

(1920) 02 BOM CK 0001
In the Bombay High Court

Dayal Khushal

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision : 09-02-1920

Acts Referred:

Bombay Revenue Jurisdiction Act, 1876 — Section 11

Citation : 59 Ind. Cas. 122

Hon'ble Judges : Norman Macleod, C.J;Heaton, J

Bench : Division Bench

Judgement

Heaton, J.—This is a suit which the plaintiff brought for the reversal of an order passed by the Collector of Surat directing the plaintiff to remove an alleged encroachment on a public road, and for an injunction against the defendant to suspend the said order pending the suit. When the suit came on for hearing before the District Judge of Surat, he held that it was barred by Section 11 of the Bombay Revenue Jurisdiction Act, because the plaintiff had not presented all the appeals allowed by law in the matter. In fact, he had not presented any appeal. The Collector's order was made on the 6th of February 1917, and, on the 21st of April, i.e., nearly two and a half months later, the Collector followed up his order by intimation that, unless the plaintiff filed a suit, the order would be given practical effect to by removing the encroachment. Thereupon the plaintiff did file this suit. Moreover, it would seem that the plaintiff never, either before filing the suit or afterwards, made any appeal to the Commissioner either against the Collector's first order or his later intimation. There is, it is said, no evidence on the record as to whether an appeal was or was not presented to the Commissioner, but it must have been admitted in the lower Court that no appeal had been presented, or the suit could not have been dismissed under Section 11 of the Bombay Revenue Jurisdiction Act.

2. On the facts so far stated, the suit was quite plainly, and as I think rightly, dismissed, But it is argued that the principle of the case of Secretary of State v. Gajanan Krishna 10 I.C. 639 : 13 Bom. L.R. 273 applies here, that is to say, it is

said that if a plaintiff brings a suit for an injunction, he is not bound by the provisions of Section 80 of the Civil Procedure Code, and by analogy, therefore, he is not bound by the provisions of Section 11 of the Bombay Revenue Jurisdiction Act. I was myself a party to the decision to which I have referred, and I see that there is a judgment of mine in the case. I am afraid the principle that was in my mind in giving that judgment has been very greatly misapprehended. It is true that I still think that if the only remedy which a party has, is to obtain an injunction from a Civil Court and if the circumstances are such that if the injunction is not obtained, the mischief sought to be avoided will inevitably be done; then the Court will be justified in accepting the suit even without the previous notice required by Section 80 of the Code. Because, on the assumptions I am making, if that were not done, the suitor would be left without any effective remedy whatever. The Civil Procedure Code, which contains our law as to how suits are to be presented, cannot intend that its provisions should be so applied as to deprive a suitor of the only remedy by which a wrong to him can be prevented. That, however, is a principle which has no application here. The remedy provided by the law was an appeal to the Commissioner against the order of the Collector. That order was dated the 6th of February. More than two months elapsed without the plaintiff taking any action whatever by way of appeal. When the farther intimation from the Collector arrived he had still a fortnight within which he could appeal to the Commissioner and obtain an order staying the removal of the alleged encroachment. But, instead of adopting this method which was the method of redress indicated to him by the law, and a perfectly effectual method of redress, he came to the Civil Court. I think, therefore, that when we examine the facts of this case, it is found that Section 11 of the Bombay Revenue Jurisdiction Act does apply, that this is not a case in which the only remedy that the plaintiff had was an immediate application to the Court for an injunction, and consequently that the suit was rightly dismissed.

3. I think the appeal must be dismissed with costs.

Norman Macleod, C.J.

4. I concur.