

adverse possession against the Khot. But in the present case we are not concerned with the effect of these decisions on what may be described as proper *warkas* land. These Bhati lands stand on the same footing for the purpose of acquisition of rights by prescription as ordinary lands; and I see no reason why these villagers who have been enjoying the produce of these grass-growing lands, should not have the benefit, which the law gives to such occupation and enjoyment, as against the Khot. As regards the few lands, as to which Mr. Desai contended that the acquisition of rights by adverse possession was not established, I am of opinion that he has failed to show that the conclusion reached by the lower Court is wrong.

Appeals dismissed.

J. G. R.

APPELLATE CIVIL.

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

JINA JIJIBHAI BARIA (ORIGINAL DEFENDANT), APPLICANT *v.* MATHUR JIBHAI BARIA (ORIGINAL PLAINTIFF), OPPONENT^a.

1921

July 1.

Bombay Mamltdars' Courts Act (Bombay Act II of 1906), section 5. Explanation†—Mamltdar—Possessory suit—Joint possession cannot be ordered—Jurisdiction.

Under the Bombay Mamltdars' Courts Act, 1906, the Mamltdar has no jurisdiction to award joint possession, in a possessory suit against a co-owner.

THIS was an application under the Extraordinary Jurisdiction of the High Court, from an order passed by H. L. Talati, Mamltdar of Borsad.

^a Civil Extraordinary Application No. 88 of 1921.

† The explanation runs as follows:—

“The exercise by a joint owner of any right which he has over the joint property is not a dispossession, or disturbance of possession, of the other joint owner or owners within the meaning of this section.”

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The plaintiff filed a suit under the provisions of the Mamlatdars' Courts Act (Bombay Act II of 1906) to recover possession of the eastern half of a survey number. The evidence adduced in the case went to show that both plaintiff and defendant were in joint possession of the whole survey number. The Mamlatdar, accordingly, ordered the plaintiff to be put in joint possession of the whole survey number.

An application against the order was rejected by the Collector of Kaira.

The defendant applied to the High Court.

G. N. Thakor, for the applicant.

H. V. Divatia, for the opponent.

MACLEOD, C. J.:—The plaintiff filed this suit in the Mamlatdar's Court averring that the defendant had dispossessed him of three acres and seven gunthas of land out of Survey No. 51. The order of the Mamlatdar was that the plaintiff should be put in joint possession of the whole of Survey No. 51 with the defendant. It has been contended that that order was without jurisdiction. We have been referred to the decisions of this Court in *Keso Dinkar v. Moro Sakharam* ⁽¹⁾ and *Krishna v. Gopala* ⁽²⁾ which decided that the Mamlatdar had no jurisdiction to award joint possession in proceedings under the Act III of 1876. The Mamlatdar in making this order relied upon the case of *Bai Jamna v. Bai Jadav* ⁽³⁾. But the question decided there was one of an entirely different character. The only ground on which we could hold that the Mamlatdar had jurisdiction would be that jurisdiction had been granted by Bombay Act II of 1906. The explanation to section 5 is, as often happens, somewhat obscurely worded, and it

⁽¹⁾ 1883 P. J. 120.

⁽²⁾ (1890) P. J. 316.

⁽³⁾ (1879) 4 Boin. 168.

may be read in two different ways, either as confirming the decisions of this Court to which we have just referred (*Keso Dinkar v. Moro Sakharan*⁽¹⁾ and *Krishna v. Gopala*⁽²⁾), or as altering the law; and at first we thought that the explanation might be read as showing that in certain cases of joint ownership the action of one co-owner against the other might amount to dispossession, and, therefore, it might be concluded that where the action amounted to dispossession the Mamlatdar could award joint possession. But we think the proper way to read that explanation is that any action of one co-owner who has rights over the whole property, although it may interfere with the joint ownership of his co-owner, does not amount to dispossession under the Act, and that it was not intended that ouster by one co-owner of the other should amount to dispossession within the meaning of the Act so as to entitle the Mamlatdar to award joint possession. This seems to us to be clear from the provisions of section 19 which prescribe very clearly the points to be decided by the Mamlatdar at the hearing, and the case of a plaintiff who is asking for joint possession against his co-owner is not dealt with either expressly or by implication. We think, therefore, the law still stands as it did when *Krishna v. Gopala*⁽²⁾ was decided, and that the Mamlatdar had no jurisdiction in this case to decree joint possession. The rule must be made absolute and the decree set aside and the plaintiff's suit dismissed with costs in the Mamlatdar's Court and in this Court.

Rule made absolute.

R. R.

⁽¹⁾ (1883) P. J. 120.

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