

APPELLATE JURISDICTION. (a)

*Special Appeal No. 55 of 1862.*RAGAVENDRA RAU.....*Appellant.*MUHAMMAD KANITARAGANAM and others...*Respondents.*

Regulation V of 1822 does not apply to disputes respecting irrigation.

The disputes mentioned in section 18 of Regulation V of 1822 are subjected to the procedure provided by Regulation XII of 1816.

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THIS was a special appeal from the decision of J. H. Goldie, the Civil Judge of Tinnevely, in Appeal Suit No. 367 of 1861. The original suit was brought before the Acting Sub-Collector for the recovery of rupees 213, the value of 35½ kottais of paddy, which was the loss alleged to be sustained by the plaintiffs owing to the defendants having encroached on the channel irrigating their nanjey lands in the village of Latchminarasisingapuram, by raising a mud dam across it, and having diverted the water from such channel to the defendant's own fields in the village of Tiruváti. The Acting Sub-Collector under Reg. V of 1822 dismissed the plaintiff's claim for damages, but decreed that the defendants were not entitled to use the water in the channel for the lauds in Tiruváti. On appeal the Civil Judge reversed the decree on the ground that the Sub-Collector should have disposed of the suit under Reg. XII of 1816, the provisions of section 4 of which regulation having (the Civil Judge held) been extended by section 18 of Reg. V of 1822 to all disputes respecting the irrigation of lands.

Regulation XII of 1816, section 4 enacts that

“ First. In cases of claims to lands or crops, in districts permanently settled or otherwise, the validity of which claims may depend on the determination of an uncertain and disputed boundary or land-mark, and also in cases of disputes respecting the occupying, cultivating and irrigating of land which may arise between the proprietors, or renters and heir ryots, in those districts only where the land revenue

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is fixed ; either permanently or for a term of years, persons having such claims may prefer them in person or by vakil, to the Collector of the zila' in which the lands may be situated.

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“Second. The plaint, if for land, shall contain as accurate a description as can be obtained of the land claimed, its position, boundaries, extent and the value of its estimated annual produce ; also whether it be subject to the payment of rent or revenue, or whether it be exempt from any charge on these accounts ; also the time when the cause of action arose, the name and residence of the person or persons complained against, and all material circumstances which may elucidate the transaction.

“ Third. If the plaint be for water, it shall, with regard to the land to be watered, state the above particulars, and in addition thereto the custom of the village relative to the irrigation of the land in question.”

The preamble to Regulation V of 1822 is as follows :—

“ Whereas the provisions of Regulations XXVIII and XXX of 1802, have been found insufficient for the due protection of the ryots, inasmuch as the powers they vest in land-holders are prompt and summary, while efficient redress for the abuse of those powers must frequently be sought by the institution of a regular suit, to the expense of which the means of ryots in general are inadequate ; and it has been deemed expedient to vest Collectors with authority to take primary cognizance of all cases which, under the provisions of those Regulations, are cognizable by summary suit in the Courts of ‘ Adalat, provided the officers of Government are not parties in the case, and to authorize the said Collectors to enforce in the first instance the penalties prescribed by those Regulations, their decisions being subject to revision by the Civil Courts when parties may choose to have recourse thereto ; and whereas the provisions of Regulation XXXII of 1802 do not afford a remedy sufficiently prompt in cases of sudden and violent disputes respecting the occupancy, cultivation or irrigation of land ; and it is expedient to rescind that Regulation, and to refer to the Collectors of the revenue the summary enquiries which, under it, were conducted by the ‘ Adalat of the zila’ ; and whereas disputes

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as well regarding arrears of rents and rates of assessment, as regarding the occupancy and cultivation of land, may occasionally be adjusted by pancháyats to the relief of the ryots and the furtherance of the ends of justice ; and it is deemed proper to enable Collectors with the consent of the parties, to refer all such cases to pancháyats for decision, and to extend the provisions of Regulation XII of 1816: The Honourable the Governor in Council has therefore enacted the following rules to be in force from the date of their promulgation."

And Section 18 of the same Regulation enacts that

"The provisions of Section 4, Regulation XII of 1816, shall be extended to all disputes between ryot and ryot respecting the occupying, cultivating and irrigating of lands in districts whether permanently settled or otherwise."

The first plaintiff now specially appealed against the Civil Judge's decree.

Norton (*Tirumalcahariyar* with him) for the special appellant, the first plaintiff. The language of the preamble to Reg. V of 1822 is sufficiently general to bring this case within its provisions, and it gave the Sub-Collector power to proceed under those provisions and decide the case. The Civil Judge therefore was wrong in holding that the Sub-Collector should have disposed of the suit under Reg. XII of 1816.

The defendants did not appear.

The Court delivered the following

JUDGMENT :—This was a suit for damages for the obstruction of an irrigating channel by which the water was diverted from the plaintiff's land.

The Sub-Collector proceeded accordingly to the provisions of Regulation V of 1822, and decided in favour of the plaintiffs.

The Civil Judge, upon appeal, being of opinion that Regulation V of 1822 was inapplicable to cases of this description, reversed the order of the Sub-Collector.

Mr. Norton, for the appellant, submitted that the very general language of the preamble to Regulation V of 1822

brought this case within its provisions, and that it gave the Sub-Collector jurisdiction to proceed under its provisions and decide the case, and that the decree of the Civil Judge was therefore wrong. We are, however, of opinion that the Civil Judge has put the right construction upon the Regulations.

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Regulation V of 1822 merely authorized the disposal by Collectors of suits summarily cognizable by the zila courts under Regulation XXVIII and Regulation XXX of 1802. Nothing whatever is to be found in those Regulations with respect to disputes on matters of irrigation. But Section 4, Regulation XII of 1816, defined the disputes which under that Regulation were referrible to village and district pancháyats, and, amongst others, disputes between proprietors, renters, and their ryots, respecting the occupying, cultivating, and irrigating of land in districts where the land revenue was fixed. Then Section 18 of Regulation V of 1822 extended the provisions of the former Regulation to all disputes between ryot and ryot respecting the occupying, cultivating, and irrigation of lands, whether permanently settled or otherwise; and nothing is said as to the mode of proceeding. Reading Section 18, Regulation V of 1822, and Section 4, Regulation XII of 1816 together, we think the only reasonable construction is that the disputes mentioned in Section 18 are subjected to the procedure provided by the Regulation XII of 1816. Section 18 is the only section in Regulation V of 1822 having any reference to disputes in matters relating to irrigation. We are therefore clearly of opinion that the Sub-Collectors had jurisdiction over these disputes solely under Regulation XII of 1816. and that, in adopting the different procedure of Regulation V of 1822, he acted without jurisdiction. The result is, that in our judgment the order of the Civil Judge is correct, and that this special appeal must be dismissed with costs.

Appeal dismissed.

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