

(1907) 07 BOM CK 0023
In the Bombay High Court
Case No : Application No. 354 of 1906

Vajechand Ramaji

APPELLANT

Vs

Nandram Daluram

RESPONDENT

Date of Decision : 16-07-1907

Acts Referred:

Bombay Mamlatdars Courts Act, 1876 — Section 4

Citation : (1907) 9 BOMLR 1028

Hon'ble Judges : Russell, Acting C.J.;Batty, J

Bench : Division Bench

Judgement

Russell, Acting C.J.

1. An important question is raised in this case as to the construction of the Mamlatdars" Courts Act II of 1906.
2. The suit was brought in Mamlatdar"s Court of Dohad for possession of a certain house in the town and a decree passed that the plaintiff should be restored to immediate possession of the said house, with costs to be paid by the defendant.
3. The suit was filed on the 24th September 1906; evidence taken on the 22nd, 24th and 26th October and then the case was adjourned for argument.
4. On the 29th October 1906, the Bombay Mamlatdars" Courts Act II of 1906 received the assent of the Governor General in Council and on the 17th of November 1906 judgment was delivered. On the 29th November 1906, possession was given under the decree and on the 22nd January 1907 the Mamlatdar was informed by the Collector of the passing of the new Act which repealed the whole of the previous Act, Bombay Act III of 1876, without any saving as to pending proceedings.
5. A rule was granted by this Court on the 8th January 1907 to show cause why the Mamlatdar"s decree should not be set aside on the ground (us) that on

Bombay Act II of 1906 coming into force he had no jurisdiction in respect of the subject matter; and (6) that it purports to decide a question of title and not possession.

6. The first of these is an important point and has already been decided by Mr. Justice Beaman in the case of *Gulam Rasul v. Balu Sayaji* (1907) 9 Bom. L.R. 527 and is likely to come up on several occasions.

7. Section 5, para 1, of the Mamlatdar's Courts Act provides as follows:-

(5). (1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court and Which shall, subject to the provisions of Sections 6 and 26, have power, within such territorial limits as may from time to time be fixed by the Governor in Council, to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or to restore the use of water from any well, tank, canal or watercourse, whether natural or artificial, used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner.

8. The corresponding words in Section 4 of Bombay Act III of 1876 were: " to give immediate possession of lands, premises, trees, crops or fisheries or of any profits of the same " etc.

9. It will be seen by Bombay Act II of 1906 that the jurisdiction is limited to the cases of agricultural lands or premises. In the Statement of Objects and Reasons as to Bombay Act II of 1906 it is stated : "In the case of *Bai Jamna v. Bai Jadav* (ILR 1870) 4 Bom. 161 at pp-178 and 180, it was held that the jurisdiction of these Courts was not so limited but extended to towns and cities and in *Kazi Isub v. Husan Saheb* (1894) P.J. 424 the question of possession of a masjid was held to be within the jurisdiction. These decisions are contrary to the original object and intention of the Act and it is considered that possessory disputes arising in towns and cities can better be disposed of: by the Civil Courts, either summarily u/s 9 of the Specific Relief Act, (I of 1877), or in ordinary suits. The same limitation should, it is thought, apply to disputes in regard to water."

10. The first clause of the head note to the case in 9 Bombay Law Reporter 527 above referred to is incorrect. What the learned Judge says is: "On the face of it, it would appear that the Mamlatdar's jurisdiction has been taken away by the later Act and great reliance has been placed on the well-established rule that enactments relating to procedure are to be given retrospective effect. " But the learned Judge held that the order of the Mamlatdar which related to a house situate within the town limits of Kalyan and which was passed after Act II of 1906 came into force was wrong and must be set aside. The reasoning of Mr.

Justice Beaman in that case appears to us entirely correct. We cannot think that the plaintiff in the present case can be said to have any "right, privilege or obligation " to have his case finally decided in the Mamlatdar's Court within the meaning of those words in Section 7 of the Bombay General Clauses Act I of 1904, which is identical with the corresponding section of the General Clauses Act X of 1897. No person, it is said, has any vested right in procedure, and, as stated by Sir Charles Sargent C.J. in *Shamlal v. Hirachand* ILR (1885) .10 Bom. 369 jurisdiction is matter of procedure." The question herein is purely one relating to the jurisdiction of the Mamlatdar's Court. After the 29th of October 1906, when the new Act received the sanction of the Governor General, it must in our opinion be held that the Mamlatdar's Court had no further jurisdiction with regard to houses in towns or cities or, in other words, the door of the Mamlatdar's Court after that date was shut to all cases relating to such houses.

11. *Reg v. Denton* (1852) 18 Q.B. 761 is very similar to the present case. The head note says as follows :-"By Act of Parliament, the liability to repair certain highways in a parish was taken from the parish and cast upon certain townships in which the highways respectively were and the Act gave a form of indictment against such townships for non-repair, which would have been insufficient at common law. One of the townships was indicted under the Act, but, before trial, the Act was repealed without any reference to pending prosecutions. The Court arrested a judgment given against the township on such indictment."

12. We read the following passages from the judgment of Coleridge J. at page 771. "The proceedings are before the Court and are at a stage when the question arises whether a particular step can be justified. It can be justified only by an Act of Parliament; and that Act is repealed without any saving, then, can the Court for the present purpose take notice of the repealed Act t The answer is that what has been done and perfected cannot be disturbed; but, if you want the Statute for a further purpose, as that of giving Judgment, you cannot have it." Erle J. says "the repealed Statute is, with regard to any further operation, as if it had never existed. It gave a form of proceeding which has been followed in this indictment; and the defendants were not liable except under the Statute. Between the indictment and judgment this Statute is repealed. To say that the proceedings may nevertheless be followed up contravenes the sense of the word "repeal"."

13. Under these circumstances it is not necessary to decide the question raised in the second ground of the rule herein.

14. We are of opinion, therefore, that the decree of Mamlatdar was wrong and must be reversed with costs.