1929

GHELABHAI JIVABHAI v. CHHAGAN NARASI

Kemp Ag. C. J.

his first suit should have been on the running account of all the indents. No plaintiff would ever take the risk of filing a suit with regard to a separate item giving rise to separate cause of action if this were the result.

Under the circumstances, I think that the present cause of action was an entirely different cause of action to the previous one and it cannot be said that the plaintiff, when he filed Suit No. 800 of 1927, filed that suit in respect of a portion only of his cause of action.

I am of opinion, therefore, that the order of the learned Subordinate Judge is wrong, and this is a case where we should interfere in revision. His order is set aside and the rule made absolute with costs.

Rule made absolute.

J. G. R.

APPELLATE CIVIL

Before Sir Norman Kemp, Kt., Acting Chief Justice, and Mr. Justice Murphy.

1929 *July 17.*

HARI GOVIND KALKUNDRI (ORIGINAL PLAINTIFF), APPLICANT v. THE CITY MUNICIPALITY OF BELGAUM, BY ITS CHIEF OFFICER (ORIGINAL DEFENDANT), OPPONENT.*

Bombay City Municipalities Act (Bom. Act XVIII of 1925), sections 110, 111(1) and 206—"Sullage water cess", levy of—"House", meaning of—House may be construed as separate tenements—Assessee may file suit after statutory notice—Application lies to High Court against Magistrate's decision.

A house which is divided into separate tenements can be charged separately in respect of each tenement for the "Sullage Water Cess".

The word "house" may be construed as separate tenements.

Rango Narayan Kirloskar v. *Hughes*[1] and *Allchurch* v. *Assessment Committee and Guardians of Hendon Union*,[2] referred to.

There is nothing to prevent a suit being filed under section 206 of the Act, provided the statutory requirements of that section are complied with, even though the assessee may not have followed in its entirety the procedure laid down in section 110 of the Act.

Under section 111 (1) of the Bombay City Municipalities Act, 1925, an application in revision would lie to the High Court.

*Civil Revision Application No. 260 of 1928.

[1] (1881) P. J. 41. [2] [1891] 2 Q. B. 436.

APPLICATION for setting aside the decree passed by V. V. Phadke, Joint Subordinate Judge, at Belgaum in Small Cause Suit No. 613 of 1927.

Suit for refund of tax.

The material facts are stated in the judgment.

R. D. Belvi, for the applicant.

H. B. Gumaste, for the opponent.

KEMP, Ag. C. J. :—This is a revisional application to set aside the decree of the Second Class Subordinate Judge of Belgaum in Small Cause Civil Suit No. 613 of 1927. This was a suit by the applicant to recover the excess paid by him in respect of the cess known as "Sullage Water Cess" levied on his house. The house in suit is divided into 17 tenements occupied by 17 families residing separately. A rough sketch of the premises has been put in but we have been able to gather from the arguments before us that the space in which this building is erected has two outside walls in which there are three gates each of which opens into a small space and the 17 tenements have 17 doors opening into this space. Each tenement has, therefore, direct communication with this space and through the gate to the road. The learned Subordinate Judge construed the rule passed by the Belgaum Municipality under section 46 (1) of the Bombay City Municipalities Act as meaning that the word "house" in item 7 of rule 1 must be taken under the circumstances of this case as meaning 17 different tenements. It is in evidence that there are 8 drains from this house leading into the Municipal gutter and that in some cases some of the drains from the tenements lead into one or other of these 8 private drains. The learned Subordinate Judge, therefore, dismissed the suit. Against that order the plaintiff-applicant has filed this revision application.

1929

HARI GOVIND v. THE CITY MUNICIPALITY OF BELGAUM

Kemp Ag. C. J.

Item 7 of rule 1 reads as follows:—

"Every house that lets out sullage water into the Municipal gutters or Municipal limits shall pay Rs. 5 per year."

The first question, therefore, for determination is the meaning of the word "house." That is certainly a question of fact and it may be also partly a question of law. Section 25 of the Provincial Small Causes Courts Act gives us power to interfere in revision in any case where the decision is not according to law. Our powers, therefore, are wide and it is for us to see whether the present decision comes within that definition. Now the learned Subordinate Judge has relied, so far as his finding of fact is concerned, on the following evidence to show that the word "house" here meant 17 tenements. Firstly, there are the separate numbers given to each house since 1921. Secondly, there are the eight drains which are connected with the Municipal gutter direct. Thirdly, there are separate iron plates fixed to the doors of the tenements to mark that they are different houses and separately numbered. The tenements are separately numbered in the City Survey and Cess Register and the tenements are separately occupied each by a different family. Lastly, there is the fact, which I have referred to, that each tenement has a separate entrance leading through the gate into the highway. It is true that in Exhibit 23 the house is described only by one number and it is so entered in the Municipal Register. But in the face of the facts which I have mentioned I am of opinion that so far as the question of fact is concerned this house must be considered as 17 different tenements and item 7 of rule 1 of section 46 (1) of the Bombay City Municipalities Act must be intended to apply to each one of these tenements.

The case of *Rango Narayan Kirloskar* v. *Hughes*[1] does not say clearly whether there was one building

(1) (1881) P. J. 41.

1929

HARI GOVIND
v.
THE CITY
MUNICIPALITY
OF BELGAUM

Kemp Ag. C. J.

which was divided up into several tenements or whether there were separate buildings adjoining one another. But even in the latter case the learned Judges there held that "in so far as the plaintiff has in a manner separated one building from the rest by letting it to a tenant at a rent, we think that the Municipality was justified in treating that building as a 'house' within Bombay Act VI of 1873 and section 5, clause 1, of the Rules of the Municipality made under it." I think there can be no doubt that if you divide up a house into separate tenements it is not unreasonable to say for the purposes of this particular cess which, it must be noted, as my brother Murphy has pointed out, is a service cess that the cess should be charged in respect of each tenement.

The next question for our consideration relates to the construction of the word "house" and there is nothing inconsistent in construing that word as separate tenements. Under a particular Act in England it has been decided in *Allchurch* v. *Assessment Committee and Guardians of Hendon Union*[1] that each occupier of a tenement was capable of being rated and should be rated separately. There is nothing, therefore, extraordinary or inconsistent in law in the construction which I take of the meaning of the word "house."

Then an objection has been taken that no revision application lies in the present case. The procedure laid down by the Act commences, as far as I can see, by the presentation of the bill under section 104 (1) of the Act and sub-clause (3) of that section provides that if the amount of the bill is not paid within 15 days from its presentation the Chief Officer may cause a notice of demand in the form of Schedule V or to the

[1] [1891] 2 Q. B. 436.

1929

HARI GOVIND
v.
THE CITY MUNICIPALITY OF BELGAUM

Kemp Ag. C. J.

like effect to be served on the assessee. Section 110 then provides for an appeal to a Magistrate or Bench of Magistrates. The appeal against the notice of demand is subject to two conditions : (1) that it must be brought within 15 days after service of the notice of demand, and (2) under sub-clause (b) of clause 2 of that section it is required something further should have been done, viz., that the assessee must within 15 days after the presentation of the bill submit an application in writing to the Standing Committee mentioning the grounds on which the claim of the Municipality is disputed. We have, therefore, two things which it is necessary the assessee should do. Why this singular procedure was adopted is not for us to inquire. Our business is to construe the Act as it stands. We are informed that a petition was presented to the Municipality and that it was disallowed. We have no information as to whether any appeal was made to the Magistrate and apparently none was. Therefore the procedure laid down under section 110 of the Act has not been followed. An application in revision would lie under section 111 (1) against the decision of a Magistrate or Bench of Magistrates to this Court.

Nevertheless the plaintiff-applicant apparently filed his suit purporting to do so under section 206 of the Act and gave the statutory notice of two months required by that section. There is nothing that I can see to prevent a suit being filed under section 206 even though the assessee may not have followed in its entirety the procedure for appealing to the Magistrate laid down in section 110 of the Act. It is to be noted that section 110 states that the assessee "may" prefer an appeal. I am, therefore, inclined to hold that this suit may properly be brought under section 206 provided the statutory requirements under that section have been complied with.

1929

HARI GOVIND
v.
THE CITY
MUNICIPALITY
OF BELGAUM

Kemp Ag. C. J.

Under these circumstances I would discharge the rule with costs.

Rule discharged.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Kemp, Kt., Acting Chief Justice, and Mr. Justice Murphy.

1929
July 18.

DATTATRAYA JAYARAM PRABHU DESAI (ORIGINAL PLAINTIFF), APPELLANT *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Land Revenue Code (Bom. Act V of 1879), sections 10, 211 and 212—Sheri lands—Disposal by District Deputy Collector contrary to terms of Government Resolution—Revision by Collector—Bar of limitation—Jurisdiction of Civil Court.

The District Deputy Collector in charge of the Malvan Taluka in the Ratnagiri District disposed of "Sheri" or Government waste lands in that Taluka in favour of a person whose lease had expired contrary to the directions contained in a Government Resolution governing his action. When the matter came to the notice of the Collector he, acting under section 211 of the Land Revenue Code, reversed the order.

Held, (1) that although under section 10 of the Land Revenue Code a District Deputy Collector can perform all the duties and exercise all the powers conferred upon a Collector his orders are subject to revision by the Collector under section 211 of the Land Revenue Code, when he has to deal with a special kind of revenue question in accordance with the directions contained in a Government Resolution;

(2) that there was no period of limitation prescribed for the exercise of revisional powers under section 211 of the Land Revenue Code.

Querri.—Whether section 212 of the Land Revenue Code bars the jurisdiction of the Civil Court.

FIRST Appeal No. 292 of 1924 from the decision of C. C. Dutt, District Judge at Ratnagiri, in Suit No. 2 of 1918.

Suit for declaration and possession.

The facts are fully set out in the judgment.

K. N. Koyajee, for the appellant.

B. G. Rao, Assistant Government Pleader, for respondent No. 1.

G. B. Chitale, for respondent No. 20.

*First Appeal No. 292 of 1924.