

1907.

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v. *Kay*⁽¹⁾, and showing that the defendant having been victimised by the plaintiff's unfair and improper conduct was unable to understand what he was doing. The District Judge's finding as to the defendant's mental competence negatives any such inference as the latter.

For these reasons, we must vary the decree of the District Judge and award the claim as against defendant 1, who should pay to the plaintiff half the costs throughout. We cannot pass the usual order that costs shall follow the event, having regard to the fact commented upon by the District Judge that the plaintiff made a false case as to the consideration for the promissory note on which the suit was brought. Cross-objections stand dismissed.

Decree varied.

R. R.

(1) (1859) 7 H. L. Cas. 750 at p. 779.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

DEU MARD DADA GAVLI (ORIGINAL DEFENDANT No. 3), APPLICANT,
v. SITARAM CHIMNAJI (ORIGINAL PLAINTIFF), OPPONENT.*

1907.

October 1.

*Māmlatdārs' Courts Act (Bombay Act II of 1906), sec. 19, cl. (b)†—
Possessory suit—Landlord and tenant—Trespasser dispossessing the tenant during the duration of tenancy—Landlord suing to recover possession within six months from the determination of the lease.*

On the 5th June 1905, the plaintiff let certain lands to defendants Nos. 1 and 2. During the continuance of the tenancy defendant No. 3, a trespasser, dispossessed defendants Nos. 1 and 2 and got into possession of the lands in November 1905. The tenancy determined on the 6th June 1906. On the

*Civil Application No. 168 of 1907.

†The Māmlatdārs' Courts Act (Bombay Act II of 1906), section 19, clause (b), runs as follows:—

19. (1) On the day fixed, or on any day to which the proceedings may have been adjourned, the Māmlatdār shall, subject to the provisions of section 16, proceed

29th October 1906, plaintiff filed a possessory suit in the Mámílatdár's Court against the defendants Nos. 1—3 to recover possession of the lands. The defendant No. 3 contended that her adverse possession having commenced more than six months before the institution of the suit, the Mámílatdár had no jurisdiction so far as the plaintiff's claim against her was concerned.

Held, that the plaintiff's remedy having been to bring his suit under clause (b) of section 19 of the Mámílatdárs' Courts Act (Bombay Act II of 1906), on the expiry of the tenancy, the fact that a trespasser got into possession during the continuance of the tenancy, but more than six months before its determination, did not oust the Mámílatdár's jurisdiction.

Per CHANDAVARKAR, J.—The Mámílatdárs' Courts Act (Bombay Act II of 1906) is a remedial measure and must be liberally construed so as to advance the remedy.

APPLICATION under section 622 of the Civil Procedure Code (Act XIV of 1882), against the decision of L. B. Goge, Mámílatdár of Niphád.

Suit to recover possession of certain lands, under the provisions of the Mámílatdárs' Courts Act (Bombay Act II of 1906).

The plaintiff let the lands to Punja and Sakharam (defendants Nos. 1 and 2) on the 5th June 1905. During the continuance of the tenancy, Punja and Sakharam were dispossessed by Deu (defendant No. 3), who went into possession of the lands in November 1905. The tenancy terminated on the 6th June 1906.

to hear all the evidence that is then and there before him, and to try the following issues, namely :—

* * * * *

(b) If the plaintiff avers that he is entitled to possession of any property or restoration of any use by reason of determination of any tenure or other right of the defendant in respect thereof :—

(1) Whether the defendant is in possession of the property or in the enjoyment of the use by a right derived from the plaintiff or from any person through whom he claims.

(2) Whether such right has determined at any time within six months before the suit was filed.

(3) Whether the defendant is other than a person who has been a former owner or part owner within a period of twelve years before the institution of the suit of the property or use claimed, and other than the legal representative of such former owner or part owner

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The plaintiff filed this suit against defendants Nos. 1—3 on the 29th October 1906.

Defendant No. 3 contended that her adverse possession having commenced in November 1905, that is, more than six months before the suit was brought, she was not amenable to the jurisdiction of the Mámlatdárs' Courts.

The Mámlatdár awarded the plaintiff's claim against all the defendants. His reasons were as follows:—

The chief contention of defendant No. 3 is that she dispossessed defendants Nos. 1 and 2 in November 1905, and her adverse possession against the plaintiff commenced from that time. The dispossession of defendants Nos. 1 and 2 took place during the currency of the lease. Plaintiff could not have proceeded in the matter until the expiration of the lease. This view is supported by I. L. R. 18 Bom. 216. It is clearly laid down in I. L. R. 20 Bom. 230, that the landlord cannot proceed against a trespasser for having ousted a tenant during the period of the tenure. The present case is on all fours with the above quoted case when the tenant (defendant No. 1) informed the plaintiff that he was dispossessed he replied that the defendants should institute a suit. In these circumstances the adverse possession of defendant No. 3 against the plaintiff commenced from the termination of the lease, *viz.*, from 6th May 1906."

The defendant No. 3 applied to the Collector of Násik, under section 23 of the Mámlatdárs' Courts Act, 1906, but he declined to revise the Mámlatdár's decision.

Defendant No. 3 then applied to the High Court.

R. R. Desai, for the applicant.

P. D. Bhide, for the opponent.

CHANDAVARKAR, J.:—The suit was brought in the Mámlatdár's Court under clause (b) of section 19 of the Mámlatdárs' Act. According to the finding of the Mámlatdár the tenancy of defendants 1 and 2, which had commenced on the 5th June 1905, expired on the 6th June 1906; and the suit having been filed within six months from the latter date, the Mámlatdár has jurisdiction to take cognizance of it, so far as the cause of action affecting defendants 1 and 2, the tenants of the plaintiff, was concerned. But it is contended before us, as it was before the Mámlatdár, that he had no jurisdiction to try the suit, so far as

it affected defendant No. 3. Now, the Mámlatdár has found that defendant No. 3 has been in possession of the land since November 1905. That defendant having gone into possession during the continuance of defendants 1 and 2's tenancy, the plaintiff could not have sued in the Mámlatdár's Court to oust her; *Goma v. Narsingrao*⁽¹⁾. Defendants 1 and 2 could have sued, but if they were unwilling, the plaintiff according to the decision just cited had no alternative but to wait until the tenancy expired. Under these circumstances the law must be construed so as to prejudice no party situated as the plaintiff in the present case is. The Mámlatdárs' Act is a remedial measure and must be liberally construed so as to advance the remedy. And we think in a case of this kind the plaintiff's remedy being to bring his suit under clause (b) of section 19 on the expiry of the tenancy, the fact that a trespasser (which defendant No. 3 must for the purposes of this case be held to be) got into possession during the continuance of the tenancy, but more than six months before its determination is not sufficient to oust the Mámlatdár's jurisdiction. The trespass was on the tenancy and must stand or fall with it, because the plaintiff could not have assailed it in the Mámlatdár's Court so long as the tenancy was in force and it must be held on a proper construction of the object and policy of the Mámlatdars' Act, that a trespasser like defendant No. 3 cannot defeat the right of the landlord to recover immediate possession of the land on the determination of defendants Nos. 1 and 2's tenancy by resorting to the summary remedy given by the Act. The rule is discharged with costs.

Rule discharged.

R. R.

(1) 1895) 20 B.M. 260.

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