

the Court to refer to the statements and to direct that the accused be furnished with a copy thereof for the purpose of contradicting the witnesses, the Court would have been bound to comply with the request. In the present case, it does not appear from the record whether any of the witnesses had been examined by the Police and the learned Government Pleader has had no instructions on the point and was unable to state definitely, whether the witnesses were examined or not. We have accordingly found it necessary to direct him to obtain information on the point from the police.

The statements have now been received and do not contain anything which would affect the cross-examination, nor has the accused been prejudiced by their non-production. The rule will therefore be discharged.

Rule discharged.

R. R.

APPELLATE CIVIL

Before Mr. Justice Madgavkar and Mr. Justice Patkar.

MOTI JAGTA (ORIGINAL DEFENDANT), PETITIONER v. INDURAI BHAURAI DESAI AND OTHERS (ORIGINAL PLAINTIFFS), OPPONENTS.*

1927
November 14

Mamlatdars' Courts Act (Bom. II of 1906), section 26, clause (b)—Landlord and tenant—Suit by tenant in Civil Court—Pending suit, possessory suit filed by landlord in Mamlatdar's Court—Jurisdiction of Mamlatdar to proceed.

Under section 26, clause (b) of the Mamlatdars' Courts Act, 1906, the jurisdiction of the Mamlatdar is barred when there is a civil suit pending between the parties in respect of any dispossession, recovery of possession or disturbance of possession.

Ramchandra v. Narsinhacharya⁽¹⁾ and *Nagappa v. Sayad Badrudin*,⁽²⁾ referred to.

Per MADGAVKAR, J. :—“ In a decided suit, the question as to recovery or disturbance of possession or dispossession would be *res judicata*, and no express clause as section 26, clause (b), would be necessary. It follows that the words ‘has been’ are used to include present proceedings, that is to say, proceedings that are pending, and therefore apply to the proceedings between the parties, and, in fact, section 5, in any case, gives the Mamlatdar a clear discretion to refuse ejection. It cannot, for a moment, be supposed that the Legislature

*Civil Revision Application No. 145 of 1927.

⁽¹⁾ (1899) 24 Bom. 251.

⁽²⁾ (1901) 26 Bom. 353.

1927

MOTI JAGTA
v.
INDURAI
BHAURAI

contemplated that the proceedings in the final tribunal to decide the questions between the parties should be allowed to be disturbed by proceedings before a tribunal whose powers are much more limited, such as the Mamlatdar, and which is created to prevent resort to force and not to interfere with the trial and decision by the civil Courts."

CIVIL Revision Application praying for setting aside the order of the Mamlatdar of Godhra in Possessory Suit No. 13 of 1926.

The petitioner, Moti Jagta, was a tenant of the Inam lands of the opponents in the Inam village of Irandi, Taluka Godhra, District Panch Mahals.

The petitioner filed a suit in a civil Court against the opponents-Inamdars for a declaration of their right of permanent tenancy. While the said suit was pending the opponents filed a possessory suit before the Mamlatdar of Godhra, alleging that the petitioner-defendant was a yearly tenant and, though served with a due and proper notice to deliver over the lands leased to him, still remained in possession. The petitioner contended that by reason of his suit pending in the civil Court, the Mamlatdar had no jurisdiction to proceed with the possessory suit.

The Mamlatdar proceeded with the suit and, holding that the petitioner was a yearly tenant, ordered him to restore possession of the suit lands to the opponents.

Aggrieved by the order, the petitioner made an application to the Collector of Panch Mahals but it was rejected.

The petitioner, therefore, applied in revision to the High Court.

R. W. Desai, for the applicant.

G. N. Thakor, with *M. H. Mehta*, for the opponents.

MADGAVKAR, J. :—The question in this application is whether the words "has been" in section 26, clause (b), of the Mamlatdars' Courts Act include the word "is" or only refer to past proceedings. The dispute between the present parties was whether the petitioner was or

was not a permanent tenant of the opponents. The petitioner brought a suit in the civil Court for a declaration that he was a permanent tenant with consequential reliefs. The opponents sued, subsequently and during the pendency of the civil suit, in the Mamlatdar's Court for ejectment. The Mamlatdar held that the petitioner was not a permanent tenant and granted ejectment. The petitioner applies in revision, and it is argued on behalf of the opponents that the words "has been" cannot include a pending suit but only a decided suit.

This contention is, in our opinion, untenable. In a decided suit, the question as to recovery or disturbance of possession or dispossession would be *res judicata*, and no express clause as section 26 (b) would be necessary. It follows that the words "has been" are used to include present proceedings, that is to say, proceedings that are pending, and therefore apply to the proceedings between the parties; and, in fact, section 5, in any case, gives the Mamlatdar a clear discretion to refuse ejectment. It cannot, for a moment, be supposed that the Legislature contemplated that proceedings in the final tribunal to decide the questions between the parties should be allowed to be disturbed by proceedings before a tribunal whose powers are much more limited, such as the Mamlatdar, and which is created to prevent resort to force and not to interfere with the trial and decision by the civil Courts.

The order of the Mamlatdar was, therefore, without jurisdiction; and the application must be allowed, the rule made absolute and the order set aside, without prejudice to the remedy, if any, of the opponents in the civil suit which is now pending.

PATKAR, J. :—This is an application to revise the order of the Mamlatdar in a possessory suit brought by the Inamdars against the defendant on the ground that

1927

MOTI JAGTA

v.

INDURAI
BHARAI

1927

MOTI JAGTA
v.
INDURAI
BHAURAI

he was a yearly tenant and that the lease terminated on March 31, 1926. The defendant contended that he was a permanent tenant and was not liable to be evicted by the plaintiffs-Inamdars who were only alienees of the Royal share of the revenue. The Mamlatdar awarded possession to the plaintiffs.

It is contended before us that the Mamlatdar had no jurisdiction to entertain the suit as the defendant-tenant had filed a civil suit No. 233 of 1926 on July 5, 1926, for a declaration that he was a permanent tenant and for an injunction against the Inamdars restraining them from disturbing him in his possession.

Under section 26, clause (b), of the Mamlatdars' Courts Act, no suit shall lie under the Act in respect of any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party in a civil Court.

It is contended by Mr. Thakor on behalf of the opponents that clause (b) of section 26 does not apply to the present case where the proceeding in the civil Court is pending, but applies only to previous proceedings which have terminated. I think that the words "has been the subject of previous proceedings" would include pending proceedings in a civil Court. If the proceedings in a civil Court have ended in a decree, the rights of the parties would be determined in the civil proceedings and the decision would be binding on the parties to the litigation. It would not be necessary, in my opinion, to make any provision in the Mamlatdars' Courts Act with regard to the civil proceedings which have ended in a decree.

In *Ramchandra v. Narsinhacharya*⁽¹⁾ it was held that the Mamlatdar's decision was not conclusive and the

⁽¹⁾ (1899) 24 Bom. 251.

plaintiff was entitled to bring a second suit under section 9 of the Specific Relief Act. In *Nagappa v. Sayad Badrudin* ⁽²⁾ it was held that the Mamlatdar had jurisdiction to try a possessory suit notwithstanding the fact that there were previous proceedings between the parties under section 145 of the Criminal Procedure Code. In order to give effect to the view, overruling the above two cases, that the remedies under the Mamlatdars' Courts Act on the one hand and the Specific Relief Act and the Code of Criminal Procedure on the other hand should be alternative and not cumulative, section 24 of Bill No. IV of 1905 seems to have been drafted. Section 26, as now enacted, enlarges the scope of section 24 of the Bill and substitutes a proceeding in a civil Court for a proceeding under section 9 of the Specific Relief Act as proposed in section 24 of Bill No. IV of 1905. It is clear, therefore, that the pendency of a civil proceeding in any Court would be a bar to the exercise of jurisdiction by the Mamlatdar under the Mamlatdars' Courts Act (Bom. Act II of 1906). The usual course for the parties is to have recourse to the Mamlatdar's Court for a speedy relief before they seek assistance of a civil Court, and the defeated party is generally driven to bring a suit in the civil Court. The procedure adopted by the Inamdars in this case was very unusual. They brought a suit in the Mamlatdar's Court after they were sued by the tenant in a civil Court. Under the proviso to section 5 of Act II of 1906, it is discretionary with the Mamlatdar to refuse to exercise the power under the Act if he is of opinion that the case before him would be more suitably dealt with by the civil Court. The decision in the Mamlatdar's Court does not finally decide the rights of the parties. If a civil Court decides the rights of the parties, then clearly apart from

1927

MOTI JAGTA

v.

INDURAI
BHAURAI

(2) (1901) 26 Bom. 353.

1927

MOTI JAGTA
v.
INDURAI
BHAURAI

section 26 of Act II of 1906 the Mamlatdar's Court would have no jurisdiction to entertain a suit under the Mamlatdars' Courts Act. Under the proviso to section 5 (1) of the Mamlatdars' Courts Act, discretion is given to the Mamlatdar to refuse to exercise the power under the Act if he is of opinion that the matter would be suitably dealt with by a civil Court.

I think that section 26, clause (b), bars the jurisdiction of the Mamlatdar when there is a civil suit pending between the parties in respect of any dispossession, recovery of possession or disturbance of possession. I think, therefore, that the contention on behalf of the applicant is well founded and that the Mamlatdar had no jurisdiction to entertain the present suit.

I would, therefore, make the rule absolute, reverse the decree of the Mamlatdar and dismiss the plaintiffs' suit with costs throughout.

Rule made absolute.

J. G. R.

APPELLATE CIVIL

1927

November 17

Before Mr. Justice Fawcett and Mr. Justice Mirza.

BASAPPA BUDAPPA HALAVAIAD (ORIGINAL DEFENDANT No. 2), APPELLANT
v. BHIMANGOWDA SHIDDANGOWDA PATIL AND ANOTHER (ORIGINAL
PLAINTIFF AND DEFENDANT No. 1), RESPONDENTS.*

Transfer of Property Act (IV of 1882), section 52—Transfer pendente lite—Alienee bound by decree though not party to suit—Civil Procedure Code (Act V of 1908), section 47—Alienee—Separate suit against alienee.

An alienee *pendente lite* is bound by the result of the suit although he is not a party to it.

Gulabchand Manikchand v. Dhondi valad Bhan⁽¹⁾; *Lakshmandas Sarupchand v. Dasrat*⁽²⁾; and *Faiyaz Husain Khan v. Prag Narain*,⁽³⁾ followed.

A separate suit can lie against such an alienee to recover possession of the property.

Madho Das v. Ramji Patal⁽⁴⁾ and *Sheo Narain v. Chunni Lal*,⁽⁵⁾ distinguished.

*Second Appeal No. 506 of 1926.

⁽¹⁾ (1873) 11 Bom. H. C. 64.

⁽²⁾ (1907) 29 All. 339 at p. 345.

⁽³⁾ (1880) 6 Bom. 168.

⁽⁴⁾ (1894) 16 All. 286.

⁽⁵⁾ (1900) 22 All. 243.