

for such repairs, he had a claim for contribution from the defendant. I agree with what is said in that passage, and I think the period of limitation which was applicable to this case was three years, and not six. The appeal, therefore, will be dismissed with costs.

*Appeal dismissed.*

J. G. R.

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## APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.*

IRBASAPPA BIN MALLAPPA BILEBAL (ORIGINAL PLAINTIFF), APPLICANT  
*v.* BASANGOWDA BIN FAKIRGOWDA PATIL, AND ANOTHER (ORIGINAL  
 DEFENDANTS), OPPONENTS\*.

*Civil Procedure Code (Act V of 1908), section 115—Revision—Mamlatdars' Courts Act (Bom. Act II of 1906)—Injunction issued by Mamlatdar—Order set aside by Collector—Summary Proceedings—High Court not to exercise powers of revision unless the party has no other remedy.*

The petitioner sued the opponents in Mamlatdar's Court for an injunction to restrain the opponents from disturbing the petitioner in the possession of his land. The Mamlatdar issued the injunction. The opponents then applied to the Collector who set aside the Mamlatdar's order under section 23 of the Mamlatdars' Courts Act (Bom. Act II of 1906). The petitioner having applied to the High Court under section 115, Civil Procedure Code, 1908,

*Held*, discharging the rule, that the High Court would not exercise its powers of revision under section 115, Civil Procedure Code, 1908, unless the party applying to the Court had no other remedy.

In a case where the proceedings which are sought to be revised are purely summary proceedings and which do not finally decide the dispute between the parties, the High Court should not exercise its powers of revision.

CIVIL Extraordinary application under section 115, Civil Procedure Code, 1908, praying for reversal of the

\* Civil Application No. 94 of 1919 under Extraordinary Jurisdiction.

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decision of E. G. Turner, Collector of Dharwar, in Vahiwat Suit No. 11 of Navalgund Mamlatdar's Court.

The facts are fully stated in the judgment of his Lordship, the Chief Justice.

*B. J. Desai* with *Nilkanth Almaram*, for the applicant:—The plaintiff sued for an injunction restraining the defendant from obstructing him in the possession and enjoyment of the land in suit. It was a suit under the Mamlatdars' Courts Act, 1906. Statutory issues were framed, viz., those prescribed by section 19 (c). The plaintiff was a tenant in actual possession. The Mamlatdar having gone into the evidence of such possession found in his favour on all the issues and passed an order issuing injunction. The Collector in revision under section 23 of the Act has set aside the order. In so doing the Collector has exercised jurisdiction not vested in him in two particulars: (1) He has gone into the question of title, which he has no jurisdiction to do: see section 19; *Nagar Vasan v. Jogun Dulabh* <sup>(1)</sup>. (2) He has no jurisdiction to appreciate evidence under section 23 of the Act. He is not a Court of Appeal: see *Kashiram Mansing v. Rajaram* <sup>(2)</sup> and *Hasan v. Rasul* <sup>(3)</sup>.

*Jayakar* with *A. G. Desai*, for the opponent, was not called upon.

MACLEOD, C. J.:—The petitioner sued the opponents in the Mamlatdar's Court at Navalgund for an injunction to restrain them from disturbing and obstructing the petitioner in the possession of the eastern moiety of Revision Survey No. 21 in the village of Umachgi in the Hubli Taluka of the Dharwar District. The Mamlatdar, relying upon E, tenancy register of the record of rights, and other documentary and oral evidence recorded

<sup>(1)</sup> (1891) P. J. 193.

<sup>(2)</sup> (1911) 35 Bom. 487.

<sup>(3)</sup> (1913) 37 Bom. 595.

in the case, found that the petitioner was in actual possession of the land in suit; that the opponents were obstructing him and that such obstruction first commenced within 6 months before the 30th August 1917 when the suit was filed by the petitioner. Therefore the Mamlatdar issued an injunction as had been prayed for by the petitioner. The opponents applied in revision to the Collector of Dharwar under section 23 of the Mamlatdars' Courts Act. The Collector took a different view of the evidence and held that the opponent Basangowda was the owner of the land in suit. Accordingly he set aside the order of the Mamlatdar and cancelled the injunction.

A Rule was granted by Mr. Justice Pratt calling upon the opponent to show cause why this order of the Collector should not be set aside. The Rule has now come on for argument. In our opinion the Court should be slow to exercise its powers of revision under section 115 of the Code unless the party applying to the Court has no other remedy. But in a case where the proceedings which are sought to be revised are purely summary proceedings, which did not finally decide the dispute between the parties, then as far as we are concerned we do not think that we should exercise our powers of revision. The Rule is therefore discharged with costs.

HEATON, J. :—I concur. Not only have the applicants in these cases a remedy by suit, but that is the remedy which I very strongly hold the law intends that they should take.

*Rule discharged.*

J. G. R.

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