

incumbrances, when, as a matter of fact, it is subject to a mortgage charge. For these reasons we hold that this appeal fails and it is hereby dismissed. It has been heard *ex parte*, so we make no order as to costs.

1914

MUNNA LAL
v.
MUNUN LAL.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

1914
April, 7.

ABDUS SAMAD (PLAINTIFF) v. THE CHAIRMAN, MUNICIPAL BOARD, MEERUT (DEFENDANT).*

Act (Local) No. I of 1900 (United Provinces Municipalities Act), sections 87 and 152—Municipal board—Refusal of permission to re-erect a building—Remedy open to applicant special appeal not suit.

When a Municipal board refuses permission to erect or re-erect a building, the proper way to contest such refusal is to appeal in the manner provided for by section 152 of the United Provinces Municipalities Act, 1900. The applicant for permission cannot maintain a civil suit for an injunction to restrain the board from interfering with the plaintiff's building.

THE facts of this case were as follows :—

One Abdul Samad was the owner of certain shops situated on either side of a public road in Meerut. These shops had at one time been connected with each other by means of a sort of gallery resting on arches. The gallery having fallen into disrepair, Abdus Samad applied to the municipal board for permission to re-build it and also to build some further structure on the top. The board refused permission. Thereupon Abdus Samad instituted the present suit against the board, claiming an injunction restraining it from interfering with his proposed building and for damages. The court of first instance decreed the claim in part. On appeal, however, that decree was set aside and the suit dismissed. Abdus Samad accordingly appealed to the High Court.

Mr. B. E. O'Connor and Maulvi Muhammad Ishaq, for the appellant.

Mr. A. E. Ryves and Mr. W. Wallach, for the respondent.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit brought by the plaintiff against the municipal board of Meerut. The circumstances are as follows. The plaintiff has

* Second Appeal No. 1555 of 1912 from a decree of L. Johnston, District Judge of Meerut, dated the 2nd of October, 1912, reversing a decree of Muhammad Husain, first Additional Subordinate Judge of Meerut, dated the 13th of July, 1912.

1914

ABDUS SAMAD
v.
THE
CHAIRMAN,
MUNICIPAL
BOARD,
MEERUT.

been found to be the owner of certain shops on both sides of a public road in the city of Meerut. In the past there was some sort of gallery resting on arches which connected the shops on both sides of the road. The gallery had got out of repair and the plaintiff applied to the municipal board for leave to repair the arches and gallery and also to build on the top of the gallery. The municipal board refused permission. Thereupon the suit out of which this appeal has arisen was instituted, the plaintiff claiming a perpetual injunction restraining the municipal board from interfering with what he wanted to do and damages. On the facts as found, so far as the plaintiff sought to repair an existing structure, the case came within the provisions of section 87 of the Municipalities Act; so far as he sought to make a new structure the case came within the provisions of section 88. We need not consider now the provisions of the last mentioned section. So far as the case came within that section it was admittedly within the right of the board to refuse permission to allow the structure to be made. Section 87 provides that a person who intends to re-erect a building of the kind must give notice in writing of his intention. The board may refuse to grant permission upon some one or more of the grounds mentioned in the section. If they neglect to answer the application there is further provision made showing the applicant the course he is entitled to take. If the order of refusal is made and the applicant feels himself aggrieved at what the municipal board has done, an appeal is provided by section 152, which further provides that save by such appeal the order of the municipal board shall not be liable to be called in question. It is quite clear, therefore, that if the plaintiff in the present case felt himself aggrieved by the order of the municipal board refusing to give him leave to repair and re-erect his gallery and arches, his remedy was by way of an appeal. But it is quite clear that he is not entitled to maintain a suit like the present one. This being so, the decision of the lower appellate court was correct and the appeal fails. We accordingly dismiss the appeal with costs.

Appeal dismissed.