

(1922) 02 BOM CK 0027

Bombay High Court

Case No: None

Nusservanji Cawasji Arjani

APPELLANT

Vs

Shahjadi Begam Widow and heir
of Nawab Imdad Ali Khan Gulam
Jhilani and Others

RESPONDENT

Date of Decision: Feb. 6, 1922

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1

Citation: (1922) ILR (Bom) 939

Hon'ble Judges: Norman Macleod, J; Coyajee, J

Bench: Division Bench

Judgement

Norman Macleod, Kt., C.J.

The present plaintiffs were owners of a bungalow at Panchgani which had been let to the defendant on a lease, which the plaintiffs say expired on the 30th June 1920. Meanwhile the defendant had sub-let the premises, or part of them, and as he could not get possession from his sub-tenants a suit had to be filed in which there was a decree in his favour. The plaintiffs, as owners of the property, filed a suit against the defendant claiming that they were entitled to possession, and that the decree which the defendant had. obtained against his sub-tenants was not binding upon them, and for an injunction against the defendant not to take possession. After the suit was filed, an application was made by the plaintiffs for a temporary injunction restraining the defendant from executing his decree against the sub-tenants. The trial Court granted the injunction, and an appeal against that order was dismissed by the District Judge.

2. In revision it is urged for the defendant that the Court had no jurisdiction to grant the temporary injunction asked for. Order XXXIX, Rules 1 and 2 prescribed in what cases the Court can grant a temporary injunction, and it is quite clear that the plaintiffs' suit is not a suit of the nature prescribed in either Rule 1 or Rule 2. The

primary object of the plaintiffs' suit is to get possession of the property which they claimed as belonging to them, on the ground that the term of the defendant's lease had expired, and accordingly possession should be given to the owner. That is an entirely different question from that which had already been decided between the defendant and his sub-tenants. The Court has no jurisdiction to restrain the defendant from seeking to get the benefit of the decree he has obtained, which has nothing whatever to do with the plaintiffs' claim. What the plaintiffs ought to have asked for was the appointment of a Receiver, so that the Court might take charge of the property through its Receiver pending the settlement of the dispute between the plaintiffs and the defendant. The rule will be made absolute, and the order staying execution and restraining the applicant from executing his decree is set aside, with costs through out.