
(1911) 11 BOM CK 0018
In the Bombay High Court
Case No : First Appeal No. 128 of 1911

Sakharam Bhagwan Patil

APPELLANT

Vs

The Secretary of State

RESPONDENT

Date of Decision : 23-11-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1912) 14 BOMLR 353

Hon'ble Judges : Russell, J;N.G. Chandavarkar, J

Bench : Division Bench

Judgement

Russell, J.—An important question is raised in this suit. The plaintiff, on the 21st July 1911, filed the present suit against the Secretary of State for India, the substance of which is that he complained that by an order, dated so long ago as 1909, by the District Deputy Collector, an officer in the service of the defendant, it was directed that the land which is described in clause 1 of the plaint belongs to Government and that he (plaintiff) has trespassed upon the said land, and, therefore, he (plaintiff) be ordered to vacate and give possession of the land. It is worthy of note that in that paragraph 3 of the plaint no mention is made of the year in which that order was passed.

2. That being so, it is not necessary to set out the further details of the plaint. But it appears that from 1909, down to about the middle of July 1911, the plaintiff was occupying himself in filing the necessary appeals against the orders of different Government officials with reference to this original order of the District Deputy Collector.

3. The point we have to decide is : Is notice necessary for this suit, having regard to the terms of Section 80 of the CPC ? Now, the words of that section, so far as they are material to this case, are as follows :-

No suit shall be instituted against the Secretary of State for India in Council, until the expiration of two months next after notice in writing has been delivered to,

or left at the office of, a Secretary to the Local Government, or the Collector of the District, in the case where the suit is filed against the Secretary of State for India.

4. Now, the words there are absolutely imperative. An appeal has been made to us for our sympathy with regard to the expensive superstructure which the plaintiff has put up upon this land. But we have nothing to do with sympathy. We cannot decide cases according to our sympathies for either party. The words of the section, as I have said, are perfectly distinct.

5. Now, it appears to us that it cannot be too widely known that any person who is desirous of filing a suit against the Secretary of State for India in Council must give a previous notice of two months before that suit is filed. That is laid down by Section 80.

6. It is suggested that the plaintiff was taking other steps before the revenue authorities with reference to this order by which he says he has been damnified. But it appears to us that that does not affect the question at all. There are the words of the section which say that such a notice must be given, and there was nothing whatever in the present case to ? prevent the plaintiff giving the requisite notice as soon as he received the order in 1909, and simultaneously carrying on his various applications to the revenue authorities, in which case, if he had done that, he would have complied with the section and this defence would not have been open to the defendant.

7. My learned colleague has dealt with his judgment, sitting with Heaton J., in *The Secretary of State Vs. Gajanan Krishna Mavlankar*, ; and it is unnecessary for me to do so.

8. For these reasons we hold the decree must be confirmed and the appeal dismissed with costs.

Chandavarkar, J.

9. With reference to certain observations of mine in my judgment in *The Secretary of State Vs. Gajanan Krishna Mavlankar*, it is sufficient to say that there are no facts in the present case to bring it within the line of the principle which I endeavoured to lay down there. What I said was that in order to take the case out of Section 80 of the Civil Procedure Code, there must be something in the conduct of the Secretary of State which had brought about a state of things preventing the plaintiff from complying with the provisions of the section in question. That means that the evidence must be such as to show that humanly speaking it was impossible for the plaintiff to give a notice and comply with the provisions of the law as laid down in Section 80. That is in accordance with the legal maxim " that the law does not expect a man to do what is impossible." It cannot be said that the plaintiff here had to do anything that was practically impossible. Therefore, I agree to the decree proposed.