

in inam tenure, which was not enfranchised, was not within the scope of the Pensions Act, as the question did not arise for decision in that case.

We consider that the appeal cannot be supported and dismiss it with cost.

RAMA
v.
SUBBA.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Muttusami Ayyar.

RAMACHANDRA (PLAINTIFF), APPELLANT,
and

THE SECRETARY OF STATE FOR INDIA IN COUNCIL.*

1888.
August 30.
December 6.

Madras Forest Act, 1882, s. 10—Procedure—Remedy by ordinary suit barred.

Where by an act of legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the ordinary jurisdiction of civil courts is ousted and in the case of injury the party cannot proceed by action.

Plaintiff sued in a Munsif's Court to cancel the decision of a Forest officer confirmed by a District Judge under s. 10 of the Madras Forest Act, 1882, and to recover certain land, a claim to which had been rejected under the said section:

Held that the Munsif had no jurisdiction to entertain the suit.

APPEAL from the decree of H. J. Stokes, District Judge of Coimbatore, reversing the decree of P. Narayanasami Ayyar, District Munsif of Coimbatore, in suit No. 387 of 1885.

The facts necessary for the purpose of this report are set out in the judgment of the Court (Kernan and Muttusami Ayyar, JJ.).

Bhashyam Ayyangar for appellant.

The Government Pleader (Mr. Powell) for respondent.

JUDGMENT.—The appellant is the plaintiff in suit No. 387 of 1885 in the Court of the District Munsif of Coimbatore.

The facts are that plaintiff alleges that he is the owner of lands having an area of 822 acres in the village of Vellimalaipattanam. The Forest Range Officer of Coimbatore, acting under the Forest Act V of 1882, notified in the gazette the intention of Government to constitute the said lands forest reserve. The plaintiff under s. 10 of that Act filed a claim to the lands, No. 53 of 1883. On the 18th December 1883 the Forest officer allowed

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the claim to the extent of 233 acres as being the land comprised within Survey No. 363, but rejected the claim to the extent of 589 acres not comprised within Survey No. 363. The Forest officer on the 2nd of December published in the gazette a notification that the land rejected from plaintiff's claim was forest reserve, and took possession of it. The appellant under s. 10, clause 2, preferred an appeal, No. 29 of 1884, in respect of such rejection in the District Court, and that court on the 4th of July 1884 dismissed the appeal. Though a second appeal might have been brought from such decision, the appellant did not bring such second appeal, but he filed this suit in the Munsif's Court, praying to have the decision of the Forest officer and District Judge cancelled and to recover possession of the lands as to which his claim was rejected. The defendant in defence stated that, under the Boundary Act XXVIII of 1860, the lands claimed by the appellant were decided by the Deputy Superintendent of Survey (exhibit No. 1, dated 2nd March 1879) not to be within appellant's boundary or within the village of Vellimalaipattanam, but in the Government village of Narasapuram. The appellant was aware of that inquiry and decision, and though a suit No. 6 of 1879 was brought by the plaintiff to dispute other decisions by the officer of survey, no suit was brought to set aside the decision as regards the lands now claimed. The defendant relied on the decision of the Forest officer and District Judge as a bar to the suit. The Munsif, by decree of the 7th of April 1886, decided that the appellant was not concluded by the boundary decision or by the decision of the Forest officer or of the District Judge—and made a decree setting aside the two latter decisions and awarding possession of the lands claimed.

The District Judge on appeal by decree, dated the 30th of September 1887, declared that the appellant was concluded by the decision of the Forest officer and District Judge and dismissed this suit with costs, holding that the Munsif had no jurisdiction to try this suit after the decision made by the District Judge and that the suit was barred as *res judicata* under s. 13 of the Code of Civil Procedure.

The grounds of appeal now are—

- (1) That the Munsif had jurisdiction to hear the suit.
- (2) That the suit is not barred by s. 13.
- (3) That the decision of the Forest officer is not a decision

by a court, and that his decision and that of the District Judge on appeal are not final.

- (4) That as there is no express provision in the Forest Act excluding the jurisdiction of the Civil Court, the Munsif had jurisdiction.
- (5) That the lower appellate court misconstrued ss. 5, 10, 16, 17, and 40 of the Forest Act.

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The first and fourth grounds of appeal may be taken together, viz., whether the Munsif had jurisdiction. Now a particular procedure before a Forest officer with appeal to the District Judge is provided in the Forest Act for determining the rights of claimants to land intended to be constituted forest reserve.

Section 4(c) requires a Settlement Forest officer to be appointed to inquire into and determine the existence, nature, and extent of any rights claimed, and to deal with the same as provided by that chapter.

Section 6 requires notification to be published, specifying the land proposed to be included in the reserve and fixing a time, not less than three months after, for all parties claiming rights to deliver to the office notice of such claim or to appear before him and state their claims and requiring notice to be served on every known or reputed proprietor of land included in or adjoining the land proposed to be taken as reserve.

Section 8 requires the Forest Settlement officer to inquire into all such claims and record the evidence in the same manner as in appealable cases under the Code of Civil Procedure.

Section 9 empowers the Settlement officer to summon parties and compel the production of documents.

Section 10 requires that in case of a claim to a right in land except rights of way, of water, of pasture, and forest produce to pass an order specifying the particulars of such claim and admitting or rejecting the same in whole or in part; and in case of a claim admitted in whole or in part, the officer may come to agreement with the claimant for surrender of the right, or exclude the land from the limits of the proposed forest or acquire the same under the Land Acquisition Act.

Clause ii of s. 10 provides that if a claim is rejected wholly or in part, the claimant may, within thirty days from the date of the order, prefer an appeal to the District Court in respect of such rejection only.

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Clause iii gives a similar appeal on behalf of Government against an admission.

Section 16 provides that when, *inter alia* all appeals shall have, been disposed of, the Government may publish notification in the gazette specifying the limits of the forest, and declaring the same to be reserved from a date to be fixed in such notification and that the Forest Settlement officer shall, before the date so fixed, publish the said notification, and s. 16 provides that from the date so fixed such forest shall be deemed to be reserved forest.

Thus new powers are given to Government by the Forest Act from the exercise of which individuals may receive injury, and a special mode of redressing such injury is given by the Act and special procedure provided. If such special mode of redress and procedure was not intended to exclude the jurisdiction of the ordinary Courts, most probably, a declaration to that effect would be found in the Act. But the mode of redress given by the Act is as suitable for the redress of the injury as the mode of redress in an ordinary action, and is perhaps more suitable by reason of the nature and extent of the inquiry that may be made in a fixed time, especially where claims may be numerous and speedy ascertainment of claims may be desirable. The remedies and rights of claimants to be decided on appeal by the District Court are questions of fact and of law and from which decision there is a second appeal to the High Court. See *Kamaraju v. The Secretary of State for India*(1). It is an established principle that when by an act of the legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the jurisdiction of the ordinary courts is ousted, and in case of injury, the party cannot proceed by action. See *The Governor and Company of the Cast Plate Manufactures v. Meredith*(2), *Stevens v. Jeacoke*(3), *West v. Downman*(4).

Raja Nilmoni Singh Deo Bahadur v. Ram Bandhu Rai(5) before the Privy Council was the case of a suit against the Bengal Government made by an alleged owner of land which had been acquired by proceedings taken by Government under the Land Acquisition Act X. of 1870. It was decided that it would not be

(1) I.L.R., 11 Mad., 309.

(2) 4 T.R., 794.

(3) 11 Q.B., 731.

(4) L.R., 14 Ch. D., 111.

(5) I.L.R., 7 Cal., 338.

reasonable to permit a person whose claim had been adjudicated on in the manner pointed out by the Act to have that claim reopened and again heard in another suit. That principle applies to this case.

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The second and third grounds of appeal fail for the reason given respecting their subject matter by the District Judge.

The fifth ground of appeal also fails as there has been no misconstruction by the District Judge.

We do not see that the ss. 5, 10, 16, 17 or 40 of the Forest Act were any of them misconstrued.

The District Judge did not decide that the adjudication made by the Forest Settlement officer was made in a "Forest Court" under s. 37 to s. 41; nor did the Forest officer purport to adjudicate in "Forest Court" within the meaning of the Forest Act.

We therefore dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Muttusami Ayyar.

CHATHU (PLAINTIFF), APPELLANT,
and

KUNJAN AND OTHERS (DEFENDANTS), RESPONDENTS.*

1888.
August 29.
November 16.

Transfer of Property Act, s. 67 (a)—Usufructuary mortgage—Remedy of mortgagee.

A usufructuary mortgagee is not entitled, in the absence of a contract to that effect, to sue for sale of the mortgage property.

SEMBLE :—The construction placed on s. 67 (a) of the Transfer of Property Act, 1882, in *Venkatasami v. Subramanya* (I.L.R., 11 Mad., 88) that a usufructuary mortgagee can sue either for foreclosure or for sale but not for one or other in the alternative is wrong.

APPEAL from the decree of V. P. deRozario, Subordinate Judge at Palghat, modifying the decree of B. Kamaran Nayar, District Munsif of Betutnad, in suit 415 of 1884.

The facts necessary for the purpose of this report appear from the judgments of the Court (Kernan and Muttusami Ayyar, J.J.).

Sankaran Nayar for appellants.

Sankara Menon for respondents.

* Second Appeal No. 1362 of 1887.