

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Justice Candy.

1890.

June 30.

NEMA'VA AND ANOTHER, (ORIGINAL DEFENDANTS), APPLICANTS, v.
DEVANDRA'PPA, (ORIGINAL PLAINTIFF), OPPONENT.*

*Mámlatdárs' Act (Bombay Act III of 1876), Sec. 4, Cl. 2—Injunction—
Possession—Constructive possession—Right to sue—Constituted attorney.*

A landlord who has only a constructive possession of lands through his tenant, cannot obtain relief by way of injunction under clause 2 of section 4 of the Mámlatdárs' (Bombay) Act (III of 1876).

Desai Málábhái Bápúbhái v. Keshavbhái Kuberbhái (1) followed.

D. sued in the Mámlatdár's Court, as A.'s constituted attorney, for an injunction restraining defendants from causing any obstruction to his possession of certain lands. The land belonged to A.'s husband, who was alleged to be a lunatic. But there was no adjudication of his lunacy, nor was A. appointed a manager of his estate under Act XXXV of 1858.

Held, that D. had no right to sue. A. not having been appointed a manager of her husband's estate, had herself no right to sue in respect of a disturbance of her husband's possession. He could not, therefore, authorize her agent to sue on her behalf.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

One Devandrappa sued in the Mámlatdár's Court for an injunction restraining the defendants from causing any disturbance in his possession of certain lands.

Devandrappa sued as a recognized agent, holding a general power of attorney from Awáka, wife of Bharmappa.

It was alleged that Bharmappa was a lunatic, that he was the owner of the lands in suit, that they were demised to defendant No. 2, and that defendant No. 2 fraudulently attorned to defendant No. 1, and that this attornment constituted the cause of action.

The Mámlatdár passed a decision in plaintiff's favour granting the injunction sued for.

The defendants applied to the High Court under its extraordinary jurisdiction for a reversal of the Mámlatdár's decision.

* Application No. 1 of 1890 under extraordinary jurisdiction.

(1) I. L. R., 12 Bom., 419.

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A rule *nisi* was granted, calling upon the plaintiff to show cause why the Mámlatdár's order should not be set aside.

Branson (with him *Mahádev Bháskar Chaubal*) for applicants :—The Mámlatdár has no jurisdiction to grant an injunction in cases of constructive possession—*Desái Málúbhái Bápúbhái v. Kesharbhái Kuberbhái* ⁽¹⁾; *Gulábhái Gopálji v. Jinábhái Ratanji* ⁽²⁾; *Keso Dinkar Ránade v. Moro Sakhárám Joshi*. ⁽³⁾ Bharmáppa is alleged to be a lunatic, but there has been no adjudication of his lunacy under Act XXXV of 1858. His wife is not, therefore, entitled to sue on his behalf. Nor has she obtained a certificate of administration to her minor son's estate. The plaintiff, as her constituted attorney, has, therefore, no right to bring this suit—*Jonnagadla Subbáya v. Thatiparthi Senadala Butháya* ⁽⁴⁾; *Náráyana v. Krishna* ⁽⁵⁾; *Umá Sundari Dási v. Rámji Haldar*. ⁽⁶⁾

Macpherson (with him *Ghanashám Nilkanth*) :—The defendant No. 2 has attorned to defendant No. 1. This attornment puts an end to the tenancy. We are, therefore, entitled to relief under clause 1 of section 4 of the Mámlatdárs' Act. It is true we have not prayed for such relief, but we may be allowed to amend the plaint. Awáka is a *de facto* manager. Defendant No. 2 paid rent to her. Plaintiff, as her constituted attorney, can, therefore, maintain the present suit.

BIRDWOOD, J. :—The opponent Devandrappa brought a suit in the Mámlatdár's Court for an injunction to the applicants requiring them to refrain from causing any disturbance in his possession of certain lands. He sued as the holder of a general power of attorney from Awáka, the wife of Bharmáppa, an alleged lunatic and the owner of the lands in question, which had been let to the defendant Dhakyá, who, however, it was said, had attorned to the defendant Nemáva. It was this attornment which constituted the disturbance of possession of which the plaintiff complained.

The Mámlatdár disallowed an objection taken by the defendants to the power of attorney given by Awáka to the plaintiff, and granted the injunction prayed for.

(1) I. L. R., 12 Bom., 419.

(4) I. L. R., 6 Mad., 380.

(2) I. L. R., 13 Bom., 213.

(5) I. L. R., 8 Mad., 214.

(3) P. J. for 1883, p. 120.

(6) I. L. R., 7 Calc., 242.

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As Awáka has not been appointed the manager of her husband's property under Act XXXV of 1858, and as it was only a disturbance of her husband's possession which could have furnished any cause of action, she clearly would have had no authority herself to bring the present suit. She could not, therefore, give any authority to the actual plaintiff, Devandrappa.

The suit itself, however, was not within the Mámlatdár's jurisdiction. The decision of this Court in *Desái Málábhái Bápu-bháí v. Keshavbhái Kuberbhái* ⁽¹⁾ shows that "only an interruption of physical possession or enjoyment was intended to be removed by the injunction" provided for by the second clause of section 4 of the Mámlatdárs' Courts' Act, 1876. Though immediate possession "of any profits" of lands can be given under the first clause of the section, yet no injunction is permissible under the second clause in respect of a disturbance in the possession of such profits. It is with a disturbance or obstruction in the possession of lands only or of premises, &c., that the second clause is conversant. A landlord, therefore, who has only a constructive possession of lands through his tenants cannot obtain relief under the clause.

It is contended, however, by the opponent's counsel that, as the defendant Dhakyá, by attorning to Nemáva, determined his tenancy under Bharmáppa, he is no longer entitled to retain possession of the lands in dispute. In *Shridhar Náráyan v. Bhagvant Mahádev* ⁽²⁾ it was held that a Mámlatdár can give immediate possession of lands not only on the expiry of a tenancy by efflux of time, but on its determination by any other cause agreed upon by the parties at the time of creating the tenancy. It is unnecessary for us, in the present case, to decide whether the determination of a tenancy by the attornment of the tenant to a new landlord is such a determination of a tenancy as is contemplated in the first clause of section 4 of the Mámlatdárs' Courts' Act, because the plaintiff did not seek relief under that clause; and, even if he had legal authority to bring this suit, he certainly

(1) I. L. R., 12 Bom., 419.

(2) P. J. for 1882, p. 370.

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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.