ORIGINAL CIVIL.

Before Mr. Justice Mookerjee and Mr. Justice Teunon.

KESHO PRASAD SINGH

v.

THE BOARD OF REVENUE.*

1911

March 2.

Mandamus—Specific Relief Act (I of 1877), ss. 45 and 46—Mandamus, writ of, on the Board of Revenue—Want of necessary party—Other legal remedy being available whether the Court will interfere.

A *mandamus* will never be granted to enforce the general law of the land which may be enforced by action.

A having obtained a decree for recovery of possession of an estate against an infant under the Court of Wards, and the Collector of the District, representing that Court, applied during the pendency of an appeal by the defendants to the High Court, to the Members of the Board of Revenue forming the Court of Wards that the estate might be released in his favour. This application having been rejected A obtained a Rule from the Original Side of the High Court under s. 45 of the Specific Relief Act, calling upon the Members of the Board only to show cause why they should not forthwith release the estate. The Rule was not served upon the infant, whose interest would be affected if the Rule were made absolute:

Held, that inasmuch as the petitioner had failed to comply with Rule 483 of the Rules of the High Court, Original Side, by not serving the Rule upon the infant, and that inasmuch as he had an adequate legal remedy by way of execution of the decree obtained by him, the Rule was liable to be discharged, and the petitioner could not get any relief under s. 46 of the Act.

Held, further, that unless the Court was satisfied that the doing of or forbearing from an act was consonant to right and justice, and such doing and forbearing was under any law for the time being in force clearly incumbent on the person against whom the order was sought, no *mandamus* ought to be granted; and that title to property would not be tried in *mandamus* proceedings and the writ would not issue when it was necessary to try or decide complicated or extended questions of fact.

RULE obtained by Kesho Prasad Singh, the petitioner.

The petitioner stated that on the death of Maharani Beni Prasad Koeri, he as the next reversionary heir was entitled

* Application under s. 45 of the Specific Relief Act, 1877. (Extraordinary Original Civil Jurisdiction.)

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to the Dumraon Raj Estate; but the Court of Wards took possession of the said Raj on behalf of the infant Jung Bahadur Singh, on the allegation that he was the legally adopted son of the deceased Maharani. He made representations to the Local Government and proper authorities for the release of the estate but did not get any relief from them. He subsequently brought a suit in the Court of the Subordinate Judge of Shahabad for recovery of possession of the Dumraon Raj Estate against the infant, who was represented by his Manager, and the Court of Wards and the Collector of the district. The learned Subordinate Judge decreed the suit; and the defendants preferred an appeal to the High Court. Pending the appeal the plaintiff made an application to the Members of the Board of Revenue for the release of the estate, but his application was rejected. Then he made an application to the Original Side of the High Court under section 45 of the Specific Relief Act, and obtained this Rule on Mr. F. A. Slacke and Mr. W. C. Macpherson, the Members of the Board of Revenue, to show cause why they should not release the estate, and make over possession to the plaintiff. The Rule was served only upon the Members of the Board of Revenue, but not upon the infant.

Mr. Pugh and *Mr. B. C. Mitter*, for the petitioner.

Mr. S. P. Sinha, for the opposite party.

Cur. adv. vult.

MOOKERJEE AND TEUNON JJ. The allegations upon which this Rule was issued on an application under section 45 of the Specific Relief Act, may be briefly set out. Maharani Beni Prasad Koeri, Maharani of Dumraon, died on the 13th December 1907. The petitioner, Kesho Prasad Singh, alleges that he thereupon became entitled to the Dumraon Raj estate, but on the 16th December 1907, the Court of Wards declared an infant, Jung Bahadur Singh, as a ward of the Court and took possession of the estate as if it belonged to the infant in question. The petitioner further alleges that he addressed various memorials to the Government of Bengal and protested against the possession by the Court of Wards of the said Raj.

As his efforts were unsuccessful, he commenced an action on the 5th February 1909, in the Court of the Subordinate Judge of Shahabad, against the infant represented by his guardian and the Collector of Shahabad as representing the Court of Wards. The trial of the suit lasted from the 1st December 1909 to the 13th July 1910, and on the 12th August 1910 judgment was pronounced in favour of the petitioner. Subsequently on the 31st August, he applied to the Members of the Board of Revenue, forming the Court of Wards, that the estate might be released in his favour. Intimation was sent to him on the same date that the Court declined to comply with his request. He then obtained this Rule, on the 8th September 1910, calling upon Mr. Slacke and Mr. Macpherson, Members of the Board of Revenue, to show cause why they should not forthwith release the Dumraon Raj estate from the charge of the Court of Wards, and take all necessary steps for the purpose. The learned counsel who has appeared to show cause has contended that the application is open to various objections, anyone of which is sufficient to justify its refusal.

It has been argued, in the first place, that the petitioner has failed to comply with Rule 483 of the Rules of this Court which provides that unless otherwise ordered, every Rule issued under section 46 of the Specific Relief Act upon an application under section 45 shall call not only on the public servant, corporation, or inferior Court, but also on any person other than the applicant who may be affected by the Act to be done or forborne, to show cause. It is not disputed that the present Rule has been served only upon the Members of the Board of Revenue; it has not been served upon the infant who would be undoubtedly affected, if the application were granted. The objection, therefore, is fatal; it is one of substance and not of mere form, for the principle has been recognised wherever writs of *mandamus* are issued, that if a right, title or interest, in or to real property, is directly involved, all persons owning or claiming the same, must as a rule be joined as parties. We do not desire, however, to rest our decision on this ground because possibly if the application were meritorious, the Court might, upon payment of all costs by the petitioner,

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still allow the petition to be amended, and notice thereof given to all necessary parties before the Rule was heard.

It has been contended, in the second place, that the application ought to be refused, because the applicant has other specific and adequate legal remedy. It is an elementary principle that recourse ought not to be allowed to an extraordinary remedy of this description, when it is not really needed. In the case before us, the plaintiff is entitled to sue in ejectment; he has brought such a suit and has been successful; he is entitled to execute his decree, but has not yet taken any steps in that direction. It is well settled that a *mandamus* will never be granted to enforce the general law of the land which may be enforced by action; for instance, where the applicant has the ordinary legal remedy of an execution, *mandamus* does not lie: *R.* v. *Chester* (1). Consequently, where an action has been brought and judgment entered against a company, the Court would refuse to issue a *mandamus* commanding the company to pay the sum recovered and costs, though it appears that the company had no assets: *R.* v. *Victoria Park Company* (2). For similar reasons, a *mandamus* is not obtainable in cases where there is a remedy by distress: *R.* v. *London and Black Wall Railway Company* (3). These cases recognise the doctrine that a *mandamus* will lie to prevent a failure of justice upon reasons of public policy, to preserve peace, order and good Government, correct official inaction, and enforce official function, but only in cases of last necessity, where the usual forms of procedure are powerless to afford relief, where there is no other clear, adequate, efficient and speedy remedy; in other words, as stated by the Supreme Court of the United States in *Kendall* v. *Stokes* (4), where the petitioners may have relief in an ordinary Civil action, *mandamus* will not lie: *R.* v. *Severn* (5); see also *Bank of Bengal* v. *Dinonath Roy* (6), *In re Bombay F. I. Company* (7),

(1) (1747) 1 Wilson 209.
(2) (1841) 1 Q. B. 288; 55 R. R. 249.
(3) (1845) 3 D. & L. 399; 71 R. R. 849.
(4) (1843) 3 Howard 87.
(5) (1819) 2 B. and Ald. 645.
(6) (1881) I. L. R. 8 Calc. 166.
(7) (1892) I. L. R. 16 Bom. 398.

R. v. *Stepny Borough Council* (1). The second objection, therefore, which goes to the root of the matter, must be sustained.

In the third place, no order will be made, unless the Court is satisfied that the doing of or forbearing from the act is consonant to right and justice, and such doing or forbearing is, under any law for the time being in force, clearly incumbent on the person against whom the order is sought. In the present case, before the Court could hold that the act sought to be done is clearly incumbent upon the members of the Board of Revenue, we should have to determine that the plaintiff is the rightful owner of the Dumraon Raj estate; but that is the very matter in controversy between the plaintiff and the infant defendant in the regular suit. No doubt, the plaintiff has obtained a decree in the Court of the Subordinate Judge, but the propriety of that decree has to be considered by this Court. It is obviously impossible for this Court to adjudicate, for the purposes of this application, upon the very question in controversy between the parties in the appeal. It is an elementary principle that the title to property will not be tried in *mandamus* proceedings, and the writ will not issue, when it is necessary to try or decide complicated or extended questions of fact: *United States* v. *General Land Office* (2), *Gregory* v. *Blanchard* (3). The third objection must, therefore, prevail.

In the fourth place, it has been contended, that the application ought not to be entertained, because the specific act required to be done is not to be done within the local limits of the ordinary original jurisdiction of this Court, as no part of the Dumraon Raj estate is situated within such local limits. The learned counsel on behalf of the petitioner has, however, argued that this circumstance is immaterial, because the members of the Board of Revenue reside within the local limits mentioned, and all that is required is that a notification should be issued by them in the official Gazette that the estate has been released. The substance of the argument is that the

(1) (1902) 1 K. B. 317.
(2) (1866) 5 Wallace 562.
(3) (1893) 98 Cal. 311; 33 Pacific 656.

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order declaring the infant a ward of Court and directing possession to be taken on his behalf was made within the jurisdiction of this Court, and an order for withdrawal of the original order may similarly be directed to be made here. In support of this view, reliance has been placed upon the decision of the Bombay High Court in *Re Haji Hassam Mahomed* (1). This case does support the view that the act required to be done, in so far as it may be done within the local limits of the ordinary original civil jurisdiction of this Court, namely, the issue of an order of cancellation of the original order, might, if a good case were made out, be directed under section 45 of the Specific Relief Act. It is not necessary, however, to deal with this matter in further detail nor to arrive at a final decision upon this point, because the application must fail upon the other grounds mentioned. In our opinion, the Rule must be discharged, and as the application has been wholly misconceived, it must be dismissed with costs.

Rule discharged.

S. C. G.

Attorneys for the petitioner: *Manuel & Agarwalla.*

Attorneys for the opposite party: *Sanderson & Co.*

(1) (1902) 4 Bom. L. R. 773.