(1927) 11 BOM CK 0025

Bombay High Court

Case No: Civil Application for Revision No. 145 of 1927

Moti Jagta		APPELLANT
	Vs	
Indurai Bhaurai Desai		RESPONDENT

Date of Decision: Nov. 14, 1927

Acts Referred:

- Mamlatdars Court Act, 1906 - Section 26(b)

Citation: AIR 1928 Bom 53 : (1928) 30 BOMLR 98 : (1928) ILR (Bom) 203

Hon'ble Judges: Patkar, J; Madgavkar, J

Bench: Division Bench

Judgement

Madgavkar, J.
The question in this application is whether the words "has been" in Section 26, Clause (b), of the Mamlatdars" Courts Act include the word "is" or only refer to past proceedings. The dispute between the present parties was whether the petitioner was or was not a permanent tenant of the opponents. The petitioner brought a suit in the civil Court for a declaration that he was a permanent tenant with consequential reliefs. The opponents sued, subsequently and during the pendency of the civil suit, in the Mamlatdar"s Court for ejectment. The Mamlatdar held that the petitioner was not a permanent tenant and granted ejectment. The petitioner applies in revision, and it is argued on behalf of the opponents that the words "has been" cannot include a pending suit but only a decided suit.

2. This contention is, in our opinion, untenable. In a decided suit, the question as to recovery or disturbance of possession or dispossession would be res judicata, and no express clause such as Section 26(b) would be necessary. It follows that the words "has been" are used to include present proceedings, that is to say, proceedings that are pending, and therefore apply to the proceedings between the parties; and, in fact, Section 5, in any case, gives the Mamlatdar a clear discretion to refuse ejectment. It cannot for a moment be supposed that the Legislature contemplated that proceedings in the final

tribunal to decide the question between the parties should be allowed to be disturbed by proceedings before a tribunal whose powers are much more limited, such as the Mamlatdar, which is created to prevent resort to force and not to interfere with the trial and decision by the civil Courts.

3. The order of the Mamlatdar was, therefore, without jurisdiction; and the application must be allowed, the rule made absolute and the order set aside, without prejudice to the remedy, if any, of the opponents in the civil suit which is now pending.

Patkar, J.

4. This is an application to revise the order of the Mamlatdar in a possessory suit brought by the Inamdars against the defendant on the ground that he was a yearly tenant and that the lease terminated on March 31, 1926. The defendant contended that he was a permanent tenant and was not liable to be evicted by the plaintiffs-Inamdara who were only alienees of the Royal share of the revenue. The Mamlatdar awarded possession to the plaintiffs.

5. It is contended before us that the Mamlatdar had no jurisdiction to entertain the suit as the defendant-tenant had filed a civil suit No. 233 of 1923 on July 5, 1926, for a declaration that he was a permanent tenant and for an injunction against the Inamdars restraining them from disturbing him in his possession.

6. u/s 26, Clause (b), of the Mamlatdars'' Courts Act, no suit shall lie under the Act in respect of any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party in a civil Court.

7. It is contended by Mr. Thakor on behalf of the opponents that Clause (b) of Section 26 does not apply to the present case where the proceeding in the civil Court is pending, but applies only to previous proceedings which have terminated. I think that the words "has been the subject of previous proceedings'' would include pending proceedings in a civil Court. If the proceedings in a civil Court have ended in a decree, the rights of the parties would be determined in the civil proceedings and the decision would be binding on the parties to the litigation. It would not be necessary, in my opinion, to make any provision in the Mamlatdars'' Courts Act with regard to the civil proceedings which have ended in a decree.

8. In Ramchandra v. Narsinhacharya I.L.R (1899) Bom. 251, s.c. Bom. L.R. 660,. it was held that the Mamlatdar''s decision was not conclusive and the plaintiff was entitled to bring a second suit u/s 9 of the Specific Relief Act. In Nagappa v. Sayad Badrudin I.L.R (1901) Bom. 353, s.c. Bom. L.R. 919, it was held that the Mamlatdar had jurisdiction to try a possessory suit notwithstanding the fact that there were previous proceedings between the parties u/s 145 of the Criminal Procedure Code. In order to give effect to the view, overruling the above two cases, that the remedies under the Mamlatdars'' Courts Act on

the one hand and the Specific Relief Act and the Code of Criminal Procedure on the other hand should be alternative and not cumulative, Section 24. of Bill No. IV of 1905 seems to have been drafted. Section 26, as now enacted, enlarges the scope of Section 24 of the Bill and substitutes a proceeding in a civil Court for a proceeding u/s 9 of the Specific Relief Act as proposed in Section 24 of Bill No. IV of 1905. It is clear, therefore, that the pendency of a civil proceeding in any Court would be a bar to the exercise of jurisdiction by the Mamlatdar under the Mamlatdars'' Courts Act (Bom. Act II of 1903). The usual course for the parties is to have recourse to the Mamlatdar''s Court for a speedy relief before they seek assistance of a civil Court, and the defeated party is generally driven to bring a suit in the civil Court. The procedure adopted by the Inamdars in this casa was very unusual. They brought a suit in the Mamlatdar''s Court after they were sued by the tenant in a civil Court. Under the proviso to Section 5 of Act II of 1906, it is discretionary with the Mamlatdar to refuse to exercise the power under the Act if he is of opinion that the case before him would be more suitably dealt with by the civil Court. The decision in the Mamlatdar''s Court does not finally decide the rights of the parties. If a civil Court decides the rights of the parties, then clearly apart from Section 26 of Act II of 1906 the Mamlatdar''s Court would have no jurisdiction to entertain a suit under the Mamlatdars'' Courts Act. Under the proviso to Section 5(1) of the Mamlatdars'' Courts Act, discretion is given to the Mamlatdar to refuse to exercise the power under the Act if he is of opinion that the matter would be suitably dealt with by a civil Court.

9. I think that Section 26, Clause (b), bars the jurisdiction of the Mamlatdar when there is a civil suit pending between the parties in respect of any dispossession, recovery of possession or disturbance of possession. I think, therefore, that the contention on behalf of the applicant is well founded and that the Mamlatdar had no jurisdiction to entertain the present suit.

10. I would, therefore, make the rule absolute, reverse the decree of the Mamlatdar and dismiss the plaintiffs'' suit with costs throughout.