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allowed and the plaintiff's suit dismissed, as the second defendant is entitled to the property bequeathed to her father Manilal by clauses 12 and 13 of the will. The cross-objections which do not arise are dismissed. The Receiver should hand over the property to defendant No. 2 after passing his accounts. As the difficulties requiring a decision by the Court arose from the act of the testator the ordinary rule as to costs prevails. Costs of the suit throughout, including the costs of the cross-objections, to be paid out of the residue.

Appeal allowed.

R. R.

APPELLATE CIVIL.

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

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October 18.

JAMSHEDJI HORMASJI (ORIGINAL PLAINTIFF), APPLICANT v. GORDHAN-DAS GOKULDAS (ORIGINAL DEFENDANT), OPPONENT*.

Rent (War Restrictions) Act (Bom. Act II of 1918), section 9†—Order for possession—Small Cause Court has no power to alter the order—Presidency

* Civil Application No. 237 of 1920 under Extraordinary Jurisdiction.

† The section runs as follows :—

9 (1) No order for the recovery of possession of any premises shall be made so long as the tenant pays or is ready and willing to pay rent to the full extent allowable by this act and performs the conditions of the tenancy.

(2) Provided that nothing in this section shall apply where the tenant has committed any act contrary to the provisions of clause (a) or clause (n) of section 108 of the Transfer of Property Act, 1882, or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or where the premises are reasonably and *bona fide* required by the landlord either for the erection of buildings or for his own occupation or for the occupation of any person for whose benefit the premises are held, or where the landlord can show any cause which may be deemed satisfactory by the Court.

(3) The fact that the period of the lease has expired, or that the interest of the landlord in the premises has terminated, shall not of itself be deemed to be a satisfactory cause within the meaning of sub-section (2).

Small Cause Courts Act (XV of 1882), Chapter VII, section 43—No jurisdiction to amend the terms of the decree passed under Chapter VII.

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On the 21st January 1920 a decree for possession was made in favour of the petitioner by the Presidency Small Cause Court on the ground that the premises were reasonably and *bona fide* required, and the opponent was ordered to vacate by the 21st June 1920. On the 15th June 1920, the opponent applied for further time and was granted time till the 9th July. Thereafter, on a further application by the opponent, the Court stayed execution till the 20th October 1920. The petitioner having applied to the High Court under its revisional jurisdiction :—

Held, setting aside the order, that the Small Cause Court had no jurisdiction to alter or amend the terms of a decree or order for possession once passed under section 43 of the Presidency Small Cause Courts Act, 1882; nor was there anything in the Rent Act which gave the Small Cause Court any power to alter its orders for possession made in due course.

APPLICATION under extraordinary jurisdiction against the order passed by the Presidency Small Cause Court at Bombay in Suit No. 1694/125151 of 1919.

Suit to eject.

The petitioner plaintiff was the owner of two shops situate at Mulji Jetha Market, Bombay.

The said shops had been let to the opponent-defendant by the petitioner and as the petitioner desired to open a piece goods shop of his own, he gave notice, dated the 28th April 1919 to the opponent to vacate and deliver up possession of the said shop by the end of November 1919.

The opponent having failed to vacate, the petitioner filed a suit to eject him in the Bombay Court of Small Causes on the 9th December 1919.

The suit came on for hearing on the 21st January 1920.

The opponent among other defences denied that the petitioner required the premises reasonably and *bona fide* for his own use and claimed protection under the

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Rent Act. The Court held that the premises were reasonably and *bona fide* required and ordered that the opponent should vacate by the 21st June 1920.

On the 15th June 1920, the opponent took out a rule praying for two months' further time on the ground that he had filed a suit against some tenants of his own on other premises to which he wanted to shift his shop. The Court gave the opponent further time up to the 9th July 1920. In spite of this the opponent did not vacate the petitioner's premises, and again took out another rule against the petitioner to show cause why the order for vacating the shop made against him should not be stayed pending the result of an application made to the High Court by Mr. A. M. Sawliwala and Company, (a tenant of the premises of the opponent) for an injunction staying execution of the opponent's decree against them.

On the 8th September on the hearing of the rule *nisi* the Court stayed execution of the petitioner's decree till 20th October 1920.

Against the order staying execution the petitioner applied to the High Court under its revisional jurisdiction.

S. B. Dadyburjor, for the applicant.

M. P. Amin, with *N. M. Desai*, for the opponent.

MACLEOD, C. J. :—On the 28th April 1919 the plaintiff in these proceedings, hereinafter called the petitioner, gave notice to the respondent, who is his tenant, to deliver up possession of the plaintiff's shop by the end of November 1919. As the respondent did not vacate, the petitioner filed an ejectment suit in the Small Cause Court on the 9th December 1919. The suit was heard on the 21st January 1920. A decree was passed for possession on the 21st January, the

respondent being ordered to vacate by the 21st June 1920. On the 15th June 1920, the respondent took out a Rule praying for two months' further time, on the ground that he had filed a suit against some other tenant of his own of other premises where he wanted to shift his shop.

It will be observed in the first instance that from the time the respondent received notice in April 1919, he did not take any steps to provide himself with other premises, or to get his own tenant to vacate until a decree had been passed against him in favour of the petitioner. It is quite true that the respondent had difficulties with his own tenant. But if he had taken steps in time to eject his own tenant, then he would not have been compelled to ask for further time for remaining in possession of the petitioner's premises. The Court gave the respondent further time up to the 9th of July. In spite of that he did not vacate the petitioner's premises, and again took out another Rule against the petitioner to show cause why the order for vacating the shop made against him should not be stayed pending the result of an application made to the High Court by A. M. Sawliwalla and Co., (a tenant of the premises of the respondent) for an injunction staying execution of the respondent's decree against them. On the 8th September the Court stayed execution of the petitioner's decree till the 20th October 1920. The petitioner thereupon applied to this Court in revision as the repeated stay orders of the Small Causes Court tended to make his decree valueless, and he was unable to obtain the fruits of his decree which was passed so far back as the 21st of January.

The real question is whether the Small Cause Court has any jurisdiction to alter or amend the term of a decree or order for possession once it has been passed

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under Chapter VII of the Presidency Small Cause Courts Act. Chapter VII deals with summary proceedings for recovering possession of immoveable property. The owner may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause why he should not be compelled to deliver up the property, and section 43 provides: "If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order." That section is not very well worded, but it must include cases where the occupant does appear and fails to show cause to the summons, or satisfy the Court that there are reasons for not making an order for possession.

There is nothing in the Rent Act II of 1918 which gives the Small Causes Court any power to alter orders for possession made in due course. Section 9 says that "no order for the recovery of possession of any premises shall be made so long as the tenant pays or is ready and willing to pay rent to the full extent allowable by this Act and performs the conditions of the tenancy." But by sub-section (2) it is provided that "nothing in section 9 shall apply...where the premises are reasonably and *bona fide* required by the landlord...for his own occupation." Now it has been held by the Small Cause Court that the petitioner *bona fide* requires the premises for his own occupation. Therefore the Small Cause Court was entitled to make the order for the recovery of possession, which was made under section 43 of the Presidency Small Cause Courts Act. But we have not been referred to any power given by the

Legislature to the Small Causes Court to alter an order for possession once made; nor is there anything in either section 148 or section 151 of the Civil Procedure Code which could apply to this case. It is true that the Court may fix the time for giving possession at a considerable interval from the date of decree. But once the time is fixed, it seems to me that the plaintiff is entitled to the benefit of that order. Further in this case there is no equity whatever in favour of the respondent. He did nothing for the best part of a year after he had received notice from the petitioner in order that he might provide himself with other premises for his shop and he has only himself to thank, if, now that he is made to give up possession of the suit premises to the petitioner, he is unable to turn out his own tenant from his own premises. Therefore the Rule must be made absolute and the execution of the order for possession must proceed forthwith. The respondent must pay the costs of the Rule. The record should be sent to the Small Cause Court at once with a direction that execution of the order for possession must proceed forthwith.

SHAH, J. :—I agree.

Rule made absolute.

J. G. R.

APPELLATE CIVIL.

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

MOTIBHAI SHANKERBHAI PATEL (ORIGINAL PLAINTIFF), APPLICANT
v. NATHABHAI NARANBHAI (ORIGINAL DEFENDANT), OPONENT*.

Administration suit—Preliminary decree—Report by administrator—Defendant in possession of the estate—Defendant contending that the Court had no

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1920.

October 20.

* Application No. 133 of 1920 under Extraordinary Jurisdiction.