

[APPELLATE CIVIL JURISDICTION.]

*Regular Appeal No. 26 of 1871.*1873.
January 28.

SHIRDHAR HARI..... ..Appellant.
 CHIMÁ valad LÁDU and BÁPUJI }
 AMRUT MÁMLATDER of PARNER } Respondents.

Procedure—Improper Joinder of Government officer as defendant—Rejection of plaint—Return of plaint for presentation to proper Court.

Where a plaint is presented to the Judge of a district, in which plaint an officer of Government is added as a nominal defendant, no cause of action being alleged against him, the proper course for the District Court to adopt, is either to reject the plaint, or to call upon the plaintiff to amend it by striking out the name of the officer improperly added as a defendant, and upon the plaintiff consenting to do so, to return the plaint to the plaintiff for presentation to the court of the lowest grade competent to try it.

Where the district Judge did not adopt this course, but proceeded to try the cause, to the High Court annulled his decree, and (the plaintiff consenting to amend his plaint) returned it to him for amendment and presentation to the proper court.

THIS was an appeal from the decision of A. Bosanquet Judge of the District of Ahmadnager, rejecting the plaintiff's claim.

The plaintiff in his plaint alleged that the proprietor of certain lands, situated in Taluka Parner, redeemed them from his mortgagees, of whom the defendant No. 1 Chimá valad Ládu, was one, and mortgaged them to the plaintiff, placing him in possession on the 23rd of June 1860; that in a summary suit brought by the defendant, Chimá, in the Court of the Mámlatdar, the second defendant, the latter, by an order dated the 9th of July 1868, deprived him of his possession. The plaintiff prayed that a decree should be passed against both the defendants, and that his possession should be restored to him.

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The defendant, Chimá, stated that he had the right of possession in consequence of his mortgage from the proprietor, which was, as he alleged, still unredeemed. The Mámlatdár pleaded that he had full authority to dispose of the complaint of the first defendant under Bombay Act V. of 1864, and that as he had acted *bona fide*, he was protected by Act XVIII. of 1850.

The district Judge, holding the decree of the Mámlatdár's court conclusive on the question of possession, and being of opinion on the evidence that the plaintiff had not proved his claim, gave a decree in favor of the defendants.

The appeal was heard by SARGENT, Acting C.J., and MELVILL, J.

Bahiravnath Mangesh for the appellant.

Chunilal Maniklal for the respondents.

PER CURIAM:—The plaint does not allege a cause of action against the Mámlatdár, nor seek any relief against him. The plaint should, therefore have been rejected by the Judge unless the plaintiff consented to amend it by striking out the name of the Mámlatdár; in which case he would have had no jurisdiction to try the suit. This Court annuls the decree and the plaintiff, by his Vakil, consenting to amend the plaint by striking out the name of the Mámlatdár, returns it to him to be presented in the proper court. It is clear that the Mámlatdár is only a nominal defendant, and that his being made so was solely for the purpose of evading the law.

Decree annulled.