

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

February 16.

KUNDAÑMAL DOWLATRAM (ORIGINAL DEFENDANT), APPLICANT *v.*
LAKHMICHAND CHHOGMAL (ORIGINAL PLAINTIFF), OPPONENT^o.

Bombay Rent (War Restrictions) Act (Bom. Act II of 1918), section 9—Landlord and tenant—Ejectment suit—Landlord reasonably requiring a portion of demised premises for his own use—Tenant willing to occupy remainder—Suit can be decreed for portion only.

Where in an ejectment suit it appears that the landlord reasonably requires only a portion of the premises, within the meaning of the proviso to section 9 of the Bombay Rent Act, 1918, and that the portion so required is capable of severance, it is open to the Court, if the tenant is willing to occupy the remainder of the premises, to pass a decree for possession for the portion only.

THIS was an application under the extraordinary jurisdiction of the High Court from a decree passed by K. M. Jhaveri, Chief Judge of the Court of Small Causes at Bombay.

The plaintiff owned a house in Bombay. The house had several floors, the first floor having been let out to the defendant. The floor in question consisted of five rooms. The plaintiff resided on the fourth floor of the house.

In 1920 the plaintiff filed the present suit to recover possession of the first floor on the ground that he wanted it for his own use. At the trial, all that the plaintiff could establish was that he required only two rooms on the first floor for his own use. Those two rooms the defendant was willing to give up.

The trial Judge was, however, of opinion that he could not split up the tenancy in the manner suggested. He therefore decreed the suit.

The defendant applied to the High Court.

Dhirajlal Thakore with Ratanlal Ranchhoddas,
for the applicant.

^o Civil Extraordinary Application No. 273 of 1920.

Sir Thomas Strangman, Advocate General, with *Payne & Co.* and *G. S. Mulgaonkar*, for the opponent.

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CHAND.

MACLEOD, C. J. :—The plaintiff filed an ejectment suit in the Small Cause Court against the defendant in April 1920. Before the decree was passed a compromise was arrived at that the defendant was to place a big room out of the premises in his occupation at the disposal of the plaintiff in order to accommodate the plaintiff's mother. The terms of the compromise were not carried out with the result that the plaintiff had to file a fresh suit. The Judge found that the plaintiff reasonably required for his own use at least two rooms. The premises occupied by the defendant contained five rooms. As the learned Judge thought it was not open to him to sever the tenancy, he gave the plaintiff a decree for possession of the whole of the premises. This is rather an important question, therefore we granted a rule so that it could be decided whether the Judge was right in the view he took. We think there was no valid objection, and no authority has been cited in favour of it, to the tenancy being severed, provided the tenant was willing to occupy the remainder of the premises, after giving up what it had been decided the plaintiff reasonably required for his own use, so that the rule must be made absolute, the decree set aside, and the case remanded to the Small Cause Court for the learned Judge to resume the hearing of the case from the point where he left off. As the Judge has found that the plaintiff reasonably required two rooms for his own use, it is left for him now to decide which two rooms should now be given up by the defendant. The Judge will have to apportion the rent between the parties. Costs of the application will be costs in the suit.

SHAH, J. :—I agree.

Rule made absolute.

R. R.