. J., 1896, p. 665.