

Doubtless the decision of my learned colleagues simplifies the administration of the law on a different matter, but I am unable to see with them the main point at issue before us as an open question.

Upon the answer of the Full Bench, the Division Bench reversed the decrees of the Courts below and dismissed the suit.

Decree reversed.

1896.

RAMCHANDRA
v.
MULJI
NANABHAI.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

ABAJI PARASHRAM (ORIGINAL PLAINTIFF), APPELLANT, v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT).*

1896.
November 18.

Jurisdiction—The Bombay Revenue Jurisdiction Act (X of 1876), Sec. 11—Suit against Government—Practice—Procedure—Appeal from an order of a revenue officer—Presentation of such appeal.

All that section 11 of the Bombay Revenue Jurisdiction Act (X of 1876) requires is that the appeal referred to therein shall be *presented*. When, therefore, the only appeal allowed by law against a certain order of the Collector lay to the Commissioner, and such appeal was presented,

Held, that the plaintiff was not bound to wait for a reply before filing his suit against Government.

APPEAL from the decision of F. C. O. Beaman, District Judge of Thána.

The facts as alleged by the plaintiff were as follows:—

Plaintiff was the vatandár khot of the village of Ambdosi in the Thána District.

Before the passing of Bombay Act I of 1865, the khots of the village used to receive from the tenants *ardhal* (half the crop) of rice lands and *tirdhal* (one-third of the crop) of varkas lands.

* Appeal, No. 158 of 1895.

1896.

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 FOR INDIA.

After that Act came into force the Revenue authorities altered the amount payable to the khot and required him (the plaintiff) to pass a kabuláyat in accordance with the new arrangement.

The plaintiff, however, refused to pass a kabuláyat for 1892-93 in the prescribed terms, and insisted on recovering his dues according to the usual custom.

On the 31st October, 1892, the plaintiff made an application in this matter to the Collector of Thána, but the Collector rejected this application and ordered plaintiff's village to be attached if he failed to pass the kabuláyat in the prescribed form.

Plaintiff thereupon passed the required kabuláyat under protest.

On the 16th November, 1892, plaintiff presented an appeal from the Collector's order to the Revenue Commissioner.

As no reply was received from the Commissioner, plaintiff petitioned Government on 2nd July, 1893, but the petition was returned for want of a copy of the Commissioner's decision.

Hence the present suit, which was filed on the 28th November, 1893. The plaintiff prayed (1) for a declaration that the kabuláyat obtained from him by the Revenue authorities for 1892-93 was null and void; (2) for a declaration that he was not liable to pass similar kabuláyats in future years; and (3) for a perpetual injunction restraining defendant-plaintiff from attaching the plaintiff's village in case of his refusal to pass such a kabuláyat.

Section 11 of the Bombay Revenue Jurisdiction Act (X of 1876) is as follows:—

“11. No Civil Court shall entertain any suit against Government on account of any act or omission of any Revenue officer unless the plaintiff first proves that previously to bringing his suit he has presented all such appeals allowed by the law for the time being in force as within the period of limitation allowed for bringing such suit it was possible to present.”

The District Judge raised the following preliminary issue:—

“Has plaintiff shown that he has presented all such appeals allowed by the law in force (*viz.*, sections 203 and 204, Bombay Land Revenue Code, 1879), as it was possible for him to present within the time allowed by law for the suit?”

On this issue the District Judge recorded the following finding and dismissed the suit :—

“After taking time to consider the matter, I am reluctantly compelled to find this issue against the plaintiff. I say reluctantly, because it is, I suppose, nothing more than a preliminary which will put the litigation one stage back, and prevent very important issues from coming to a clear settlement at once. But suppose that the Commissioner's reply, which the plaintiff received long after the filing of the suit, had been in his favour, could it be then denied that his suit was premature? Would he have had any cause of action at all? And surely the object of these restrictive measures is to ensure that the Revenue authorities shall have a full opportunity of deliberating and pronouncing finally upon the need for any particular measure before Government is dragged into the Court to defend it. In this view, and taking the facts and dates as given by the plaintiff, I must hold that he had not exhausted his remedies before bringing the suit, and it is, therefore, premature and must be dismissed.”

Against this decision plaintiff appealed to the High Court.

Daji A. Khare for appellant.

Ráo Bahádur *Vasudev J. Kirtikar*, Government Pleader, for the Crown.

PARSONS, J. :—It appears that there was a dispute between the Collector of Thána and the plaintiff as to the terms of the kabuláyat that the latter was bound to pass for the management of his village, which culminated in the latter's making the application to the Collector (Exhibit 12) dated 31st October, 1892. The Collector passed an order thereon dated November 4th, 1892, refusing the plaintiff's application and requiring him to pass a kabuláyat in the form prescribed by him. Against this order the plaintiff, on the 16th November, 1892, appealed to the Commissioner.

Having obtained no reply to this appeal he, on the 2nd July, 1893, petitioned Government, but his petition was returned on the 17th July, 1893, for the reason that a copy of the decision of the Commissioner was not attached to the petition. The plaintiff then gave the statutory notice to Government and filed this suit on the 28th November, 1893. The District Judge dismissed the suit on the ground that “the plaintiff had not exhausted his remedies before bringing the suit, and it is, therefore, premature.”

1896.

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Section 11 of the Bombay Revenue Jurisdiction Act, 1876, is as follows:—"No Civil Court shall entertain any suit against Government on account of any act or omission of any Revenue officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present." The only appeal allowed by law in the present case against the order of the Collector lay to the Commissioner (see section 203 of the Bombay Land Revenue Code, 1879). There would be no appeal to Government (see section 204). The plaintiff presented an appeal to the Commissioner. It is true he filed this suit before he got a reply, but he was not bound to wait for a reply. All that the Act requires is that the appeal shall be presented. There is no provision that the time occupied in the appeal shall be excluded from the period allowed by the law of limitation, so that a suit might easily become time-barred before a reply was received. As a matter of fact in the present case the appeal was not decided by the Commissioner until the 8th November, 1894. In so far, therefore, as this suit brings into question the legality of the order of the Collector of the 4th November, 1892, it is not barred by section 11 of the Bombay Revenue Jurisdiction Act. The other acts complained of by the plaintiff need not, in our opinion, have been separately appealed from. They are merely the outcome of the order of the Collector: acts done in the carrying out of the order and the legality of which depends entirely upon the legality of the order itself. We reverse the decree and remand the suit for trial on the merits. We make costs costs in the cause.

Decree reversed and case remanded.