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the master has arrived at a decision, it lies upon those who impeach his decision to satisfy the Court that he is wrong. Where a principle is involved, the Court will always entertain the question, and, if necessary, give directions to the master; but, where it is a question of whether the master has exercised his discretion properly, or it is only a question as to the amount to be allowed, the Court is generally unwilling to interfere with the judgment of its officer, whose peculiar province it is to investigate and to judge of such matters, unless there are very strong grounds to show that the officer is wrong in the judgment which he has formed."

This lays down the rule that has guided the Courts in these matters. On a question of the quantum of fees the Court always allows the opinion of the Taxing Master to be paramount.

I, therefore, dismiss this summons with costs. Counsel certified.

Solicitors for the plaintiffs-appellants: Messrs. *Matubhai, Jamietram & Madan.*

Solicitors for the defendants-respondents: Messrs. *Malvi, Modi, Ranchhoddas & Co.*

Summons dismissed

G. G. N.

ORIGINAL CIVIL.

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

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July 21.

RUSTOMJI DINSHAW BILLIMORIA, APPELLANT AND PLAINTIFF v.
DOSIBAI RUSTOMJI MASTER, RESPONDENT AND DEFENDANT*.

Bombay Rent (War Restrictions) Act (Bom. Act II of 1918), section 9—Ejectment—Premises "reasonably and bona fide" required—Landlord requiring premises for residence and business—Costs, where ejectment proceedings could have been taken in the Small Cause Court—Practice.

Ordinarily, an owner of premises if he wishes to use them for his own purposes is entitled to do so. What the Rent Act endeavours to provide for

* O. C. J. Suits Nos. 3417, 3418 and 3419 of 1920.

Appeal No. 28 of 1921.

is the case of a landlord who evicts the existing tenants in order that he may let to another tenant at a higher rent, or exact a higher rent from the tenant on a threat of eviction.

A landlord is not bound to continue residing in rented premises with all the uncertainties of that tenure. If he chooses to live in any portion of his own house, he is entitled to do so provided he does not seek to occupy more space than is reasonably required for himself and his family.

Costs should not be allowed where ejection proceedings could have been taken in the Small Cause Court.

APPEAL from the judgment of Pratt J. in a suit in ejection.

The plaintiff, a manufacturer and dealer in furniture, was living, prior to the date of the suit, in rented premises at Girgaum. He had also rented premises in Narayan Dhuru Street for his place of business and workshop.

In May 1920, the owner of the premises in Narayan Dhuru Street instituted ejection proceedings against the plaintiff, and by a decree of the High Court, dated 20th November 1920, the plaintiff was ordered to vacate the said premises on or before the 31st day of January 1921.

Thereupon, the plaintiff filed three suits in ejection against the defendants who were occupying different portions of a building at Proctor Street, Grant Road, which he had purchased in September 1919.

The building purchased by the plaintiff consisted of a ground floor in one line running east and west with rooms the total area of which was 2,467 square feet. Of this area 1,343 square feet were taken up by the Printing Press of the defendants in Suit No. 3419 of 1920 and 150 square feet were occupied as a garage by defendant in Suit No. 3418 of 1920. The first floor above this had on the east and west frontage an area of 2,105 square feet of which four rooms to the east measuring 1,457 square feet were occupied by the Girls'

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School, the proprietress of which was defendant in Suit No. 3417 of 1920.

"The plaintiff sought to recover possession of his premises not only for his residence but also for the purpose of his business and to replace the workshop in Narayan Dhuru Street of which he was about to be dispossessed by his landlord.

Pratt J. dismissed the suits, observing in the course of his judgment :—

"The whole of his dealing with the property since its purchase negatives the idea that he had any intention of occupying the premises himself. He took away rooms 1 and 6 in plan Exhibit C from the Printing Press and relet them to other tenants. He relet room No. 7 in Exhibit C and even relet to a tenant room No. 1 in Exhibit C which he now professes to require not for occupation but to be kept vacant in the event of death occurring in his family. And it is further significant that the notices of evicting were not served immediately after the purchase but were served after there had been contentious correspondence between himself and the Proprietress of the Girls' School and after the assistance of the Rent Controller had been invoked to fix the rent.

Then with reference to the workshop there is no doubt that the plaintiff does require space in substitution of the workshop in Narayan Dhuru Street out of which he is being evicted but it seems to me that he has the space in the block of rooms 11 to 15 to the north of the Printing Press. The area of these rooms together with the room No. 8 in plan Exhibit No. 5 and the room No. 9 which Mr. Kanga the engineer says is quite fit for occupation gives 1,525 square feet and that with the three rooms which he has at present in his occupation on the west side of the ground floor next to the garage is in excess of the area of the workshop in Narayan Dhuru Street. Besides this he has at his disposal two vacant yards which can be conveniently utilised for the purposes of sawing wood and even for carpenter's tables.

The plaintiff if he had approached the tenants in proper spirit would easily have found accommodation not only for his workshop but also for his residence. He would have put his workshop in the block of rooms Nos. 11 to 15. He need not have let the western rooms in the upper floor and if he had retained these rooms they plus room No. 4 on the ground floor could have given him sufficient accommodation for residence, for the press would have moved up into rooms Nos. 1 to 3 as they have offered to do in the course of this suit."

The plaintiff was ordered to pay the costs of defendants in each suit separately up to the 17th February

1921 when the three suits were consolidated, and from and after the consolidation the costs of defendants in one consolidated suit.

The plaintiff appealed.

Coltman, for the appellant.

B. J. Wadia, for the respondent.

MACLEOD, C. J. :—The plaintiff in these three companion suits carried on the business of a furniture maker, having his business premises in Narayan Dhuru Street. He himself and his family occupied rented premises in Girgaum Road. About a year ago he purchased certain premises in Grant Road Low Level. Part of the ground floor of these premises was occupied by a printing press, the other rooms were used for various purposes, while the upper floor was occupied by a tenant for the purpose of a School for Girls. After he had purchased these premises, the plaintiff did not show any intention to occupy any part of them for his own purposes. But thereafter he was served with a notice to quit by his landlord with regard to a portion of the premises occupied by him in Narayan Dhuru Street, and he had to find other quarters for his business. So he decided that he would use part of the Grant Road property for that purpose. At the same time it occurred to him that it would be more convenient if he occupied the top floor of the Grant Road property for residential purposes instead of continuing to live at Girgaum, as he would have his show rooms in one direction, his workshops in another ; consequently he gave notice to quit to the tenants of the printing press, of the Girls' School, and of a particular room which was used as a garage.

The defendants resisted the notices and the plaintiff had to file these suits. They have been dismissed in the trial Court on the issue whether the plaintiff

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required the premises in the suits reasonably and *bona fide* for his own use and occupation. The plaintiff no longer wishes to turn out the defendants in the third suit and, therefore, the appeal, so far as they are concerned, will be dismissed.

With regard to the 1st defendant, Dosibai, no doubt from her point of view it is a hard case that a lady who has been carrying on for several years a Girls' School on these premises, attended by a large number of girls, should be compelled in these days to seek for other quarters for the School. However, the Court is not concerned with hard cases, and the only question is whether the plaintiff requires the premises in suit reasonably and *bona fide* for his use and occupation. Ordinarily speaking, an owner of premises, if he says he wishes to use them for his own purposes, is entitled to do so. What the Rent Act endeavours to provide for is the case of a landlord who evicts the existing tenants in order that he may let to another tenant at a higher rent, or exact a higher rent from the tenant on a threat of eviction. It seems to me that the question in this case whether the plaintiff was reasonably dissatisfied with the premises which he rented in Girgaum is irrelevant, because in any event the plaintiff was entitled to live in his own premises. He was not bound to continue in rented premises with all the uncertainties of that tenure. So that a great deal of irrelevant matter has been introduced into these suits, because the plaintiff is obviously entitled to live in any portion of his own house which he chooses provided he does not seek to occupy more space than is reasonably required for himself and his family. It cannot, therefore, be said that the plaintiff is acting unreasonably in saying that he wishes to occupy the upper storey for himself and his wife and his three children.

It has been suggested that he could live on the ground floor in the rooms Nos. 12, 13, 14 and 15 in the plan Exhibit 5. But again if he wishes to live above the ground floor, there is no reason why he should be compelled to reside on the ground floor.

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Then the defendant says "give me these rooms Nos. 12, 13, 14 and 15 for the School", but the plaintiff says "I want those for my business to compensate me for the space which I have lost in Narayan Dhuru Street." There is nothing unreasonable in that.

But it is suggested that the business could be carried on in the verandah and the open space. If the plaintiff says: "I am not willing to carry on my business in the verandah and the open space", I should have considerable sympathy with him, especially having regard to the sort of weather we have been experiencing during the last three or four days. There is no reason why the plaintiff should be compelled to take his business out of covered rooms and carry it on in the open.

I cannot, therefore, agree with the learned Judge in holding that this issue should be found in the negative, so that with regard to the suit against Dosibai there must be a decree for possession, but a reasonable time should be allowed to the defendant to vacate, which we fix at six months.

With regard to the other defendant who occupies a room for a garage, there is nothing that could possibly be said in his favour. The plaintiff wants that space for his own conveyance, of whatever kind it may be. Clearly he is entitled to it. That defendant must vacate in three months.

The appeal is allowed against respondents Nos. 1 and 2 and dismissed as against respondent No. 3.

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No order as to costs in the case of any of the defendants in either Court, as ejectment proceedings could have been taken in the Small Cause Court.

SHAH, J. :—I agree.

Solicitors for the appellant: Messrs. *Shamrao Minocheher and Hiralal*.

Solicitors for the respondent: Messrs. *Smetham Byrne & Co. and Mehta, Laljee & Co.*

Appeal allowed.

G. G. N.

ORIGINAL CIVIL.

Before Mr. Justice Pratt.

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July 30.

EBRAHIMBHOY PABANEY MILLS CO., LTD., PLAINTIFF v. HASSAN MAMOOJI, DEFENDANT*.

Indian Evidence Act (I of 1872), sections 91, 92—Contract—Contract signed by a party personally—Oral evidence to show that the party signing contracted as agent—Admissibility of—Indian Contract Act (IX of 1872), sections 231, 233, effect of.

In a suit on a contract signed by the defendant personally, the defendant attempted to lead oral evidence to show that he was contracting as agent and that the name of his principal was disclosed at the time of the contract. On plaintiff objecting to this evidence being admitted,

Held, that such evidence was not admissible for the purpose of exonerating a contracting party from liability, for that would be substituting a different agreement from that evidenced by the writing.

Higgins v. Senior⁽¹⁾, followed.

Venkatasubbiah Chetty v. Govindarajulu Naidu⁽²⁾ and *Sadasuk Janki Das v. Sir Kishan Pershad*⁽³⁾, referred to.

SUIT on a contract.

* O. C. J. Suit No. 2957 of 1919.

⁽¹⁾ (1841) 58 R. R. 884 at p. 889.

⁽²⁾ (1907) 31 Mad. 45.

⁽³⁾ (1918) 46 Cal. 663.