APPELLATE CIVIL.

Before Mr. Justice Crowe and Mr. Justice Chandavarkar.

CHUNILAL THAKORDAS MODI (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE SURAT CITY MUNICIPALITY (ORIGINAL DEFENDANT), RESPONDENT.* 1903, *March* 11.

Municipality—Bombay District Municipal Act (Bombay Act III of 1901), sections 82 (c), 86—House-tax—Suit for injunction restraining levy of tax—Right to sue in Civil Court without first proceeding under section 86—Injunction, when granted—Specific Relief Act (I of 1877), section 56—Discretion.

The Surat City Municipality served, under section 82, clause (3), of the Bombay District Municipal Act (III of 1901), a notice of demand upon the plaintiff for house-tax due by him. The plaintiff instead of proceeding under section 86 of the Act instituted a suit in the Civil Court for an injunction to restrain the Municipality from recovering the house-tax from him. The lower Courts rejected the claim on the ground that, as the plaintiff had omitted to appeal to a Magistrate under section 86 of the Act, his suit was premature.

Held, that section 86 was permissive merely, and that it did not make it incumbent in every case upon a party complaining of an illegal levy of a tax by a Municipality to appeal against the action of the Municipality to a Magistrate before suing in a Civil Court. But

Held, also (confirming the decree), that the injunction prayed for in this case could not be granted. By section 56 of the Specific Relief Act an injunction cannot be granted where efficacious relief can be obtained by any other usual mode of proceeding. Section 86 of Bombay Act III of 1901 gave a remedy to the plaintiff, but instead of resorting to it he filed this suit for an injunction. It was discretionary for a Court to grant an injunction and that discretion must be exercised judicially with extreme caution and only in very clear cases. This was not a case of that kind.

SECOND appeal from the decision of H. L. Hervey, District Judge of Surat, confirming the decree passed by Ráo Sáheb Gokuldas Vithaldas Saraiya, Joint Subordinate Judge at Surat.

Suit for an injunction restraining the Surat City Municipality from recovering a sum of Rs. 52-8-0 from the plaintiff.

The plaintiff owned a house in Surat. On the 12th December, 1901, he was served by the Municipality with a bill, dated the 15th October, 1901, for Rs. 52-8-0 alleged to be due from him as arrears of house-tax from 1894 to 1899. On the 24th December,

*Second Appeal No. 598 of 1902.

1903.

CHUNILAL v. SURAT CITY MUNICIPALITY.

1901, the plaintiff wrote to the Municipality a letter denying his liability and requesting that the bill should be cancelled. The Municipality returned no reply to this letter; but on the 16th April, 1902, it served upon the plaintiff a notice of demand for Rs. 52-8-0 under section 82, clause 3, of the Bombay District Municipal Act (Bombay Act III of 1901).

The plaintiff thereupon filed this suit in the Court of the Joint Subordinate Judge at Surat for "an injunction restraining the Municipality from recovering Rs. 52-8-0 demanded in its notice under clause 3 of section 82 of the Bombay District Municipal Act, 1901."

The Municipality contended (*inter alia*) that the Civil Court had no jurisdiction and that the plaintiff was not entitled to any relief as he had not complied with the provisions of the Municipal Act.[1]

The Subordinate Judge dismissed the suit on the ground that the plaintiff had not followed the procedure prescribed by section 86 of the Act.

(1) Section 82, clause 3, and section 86 of the Bombay District Municipal Act (Bombay Act III of 1901) are as follows:

Section 82, clause (3).—If the sum for which any bill has been presented as aforesaid is not paid in the Municipal office, or to a person authorized by any rule in that behalf to receive such payments, within fifteen days from the presentation thereof, the Municipality may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form of schedule E, or to the like effect.

Section 86.—Appeals against any notice of demand issued under sub-section (3) of section 82 may be made to any Magistrate or Bench of Magistrates by whom, under the directions of the Governor in Council, or of the District Magistrate, such class of cases is to be tried.

But no such appeal shall be heard and determined unless—

(*a*) the appeal is brought within fifteen days next after service of the notice of demand complained of; and

(*b*) an application in writing, stating the grounds on which the claim of the Municipality is disputed, has been made to the Municipality as follows: that is to say—

(*i*) in the case of a rate on buildings or lands, within the time fixed in the notice given under section 65 or 66 of the assessment or alteration thereof, according to which the bill is prepared,

(*ii*) in the case of any other claim for which a bill has been presented under sub-section (1) of section 82, within fifteen days next after the presentation of such bill; and

(*c*) the amount claimed from the appellant has been deposited by him in the Municipal office.

The decree was confirmed by the District Judge, whose reasons were as follows:

I agree with the Subordinate Judge in holding that the suit is premature . . . The meaning of the section (86) clearly is that if the owner or occupier of the house desires to appeal against the notice of demand, then the Magistrate to whom this class of cases is entrusted by the Governor in Council or the District Magistrate is the authority to whom the appeal is to be made. The case of *Vasudevacharya* v. *The Municipality of Sholapur* (I. L. R. 22 Bom. 384) is therefore distinguishable from the present one; for in that case the wording and context of the rule, of which the interpretation was in dispute, showed that it was to be construed as permissive and not mandatory. Appellant's pleader further argues that in any case plaintiff is entitled to seek relief in the Civil Courts, even if he has not exhausted his remedies under the Act. I am of opinion, however, that the Subordinate Judge is right in holding that no action will lie until the person aggrieved by the notice of demand has followed the course prescribed by the Act, and failed to get redress (see *Sakharam* v. *The Municipality of Kalyan*, 7 Bom. H. C. (A. C. J.) 33).

Plaintiff appealed.

M. N. Mehta for the appellant (plaintiff):—The lower Courts have held that the suit is premature inasmuch as the plaintiff did not resort to the procedure prescribed by section 82 of the Bombay District Municipal Act (Bombay Act III of 1901). Our contention is that the section is not imperative, but it is merely advisory; this is borne out by the use of the word "may" in the section: see Maxwell on Interpretation of Statutes. It is only where the exercise of a right is vested in a public body and the exercise of that right is for the benefit of the public body that the word "may" can be interpreted as "shall"; but where a statute confers a benefit on a class of people such as rate-payers, as in this case, then it is purely a matter of discretion with a person whether he should take advantage of that benefit or resort to the common law remedy of proceeding in a Civil Court. Section 86 of Bombay Act III of 1901 is analogous to section 525 of the Code of Civil Procedure (Act XIV of 1882), which lays down that an award may be filed within six months; but if a party fails to resort to that remedy, he does not lose his right of getting it enforced by a regular suit: *Subbaraya Chetti* v. *Sadasiva Chetti*.[1] The procedure prescribed by section 86 of Bombay Act III of 1901 is not preliminary to the filing

(1) (1897) 20 Mad. 490.

1903.

CHUNILAL v. SURAT CITY MUNICIPALITY.

of a suit in a Civil Court, but is merely concurrent; and if any one without resorting to the procedure laid down in section 86 chooses to file a suit in the Civil Court, he may do so. If the intention of the Legislature was to make the procedure under section 86 a necessary preliminary to an action in a Civil Court, it would have expressly said so in so many words, as it has done in section 11 of Act X of 1876. Our submission, therefore, is that section 86 is no bar to the present suit.

H. C. Coyaji for the respondent (defendant):—Section 86 of the Bombay District Municipal Act (Bombay Act III of 1901) is imperative and a person cannot, therefore, bring an action in a Civil Court without first resorting to the procedure therein laid down. This section does not actually take away the common law remedy, but provides that before resorting to that remedy a person should follow the procedure prescribed by the section. The section, in effect, provides for a less expensive and more speedy remedy and requires the person to resort to it in the first instance. Where a statute provides a special remedy which is only in seeming conflict with common law, the two should be reconciled: Hardcastle on Statutory Law, page 307. The case of *Sakharam* v. *The Chairman of the Municipality of Kalyan*(1) lays down that where a statute has laid down a special procedure, that should be first resorted to. The plaintiff's suit is therefore premature.

M. N. Mehta in reply:—The case of *Sakharam* v. *The Chairman of the Municipality of Kalyan*(1) does not apply. The words in the section in that case were "shall in the first instance," which are imperative, whereas here the word is "may," which is *prima facie* only directory.

CHANDAVARKAR, J.:—This was a suit brought by the appellant, Chunilal Thakordas Modi, for an injunction to restrain the Municipality of Surat from recovering Rs. 52-8-0 as arrears of house-tax for the years 1894 to 1899. Both the lower Courts have rejected the claim on the ground that the appellant having omitted to appeal under section 86 of the Bombay Act III of

(1) (1870) 7 Bom. H. C. (A. C. J.) 33.

1901 to the Magistrate against the notice of demand issued by the Municipality, his suit is premature.

The view they have taken of section 86 is that it provides a remedy which ought to be exhausted before an action against a Municipality for an illegal levy of a tax can lie in a Civil Court. Neither the wording of section 86 nor any of the other provisions of the Act warrants that view. There is nothing in the section itself which makes it incumbent in every case upon a party complaining of an illegal levy of a tax by a Municipality to appeal against the action of the Municipality to a Magistrate or a Bench of Magistrates appointed by the Governor in Council to hear such appeals before suing in a Civil Court. Section 164 of the Act, which lays down the conditions subject to which suits against a Municipality can be brought, does not provide that a suit in respect of a notice of the demand of a tax by a Municipality cannot be brought unless the party suing has resorted to and exhausted the remedy provided by section 86. The remedy provided by that section is intended for the benefit of the party on whom the notice of demand is served, and both the language and spirit of the section show that it is permissive.

However, though we cannot accept the view of the lower Courts on the construction of section 86, we think that their decrees must be confirmed on the ground that the present is not a proper case for an injunction. The suit is substantially brought to restrain the Municipality from enforcing a money claim and there is neither principle nor authority for restraining by injunction one who alleges that he has a money claim against another from enforcing that claim in the manner sanctioned by law. According to section 56, clause (*i*), of the Specific Relief Act, an injunction cannot be granted where an equally efficacious relief can certainly be obtained by any other usual mode of proceeding. Under section 86 of Bombay Act III of 1901, it was open to the appellant to resort to the remedy provided by that section and obtain the relief which he seeks in this suit. Instead of resorting to it, he has come to a Civil Court and asks the Court to give him an injunction restraining the Municipality from enforcing its claim for the arrears of house-tax against him. He does not deny his liability to pay the tax after 1899 ; all he says is that he is not liable to pay the

1903.

CHUNILAL v. SURAT CITY MUNICIPALITY.

arrears due for certain years previous to 1899. It is open to him to pay the amount and then sue the Municipality for a refund; on the other hand, it is open to the Municipality to recover the amount by a distress warrant and sale. In either case, it cannot be said that there exists no standard for ascertaining the actual damage likely to be caused to the appellant or that pecuniary compensation cannot be given for the invasion of the appellant's right. It is discretionary with a Civil Court to grant an injunction, and that discretion must be exercised judicially with extreme caution and only in very clear cases. The present is not a case of that kind. We confirm the decree with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Crowe and Mr. Justice Chandavarkar.

1903. *March* 16.

KONDIBA BIN BABAJI (ORIGINAL DEFENDANT No. 2), APPELLANT, *v.* NANA SHIDRAO AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANT No. 1), RESPONDENTS.*

Registration—Priority—Unregistered deed accompanied with possession—Subsequent sale by registered deed—Effect of possession—Possession for purposes of notice equivalent to registration—Duty of purchaser to inquire as to nature of possession—Registration Act (III of 1877), sections 49, 50.

On the 16th June, 1876, Revapuri mortgaged the lands in suit to the first defendant with possession, and the latter on the 26th June, 1876, leased them to the second defendant for one year. The second defendant remained in possession as tenant after the year had expired. On the 3rd December, 1878, while defendant 2 was in possession of the lands as tenant, Revapuri sold to him (defendant 2) her equity of redemption for Rs. 95. The deed of sale was not compulsorily registrable under the Act then in force, and owing to the death of Revapuri it was not registered. On the 8th December, 1895, the heir of Revapuri sold the equity of redemption in the mortgage of 1876 by a registered deed to the plaintiff. At the date of this sale to the plaintiff the second defendant was still in actual possession. The plaintiff brought this suit to redeem the lands from the mort-

* Second Appeal No. 528 of 1901.