

## APPELLATE CIVIL.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and  
Mr. Justice Batty.

1904.

January 18.

SAKHARAM KRISHNA AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS,  
v. THE COLLECTOR OF RATNAGIRI FOR THE SECRETARY OF STATE  
FOR INDIA (ORIGINAL DEFENDANT), RESPONDENT.\*

*Specific Relief Act (I of 1877), section 42—Suit for declaration of title—Omission to seek further relief—Revenue Jurisdiction Act (X of 1876), section 11—Suit against Government on account of any act or omission of any Revenue Officer—All such appeals allowed by the law—Appeals in respect of the act or omission—Title of suit.*

The effect of the proviso to section 42 of the Specific Relief Act (I of 1877) is that the Court shall not make a declaration in the events specified in the proviso, not that the Court shall not grant the relief that is prayed.\*

The expression "all such appeals" in section 11 of the Revenue Jurisdiction Act (X of 1876), means appeals in respect of the act or omission. Therefore the bar of section 11 would not apply to a suit wherein the cause of action is not an order or decision in respect of which there was a right of appeal under the Land Revenue Code (Bom. Act V of 1879).

The Court directed the suit to be amended by substituting for the present description of the defendant, the title "The Secretary of State for India in Council."

APPEAL against the decision of II. Page, Acting District Judge of Ratnagiri, in Original Suit No. 14 of 1902.

The plaintiffs sued for a declaration that the village of Bail Budruk together with land, trees, water-courses, waters, grass, wood, stones, treasures trove, *Fad Farmas*, *vethbegan*, wells, *gatkuli* lands, rivers, streamlets and all their appurtenances, was of the plaintiff's *khoti vahivat*; that the defendant was not entitled to take *vasul* in excess of the survey assessment and that the plaintiffs had the right to take the *vasul* of the land whether

\* Appeal No. 65 of 1903.\*

(1) Section 11 of the Revenue Jurisdiction Act (X of 1876) :—

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.

paying assessment or not, if cultivated. The plaintiffs further claimed to recover twenty rupees on account of damages and *vasul* of the land recovered by Government, namely, Rs. 4-15-3; for an injunction to the defendant's Officers that they should not let out for cultivation any lands either adjacent to the river or streamlet or any other lands; that they should not obstruct the plaintiffs in recovering *vasul* by *thal*, rent of all lands including rivers and rivulets, and that damages should be awarded to them with respect to the lands which the defendant might let out from the date of the plaint to the decision with costs of the suit.

The defendant contended that the suit was barred under section 42 of the Specific Relief Act (I of 1877) inasmuch as no cause of action had arisen to the plaintiffs and they had not claimed further relief with respect to the bed of the river which was in the possession of Government or their tenants; that the suit was not maintainable under section 11 of the Revenue Jurisdiction Act (X of 1876), the plaintiffs having failed to prefer appeals mentioned in that section; that the suit could not lie against the defendant (Collector) under section 6 of the said Act and section 416 of the Civil Procedure Code (Act XIV of 1882); that even supposing that the suit could lie in the form in which it was brought, still the plaintiffs had no right to obtain any relief inasmuch as they were not the owners of the river bed or of the village; that the suit was time-barred under article 120, schedule II of the Limitation Act (XV of 1877), the cause of action having arisen more than six years before the suit; that as the claim for damages was dependent on the plaintiffs' right of ownership and as the plaintiffs were not entitled to that right, the claim for damages could not lie and that Government was not responsible to the plaintiffs for the acts of their tenants.

On the above pleadings the following issues were framed :—

- (1) As to whether the suit was barred by section 42 of the Specific Relief Act ?
- (2) As to whether the suit was barred by section 11 of the Bombay Revenue Jurisdiction Act ?
- (3) Whether the plaintiffs were the proprietors of the river bed and of the village and whether they were in possession of the same ?
- (4) Whether the suit as regards the declaration was barred under article 120 of the Indian Limitation Act ?

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(5) Whether the plaintiffs were entitled to any damages from defendant, and if so, what ?

(6) Whether the suit as brought was maintainable under section 416 of the Civil Procedure Code, and section 6 of the Bombay Revenue Jurisdiction Act ?

(7) What relief the plaintiffs were entitled to, if any ?

The Judge found that (1) the suit was barred under section 42 of the Specific Relief Act, that (2) it was not barred by section 11 of the Bombay Revenue Jurisdiction Act, and that (6) it was barred by section 416 of the Civil Procedure Code and section 6 of the Bombay Revenue Jurisdiction Act, but the plaint might have been amended so as to comply with the provisions of those sections had this been the only objection. The Judge recorded no findings on the other issues and dismissed the suit. He observed :—

As regards the first issue the Government Pleader urges a point which appears to me to be of considerable importance. He contends that section 42, Specific Relief Act, lays down that no Court shall make a declaration of title when the plaintiff, being able to seek further relief than a mere declaration, omits to do so, and he points out that Government having given the river bed for cultivation for 3 years continuously must be held to be in possession thereof through their tenants. The Calcutta High Court has laid down (*vide* 8 Cal., 761 at page 765) that section 42 is to be applied with great caution, for otherwise it would seem that any one who claims any interest in property, present or future, would be allowed to ask the Court to give him an opinion on his title, which cannot have been the intention of the Legislature. Further, 3 Bombay, page 230, also shows that a Court should not allow a decision to the plaintiff which would enable him to evade the provisions of the stamp law. Mr. Duple, who appears for the plaintiffs, is unable to refute the arguments put forward, and urges, on the authority of 15 Madras, page 15, that his clients may be allowed to amend the plaint. But I do not think, in view of their conduct, that they should be allowed to do so. It appears that they got an order from the District Deputy Collector on the 10th June, 1901 and that they gave the defendant notice of filing a suit on the 27th August in the same year. The suit was not actually filed, however, till 10th June, 1902. Some time after giving notice to the Collector it appears to have occurred to them that they had not exhausted all the remedies that lay in their hands. Consequently, on the 26th April, 1902, we find that they preferred an appeal to the Collector against the District Deputy Collector's decision. Then again some 21 days afterwards, *i. e.*, on 17th May, 1902, an application was made to the Revenue Commissioner. The appeal to the Collector should have been presented within 60 days, which would have allowed time for getting another decision in the case before the limitation period passed by, assuming, for the sake of argument, that that period was only one year from the date of the District Deputy Collector's order and of

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appealing in proper form to the Commissioner. In view of their laches, in this connection, I do not think I should be right in showing them any leniency, more especially as the applications to the Collector and Commissioner still appear to be undisposed of.

The Government Pleader has taken one further objection to the suit, which is that the plaintiffs sue for a declaration as regards the whole village as well as with respect to the river beds, whereas there is no cause of action for the whole village. This procedure is manifestly objectionable. As laid down in 7 B. H. C. R., A. C. J., page 99, there must be some interference on the part of the defendant with respect to the subject matter in respect of which the suit is brought, and here there is clearly none but with respect to the river beds.

As regards the second issue, though the appeals to the Collector and Commissioner—if so be that the application to the latter officer can be designated an appeal—appear to have been presented one on the top of the other, and the first long beyond the limitation period of 60 days, still I do not think, in view of the ruling in 22 Bombay, page 583, I should have been justified in dismissing the claim on that ground. It is still discretionary with those officers to admit appeals made to them and to dispose of the question on its merits. But my finding on the first issue being in the affirmative, I dismiss the plaintiffs' suit, with costs.

The plaintiffs having preferred an appeal,

*M. B. Chavhal* appeared for the appellants (plaintiffs):—We are khots and as such we have a right to the management of all the lands in the village. In 1890 Government let out certain lands and recovered assessment from the tenants. We contend that Government had no right to do so and we are entitled to recover damages. We also claimed an injunction. Our suit was thrown out under section 42 of the Specific Relief Act. This was an error. The defendant is in constructive possession through tenants and we also want to recover such constructive possession. Therefore the utmost that we could ask for in the suit was a declaration of right binding on the defendant coupled with an injunction preventing the defendant from interfering with such rights. We submit that in such a case an injunction is a consequential relief within the meaning of section 42 of the Specific Relief Act.

*Ráo Bahádur V. J. Kirtikar* (Government Pleader) appeared for the respondent (defendant):—Under section 42 of the Specific Relief Act a suit for mere injunction cannot lie. Possession must be specifically claimed. A claim for mere injunction would involve a breach of the stamp duty and that cannot be allowed. In such cases the plaint cannot be amended. We rely on *Abdul*

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*Kadar v. Mahomed*<sup>(1)</sup>, *Narayana v. Shankunni*<sup>(2)</sup>, *Raj Narain Das v. Shama Nando Das*<sup>(3)</sup>.

The plaintiffs had not exhausted all their remedies under section 11 of the Revenue Jurisdiction Act. This is also a fatal objection to the maintenance of the suit.

JENKINS, C. J. :—The plaintiffs have brought this suit seeking a declaration that the village of Bail Budruk together with the land, trees, water-courses, &c., is of the plaintiffs' *khoti vahivat*, and that the defendant has no right of taking any *vasul* more than the survey assessment and that the plaintiffs have the right of taking by *thal* the *vasul* of all lands assessed and unassessed and *kharaba*, &c., if cultivated. The remaining prayers are for damages and injunction and mesne profits.

The suit has been dismissed on the ground that section 42 of the Specific Relief Act, in the circumstances of the case, requires that result.

Now section 42 enacts "that the Court (under the circumstances therein indicated) may in its discretion make a declaration provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

It is said that the plaintiffs were, in addition to the reliefs they have specifically sought, also entitled to claim possession and that therefore the suit must be dismissed. But obviously that is not so.

All that is provided is that the Court shall not make a declaration in the events specified in the proviso, not that the Court shall not grant the relief that is prayed.

In our opinion, therefore, the ground on which the suit was dismissed is wrong.

But it is said that there is another and fatal objection to the suit in that the provisions of section 11 of Act X of 1876 have not been observed. That objection has been overruled by the District Judge, but on a ground which does not commend itself to us. We think, however, that there is another and complete answer. The section provides "that no Civil Court shall enter-

(1) (1890) 15 Mad. 15.

(2) (1891) *Ibid.*, 255.

(3) (1899) 26 Cal. 845, 850.

tain 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." That must mean appeals in respect of the act or omission.

Now was the act or omission which has given rise to the plaintiffs' right of suit one in respect of which an appeal was allowed? This must be determined by section 203 of the Land Revenue Code of 1879, which provides "that in the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a Revenue-officer under this Act, or any other law for the time being in force, to that officer's immediate superior, whether such decision or order **may** itself have been passed on appeal from a subordinate officer's decision or order or not." But that clearly does not apply in the circumstances of this case, because the act or omission which is the cause of action is not an order or decision in respect of which there was a right of appeal under the Land Revenue Code. Therefore this objection too must fail.

The case must accordingly go back to the District Court in order that it may be heard on the merits. It is necessary that an amendment of the suit should be made by substituting for the present description of the defendant, the title "The Secretary of State for India in Council."

The costs will be costs in the suit.

*Case remanded.*

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