

1910
 PUGRA
 SUNDARI
 DASI
 v.
 BIJRAJ
 NOPANT.
 JENKINS
 C.J.

account and enquiry may make it necessary to obtain further directions from the Court.

Each party will bear his or her own costs up to the 18th of January 1909. From the 18th of January the defendants must bear the plaintiff's costs including the costs of this appeal, except the costs of the 17th of January last. The defendants are entitled to the costs of the 17th of January, and those costs will be set off against those directed to be paid by the defendants respondents.

WOODROFFE J. I agree.

J. C.

Appeal allowed.

Attorney for the appellant : *R. L. Bysak.*

Attorney for the respondents : *K. N. Ganguli.*

APPELLATE CIVIL.

Before Mr. Justice Holmwood and Mr. Justice Chatterjee.

CHAIRMAN, MUNICIPAL BOARD, CHAPRA,

v.

BASUDEO NARAIN SINGH.*

Assessment—Bengal Municipal Act (Beng. III of 1884), s. 116—Civil Court, jurisdiction of—Ultra vires.

Under s. 116 of the Bengal Municipal Act, the decision of the Objection Committee in matters regarding the amount of assessment is final, and the Civil Court has no jurisdiction to interfere in such matters. It can only interfere when the assessment is *ultra vires*.

Manesaur Dass v. The Collector and Municipal Commissioners of Chapra (1) referred to.

Navadip Chandra Pal v. Purnananda Saha (2) and *Kameshwar Pershad v. The Chairman of the Bhabua Municipality* (3) distinguished.

* Appeal from Appellate Decree, No. 733 of 1908, against the decree of Sarada Prasad Bose, Subordinate Judge of Chapra, dated Dec. 17, 1907, reversing the decree of Bhupendra Nath Mookerjee, Munsif of Chapra, dated April 30, 1907.

(1) (1876) I. L. R. 1 Calc. 409.

(2) (1898) 3 C. W. N. 73

(3) (1900) I. L. R. 27 Calc. 849.

SECOND APPEAL by the defendant, the Chairman of the Municipal Board, Chapra.

This appeal arose out of an action brought by the plaintiff for a declaration that the assessment made by the Municipality was *ultra vires* and not binding on him.

The plaintiff alleged that the previous assessment of his holding was Rs. 6 and annas 8 only, and that in June 1906 the Municipality assessed it at Rs. 18; that the said assessment was not in accordance with the provisions of the Municipal law, inasmuch as no alteration or improvement was made on the holding since the previous assessment; that the assessor who made the assessment did not personally inspect the house, but relied on the report of the Tax Daroga.

The defence, *inter alia*, was that section 116 of the Bengal Municipal Act was a bar to the suit, and that the assessment was not bad in law or *ultra vires*.

The Court of first instance dismissed the plaintiff's suit on the ground that the assessment was not illegal or unfair. But, on appeal, the learned Subordinate Judge of Chapra reversed the decision of the first Court.

Against that decision the defendant appealed to the High Court.

Babu Ram Charan Mitra, for the appellant.

Babu Umakali Mukherjee and *Babu Akshoy Kumar Banerji*, for the respondent.

Cur. adv. vult.

HOLMWOOD AND CHATTERJEE JJ. This is a second appeal from the judgment and decree of the Subordinate Judge of Chapra, who, reversing the decision of the Munsif in a suit by a rate-payer to have his municipal assessment reduced as illegal and *ultra vires*, held that the tax had not been assessed on the proper valuation of the holding, and that therefore the plaintiff was entitled to a decree.

This finding is obviously untenable. The Civil Courts have nothing to do with the correctness or otherwise of the valuation; they can only interfere when the assessment is *ultra vires*.

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 CHAPRA,
 2.
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It is urged before us that it is *ultra vires*, because there is nothing to show that the assessor actually did inspect the premises, and because the record of the proceedings before the Objection Committee would lead to the inference that the appellant had no proper hearing. On a consideration of the authorities, we think we have no jurisdiction to interfere with the assessment. The ruling in *Manessur Dass v. The Collector and Municipal Commissioners of Chapra* (1) appears to bind us.

The jurisdiction to interfere in matters regarding the amount of assessment has been withdrawn by express legislation, and section 116 makes the decision of the Objection Committee final. The cases of *Navadip Chandra Pal v. Purnananda Saha* (2) and *Kameshwar Pershad v. The Chairman of the Bhabua Municipality* (3) do not affect this general principle and are clearly distinguishable. But where the Municipality have the power to make a fresh assessment as they have every three years, and merely raise the valuation, the Civil Court has no power to revise the valuation, but is bound to accept it as conclusive.

As a matter of fact there is no positive evidence in this case that the valuation was excessive. The Courts were merely asked to draw an inference from the absence of evidence of increase in value in the five years previous to suit. We are, therefore, obliged to hold that the Civil Court had no jurisdiction in this case, and that the learned Munsif in the Court of first instance was right in dismissing the suit. We accordingly decree the appeal, and direct that the judgment and decree of the Subordinate Judge be set aside and the plaintiff's suit dismissed with costs in all Courts.

Appeal allowed.

S. C. G.

(1) (1876) I. L. R. 1 Calc. 409,

(2) (1898) 3 C. W. N. 73.

(3) (1900) I. L. R. 27 Calc. 849.