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the market rate prevailing at the relevant dates was Rs. 2-15-0 instead of Rs. 2-8-0. Therefore, the decretal amount in favour of the plaintiffs must be amended in accordance with our decision.

There is no substance in the other objections which appear in the grounds of appeal or in the respondents' cross-objections, and it is not necessary for me to refer to them.

As regards the order in the Court below that interest should be allowed to date of suit we cannot interfere with the discretion which the learned Judge has exercised under section 34, Civil Procedure Code. The appellants, therefore, being successful only with regard to their contention in ground No. 12 in their memorandum of appeal, and having otherwise failed in their appeal, we think that there should be no order as to costs on either side in the appeal.

With regard to the cross-objections they have failed and, therefore, the appellants are entitled to their costs of the cross-objections.

Attorneys for appellants: Messrs. *Motichand & Devidas*.

Attorneys for respondents: Messrs. *Little & Co.*

Decree varied.

V. G. R.

APPELLATE CIVIL.

1923.

November 20

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

JAGANNATH DEWKARAN MARWADI (ORIGINAL PLAINTIFF), APPLICANT
v. DHONDU ANANDA KUÑABI (ORIGINAL DEFENDANT), OPPONENT*.

Mamlatdars' Courts Act (Bom. Act II of 1906), section 23—Collector's power to revise the order of Mamlatdar—Collector can only interfere if the order is illegal or improper.

* Civil Extraordinary Application No. 320 of 1922.

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A Collector acting under the powers given under section 23 of the Mamlatdars' Courts Act, 1906, can only set aside an order made by a Mamlatdar in a Vahiwat suit if he considers that it is illegal or improper.

APPLICATION under Extraordinary Jurisdiction to set aside the order passed by the Collector of Khandesh.

Suit to recover possession.

The applicant filed a Vahiwat Suit No. 2 of 1922 in the Court of the Mamlatdar of Bhusawal, alleging that he was dispossessed of Survey No. 23 at Manur Khurd by the opponent in February 1922.

The Mamlatdar relying on the sale deed and certain rent notes produced by the applicant held that the applicant was in possession of the Survey No. 23 since 1920 till within six months before the suit was filed and that the opponent dispossessed him otherwise than in due course of law. He, therefore, decreed possession to the applicant.

The opponent applied to the Collector under section 23 of the Mamlatdars' Courts Act to revise the order of the Mamlatdar. The Collector held

" There are two important points. Whether the sale was a sale outright or a sale with an understanding of mortgage. The document shows it was a sale, and there is no evidence that any verbal condition made it a mortgage in reality.

The next question was whether the rent notes were those of Tukaram or those of the applicant. In this matter Tukaram goes against the opponent, who had called him as a witness in the Mamlatdar's Court.

All this goes to show that the question was one of real complexity. Inasmuch as the plaintiff brought the suit it shows the defendant was in possession. The Mamlatdar, therefore, entered upon very complicated questions which are entirely outside the province of this Act. These he should have referred to the Civil Court, and not have presumed to decide them. He should have confined himself to possession and by the very fact of the plaint that possession was with the applicant, the original defendant. "

The Collector, therefore, reversed the order of the Mamlatdar and directed the opponent to be put in

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possession and referred the parties to the Civil Court for a settlement of their claims.

The applicant-plaintiff applied to the High Court.

Coyajee, with *S. G. Desai*, for the applicant.

S. C. Joshi, with *P. S. Bakhale*, for *D. C. Virkar*, for the opponent.

MACLEOD, C. J. :—In this case the Collector acting under the powers given under section 3 of the Mamlatdars' Courts Act (Bom. Act II of 1906) set aside an order made by the Mamlatdar in favour of the plaintiff in Vahivat Suit No. 2 of 1922. The Collector can only set aside such an order if he considers that it is illegal or improper. The ground on which the Collector set aside the order, according to the judgment, was that the Mamlatdar had entered upon complicated questions which were entirely outside the province of the Act, and which ought to have been referred to a Civil Court. If that decision were to stand, then it practically deprives the Mamlatdars of the power to decide who should be in possession of the disputed property until the questions in dispute have been finally determined by the Civil Court. However complicated the questions may appear to be, he is entitled to give possession to one party or the other. That is entirely within his jurisdiction. There is nothing improper or illegal in such an order. We think, therefore, although we are averse to interfere with the decision of the Revenue Authorities in a suit of this character, that when they have clearly exceeded the powers granted under the Act, we should interfere in the ends of justice. The Rule is made absolute and the order of the Mamlatdar restored with costs.

Rule made absolute.

J. G. R.