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could not now be allowed, by any amendment of the plaint, to convert the suit into one of an entirely different character.

We, therefore, make absolute the rule *nisi* granted in this case and reverse the Mámlatdár's order. The claim is rejected. The plaintiff is to pay costs throughout.

Rule nisi made absolute.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Telang.

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July 15.

SHIDHU BIN SUBHA'NA' JA'DHAV, (ORIGINAL PLAINTIFF), APPLICANT, v.
BALI BIN MURA'RI JA'DHAV, (ORIGINAL DEFENDANT), OPPONENT.*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), Secs. 53, 54—Special Judge—
Revisional powers—Question of fact—Criminal Procedure Code (Act X of 1882),
Section 435.*

Under sections 53 and 54 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) the Special Judge can interfere with an improper as well as an illegal decree or order. His revisional jurisdiction resembles that possessed by the High Court under the Code of Criminal Procedure (Act X of 1882), and ought, if it be held to include the power of setting aside the decision of a lower Court on the facts, to be exercised only in very exceptional cases.

THIS was an application presented to the High Court in its extraordinary jurisdiction, under section 622 of the Code of Civil Procedure (Act XIV of 1882), against an order passed by Ráo Bahádur M. G. Ránade, Special Judge under the Dekkhan Agriculturists' Relief Act.

Suit to redeem lands.

The plaintiff Shidhu bin Subháná sued for the redemption of certain lands, alleging that about eight years before suit he had mortgaged them with possession to defendant Báli bin Murári for Rs. 20, and that the net profits received by the defendant had discharged the mortgage-debt.

The defendant Báli bin Murári alleged that he himself was the owner of the lands, and he denied that the plaintiff had mortgaged them to him. He also pleaded limitation.

* Civil Application, No. 7 of 1890.

The Court of first instance found that the mortgage was proved, and it allowed the plaintiff's claim to redeem on payment of Rs. 20 to the defendant.

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The defendant presented an application for revision to the Special Judge under the provisions of the Dekkhan Agriculturists' Relief Act. The Special Judge held that the evidence adduced by the plaintiff to prove the mortgage was not satisfactory, and reversed the decree of the Court of first instance.

The plaintiff applied to the High Court.

Dhondu Morobá Sanzgiri for the applicant:—The Special Judge was wrong in reversing the decision of the Subordinate Judge on a question of fact. Under sections 53 and 54 of the Dekkhan Agriculturists' Relief Act,⁽¹⁾ the Special Judge can only interfere if the lower Court's decree or order be illegal

(1) Section 53:—“The District Judge may, for the purpose of satisfying himself of the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under Chapter II or Chapter IV of this Act, and as to the regularity of the proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit; and any Assistant Judge or Subordinate Judge appointed by the Local Government under section fifty-two may similarly, in any district for which he is appointed, call for and examine the record of any such suit or matter, and, if he see cause therefor, may refer the same, with his remarks thereon, to the District Judge, and the District Judge may pass such decree or order on the case as he thinks fit :

“Provided that no decree or order shall be reversed or altered for any error or defect, or otherwise, unless a failure of justice appears to have taken place.”

Section 54.—“The Local Government from time to time may, and if the Government of India so direct shall, appoint an officer, as Special Judge, to discharge in the place of the District Judge all the functions of the District Judge under this Act in respect of the proceedings of all Subordinate Judges, Village Munsifs and Conciliators, and may cancel any such appointment.

“Such Special Judge shall not, without the previous sanction of the Government of India, discharge any public function except those which he is empowered by this Act to discharge.

“If any conflict of authority arises between the Special Judge and the District Judge, the High Court shall pass such order thereon consistent with this Act as it thinks fit.

“No appeal shall lie from any decree or order passed by the District Judge under this chapter, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under section fifty-two, or by a bench, in any suit or proceeding under this Act.”

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or improper, and not otherwise. The Subordinate Judge found, on the evidence, that the plaintiff's mortgage was proved, and he allowed redemption. There was no impropriety or illegality in the finding arrived at by the Subordinate Judge. The Special Judge had, therefore, no jurisdiction to interfere with the finding of the Subordinate Judge.

Vásudev Rámchandra Joglekar for the opponent:—The wording of sections 53 and 54 of the Dekkhan Agriculturists' Relief Act is wide enough; and under them the Special Judge can interfere if he finds that the decision of a lower Court is wrong on a question of fact.

BIRDWOOD, J. :—We think that the Special Judge has exceeded his powers of revision under sections 53 and 54 of Act XVII of 1879 by reversing the decision of the Subordinate Judge on a question of fact, *viz.*, whether the plaintiff had mortgaged his land to the defendant. Under those sections he can interfere with an improper as well as an illegal decree or order. His revisional jurisdiction resembles, therefore, that possessed by the High Court under the Code of Criminal Procedure; and ought, if it be held to include the power of setting aside the decision of a lower Court on the facts, to be exercised only in very exceptional cases. The Subordinate Judge's decision in the present case was based on evidence which appeared to him to satisfactorily establish the mortgage; and the case was not an exceptional one in which the interference of a revisional Court was necessary in the interests of justice.

We, therefore, reverse the decision of the Special Judge and restore that of the Subordinate Judge. Costs throughout on the defendant.

Order reversed.