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to be issued not by the Presidency Bench, but by one of the Judges sitting on the Original Side. The case of *Kadambini Baiji v. Madan Mohan Basak* (1), on which the pleader for the applicant relies, seems to us not to furnish any argument in his favour, inasmuch as the Bench, which decided that case, was not dealing with a Rule issued under the revisional jurisdiction of this Court provided for by s. 622, Civil Procedure Code, but with a Rule issued on an application under s. 25 of the Code for the transfer of a case from Calcutta to a Court in the Dacca district. It was, moreover, not a Bench dealing with the Presidency Group, but was the Vacation Bench, for the decision, on which the pleader for the applicant relies, was passed on the 13th September 1898, which was during the vacation. Further, we observe that it was in the exercise of its jurisdiction under s. 15 of the Charter, read with s. 6 of Act XV of 1882, that the order was passed. We have in this case not been asked to exercise our extraordinary jurisdiction under s. 15 of the Charter.

For these reasons we hold that we have no jurisdiction to deal with this matter, and we discharge this Rule with costs.

S. C. G.

Rule discharged.

Before Mr. Justice Pratt and Mr. Justice Geidt.

SOSHI BHUSAN GHOSE

v.

GONESH CHUNDER GHOSE.*

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April 30.

Injunction—Specific Relief Act (I of 1877) s. 54—Judicial discretion of Court—Where the act of the defendant amounts to an ouster of the plaintiff from the possession of the joint-property.

In a case where the act of the defendant amounts to an ouster of the plaintiff from his possession of joint-property, pecuniary compensation not being an adequate relief, an injunction would be the proper remedy.

Anant Ramrao v. Gopal Balwant (2) followed.

The defendants, Soshi Bhusan Ghose and another, appealed to the High Court.

* Appeal from Appellate Decree No. 1664 of 1900, against the decree of Babu Hemanga Chunder Bose, Subordinate Judge of Hooghly, dated the 13th of August 1900, reversing the decree of Babu Khetter Nath Dutt, Munsiff of Howrah, dated the 18th of April 1900.

(1) (1898) 8 C. W. N. 247.

(2) (1894) I. L. R. 19 Bom. 269.

This appeal arose out of an action brought by the plaintiff for a perpetual injunction to restrain the defendants from closing the door of a staircase leading to the roof of a two-storeyed house on a declaration that the said staircase was the joint-property of the parties. The allegation of the plaintiff was that the house was an ancestral property, and that he and the defendants were in possession of separate rooms of the house according to their convenience; that the parties were using jointly the staircase leading to the roof; that when the partition took place, although it was agreed that the plaintiff would use the staircase jointly with the defendants, yet the latter, owing to a family dispute, had closed the doors of the staircase against the wishes of the plaintiff. Hence the present suit was brought. The defence of defendant No. 1, who alone contested the suit, *inter alia*, was that the plaintiff had no cause of action; that the claim was barred by limitation; that he had been using the small room at the top of the staircase for the last eight or nine years adversely to the plaintiff, and had repaired it at his own expense to use it as his bedroom, in which he had placed valuable properties. The Court of first instance refused the plaintiff's claim for perpetual injunction, but issued a temporary injunction on all the defendants, restraining them from placing any obstruction to the plaintiffs using the staircase from the groundfloor to the first floor. On appeal the learned Subordinate Judge of Hooghly, Babu Hemanga Chunder Bose, having found that the staircase was the joint-property of the parties, issued a perpetual injunction restraining the defendants from closing the staircase or any portion of it.

Dr. Ashutosh Mookerjee and Babu Biraj Mohun Masoomdar for the appellants.

Babu Jogesh Chunder De for the respondent.

PRATT AND CHIDT JJ. The plaintiff and defendants, who are nearly related, live in a two-storeyed house of ten rooms, five on each floor. The plaintiff occupies two rooms on the groundfloor and two rooms on the first floor, while each of the three defendants occupies one room on the groundfloor and one room on the first floor. There is a staircase inside the house leading to the roof past the first

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floor. The plaintiff's case was that this staircase was the joint-property of himself and the defendants, and that the defendants had obstructed it, so that he was unable to obtain access either to his rooms on the first floor or to the roof, and he, therefore, prayed for a perpetual injunction restraining the defendants from continuing the obstruction. The case of the defendant No. 1, who alone contested the suit, was that there had been a partition among the members of the family, and that at this partition the staircase had been allotted not to the plaintiff, but to the three defendants, and that he himself, with the consent of the other defendants, had converted the *chillaghar* (or pen-house built on the roof to protect the staircase) into a room for his own use, where he kept valuables.

The learned Subordinate Judge, on appeal, has found that the staircase is the joint-property of both plaintiff and defendants, and has granted the injunction sought for. The defendant No. 1, on appeal to this Court, does not object to the injunction so far as it relates to the obstruction between the groundfloor and the first floor, but he objects to it so far as it compels him to refrain from obstructing the plaintiff's access to the roof from the first floor. It is contended on his behalf that, even if the staircase is joint-property, as it is found to be, the Subordinate Judge should not have granted an injunction against the latter obstruction, but should have held that this was a case not for an injunction, but for damages. In support of this contention reference is made to the *Shammugger Jute Factory Company v. Ram Narain Chatterjee* (1), in which it was laid down that in granting or withholding an injunction, the Courts exercise a judicial discretion and weigh the amount of substantial mischief done or threatened to the plaintiff, and compare it with that which the injunction, if granted, would inflict upon the defendant. With that principle we are in entire agreement. But in the present case it is no mere case of damage to the plaintiff; the defendant's act amounts to an ouster of the plaintiff from his possession of the staircase which affords him access to the roof. In such a case an injunction is a proper remedy, as was held in *Anant Ramrav v. Gopal Baleant* (2). It is not a case where, to use

(1) (1896) I. L. R. 14 Calc. 189 (198). (2) (1894) I. L. R. 19 Bom. 269.

the language of s. 54 of the Specific Relief Act, pecuniary compensation would be an adequate relief. The mere fact that the defendant, in invasion of the plaintiff's right, has found a great convenience in converting the *chillaghar* into a room for keeping valuables is no ground for refusing an injunction. We find that the learned Subordinate Judge has rightly used his discretion in issuing the injunction, and we accordingly dismiss this appeal with costs.

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Appeal dismissed.

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INSOLVENCY JURISDICTION.

Before Mr. Justice Stephen.

IN THE MATTER OF CHUNI LAL OSWAL.

1902

April 24.

Insolvent Debtors Act (11 and 12 Vic. Cap. XXI) ss. 26 and 36—Construction of.

The words "and it shall be also lawful for the Court on those or any other occasions" in s. 36 of the Insolvent Debtors Act (11 and 12 Vic. cap. XXI) are intended to receive a very wide application, and the Court has power to proceed under this section as soon as there is an insolvent.

Under s. 26 of the same Act, no rule should be granted except on the application of the assignee or an admitted creditor.

In the matter of Buctwar Chand (1) followed.

No one can be regarded as a creditor until his name is admitted to the schedule, or until he establishes it there.

THIS was a rule obtained by the adjudicating creditor, Soobolchand Chunder, calling upon Amluk Chand Parruk, am-mukhtar of Hookum Chand, the sole proprietor of the firm of Binraj Hookum Chand, and Tuloke Chand, Monib gomastha of the same firm, to show cause why they should not deliver over to the Official Assignee all books, books of account, account and securities for money, and also all other stock-in-trade goods and effects belonging to the insolvents in their possession, power or control.

And for an order that the insolvents Chooni Lal Oswal, Prem Chand Oswal, Jstnull Oswal, Moolchand Oswal, Deep Chand