

APPELLATE JURISDICTION (a)

Regular Appeal No. 58 of 1861.

PONNUSÁMY TEVAR.....*Appellant.*

COLLECTOR OF MADURA.....*Respondent.*

A Collector is bound to register and sub-assess a portion of a Zamindary transferred in accordance with the provisions of Regulation XXV of 1802, such transfer not being opposed to Hindu or Mahomedan Law or the existing law.

The Civil Courts have jurisdiction to entertain a suit brought by the alienee to compel the Collector to register and sub-assess the portion of the Zamindary so alienated.

Where a statute imposes a duty, it without express words gives an action for the failing to perform that duty and for wrongfully performing it.

THIS was a regular appeal from the decision of R. R. Cotton, the Civil Judge of Madura, in Original Suit No. 6 of 1861.

1863.
June 13.

R. A. No. 58
of 1861.

Norton and Sadaqopa Charlu, for the appellant, the plaintiff.

Dale, for the respondent, the defendant.

The Court delivered the following

JUDGMENT :—The plaintiff in this suit substantially prays that the Collector who had refused to register and sub-assess a portion of a Zamindary alleged to have been assigned to him by the Ráni Setupati of Ramnad, might be compelled to do so.

Defendant in a very elaborate answer among other things submitted that the Court has no jurisdiction.

The other grounds it is unnecessary to notice, as they have not at present received any attention from the Civil Judge, who dismissed the suit because the portion which the plaintiff claimed as assigned to him had not been registered and re-assessed by the Collector, and because therefore the gift could have no legal force or effect.

(a) Present : Phillips and Holloway, J J.

1863.
 June 13.
 R. A. No. 58
 of 1861.

The only question at present before us is whether the ground taken by the Civil Judge justifies his dismissal of the suit on this preliminary point. It would be a very singular consequence if a plaintiff seeking to compel a public officer to perform a duty alleged to be incumbent upon him, in order that validity might be given to plaintiff's alleged legal right, was prevented from bringing the question to trial because the act of that public officer had prevented that legal right from acquiring validity.

The necessity for such cyclic reasoning would alone lead to suspicion of the soundness of the conclusion of the Civil Judge. The determination of the question however depends entirely upon the construction of Section VIII, Regulation XXV of 1802.

The regulation defining for fiscal and other purposes the rights and liabilities of Zamindárs, in Section VIII declares that landed proprietors shall be at free liberty to transfer, without the previous consent of the Government, their proprietary right in the whole or in a portion of their estates, and that such transfers if not opposed to Hindu or Mahomedan Law or to the Regulations shall be respected by the officers of Government and by the Courts of Justice. It is manifest that in the clearest and most specific terms the right of transfer if not opposed to law is distinctly given. It then further provides that unless such alienation has been regularly registered and the alienated portion sub-assessed the transaction shall be "of no legal force or effect." If therefore the argument for the defendant was correct, the legislature have gone through the most unmeaning form, for it would be open to the Collector to decline either registering or sub-assessing. It has been argued that the meaning shall be absolutely void as against Government. The words used are very large, but it is unnecessary to determine whether this narrow construction is or is not the true one, because the previous words of the section have given to the proprietor and of consequence to his alienee a perfect right to acquire by a transfer not subject to specific objections, a title good to all intents and purposes. On the familiar principle that there can be no right without a remedy it is manifest upon the construction of the whole of this

section that the Collector is bound to take steps necessary to validate a transfer not subject to the objections which by the distinct declaration of the legislature can alone invalidate it. He is as an accessory consequence bound to determine whether the transfer is subject to any such objections, and if not, he is clearly bound to register and sub-assess. The law clearly casts this duty upon him, because it has given to a transferor a right which would become positively null unless he performed that duty.

1863.
June 13.
R. A. No. 58
of 1861.

It is a fundamental principle much insisted upon and illustrated in *Ferguson v. Kinnoul*, (IX Cl. & Fin. 251), that where the law casts a duty upon a person which he wrongfully fails to perform he is answerable in damages to those whom his wrongful failure injures. Nothing is clearer than the duty of performing the act unless there are good grounds distinctly specified by the law for the non-performance, and it follows on the most obvious principles that if the plaintiff has a right in the present case to insist upon the act which he seeks to compel this public functionary to perform unless there are grounds for the refusal, the determination of whether the refusal is wrong or whether it has proceeded upon legal and valid grounds manifestly lies with the Courts of Justice, for it is most familiar law that where a statute imposes a duty, it without express words gives an action for the failing to perform it and for wrongfully performing it.

The result is that the judgment of the Civil Judge will be reversed, that the suit will be remitted to the Lower Court to determine the question indicated in this judgment, after a full hearing of the parties and of such evidence as they may choose to produce.

Appeal allowed.