

(1863) 03 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 1988 of 1861

Biswambhar Misser and Others

APPELLANT

Vs

Ganpat Misser

RESPONDENT

Date of Decision: March 18, 1863

Judgement

Sir Barnes Peacock, Kt., C.J., Bayley and L.S. Jackson, JJ.

The question in this case was whether an appeal from a decision, passed under the provisions of section 28, Act X of 1859, lies to the Revenue Commissioner or to the Zilla Judge. We are of opinion that the appeal lies to the Zilla Judge, unless the amount in dispute exceeds rupees 5,000, in which case the appeal will lie to the High Court. The words used appear to us to be very clear. They state that the application made to the Collector, under the provisions of the aforesaid section, is to be "dealt with as a suit;" and again that "every such suit shall be "instituted within the period of twelve years from the time when "the title of the person claiming the right to assess the land first "accrued." The object of section 28 was to prevent proprietors of estates from acting upon their own authority, without application to a Court of Justice. The words "shall make application to the Collector" were probably used in contradistinction to the rule laid down in section 10, Regulation XIX of 1793, by which it was enacted that parties might act without application to a Court of Judicature.

2. Section 151, Act X of 1859, refers to orders passed by the Revenue authorities in their executive capacities, and not to judgments in suits, or orders passed in the course of suits. From any such judgments the appeal lies to the Zilla Judge, and not to the Revenue Commissioner. Further, in section 160 of the Act, it is enacted that in "all suits "other than those in which, when tried by a Collector, the judgment of "the Collector is declared to be final, or when tried by a Deputy Collector, an appeal is allowed to the Collector, the appeal from the judgment of the Collector or Deputy Collector shall lie to the Zilla Judge," or to the High Court. This case does not fall within any of the exceptions noted in section 160 of the Act.

3. We think that we should not be justified in putting such an interpretation upon the words above quoted from section 28, as to say that it was the intention of the Legislature that an application under that section was to be dealt with as a suit as regards procedure, but not as regards appeals from decisions. This decision upon the point of law will be transmitted to the Division Court, for their guidance in finally determining the appeal.

Trevor, J.

4. I adhere to the Court's ruling as given on the 7th November 1861. The only reported case of this date is *Anundmyee Dabee Chowdrain v. Hurrish Chunder Chowdhry and Sheebdial Seward S.D.A.*, 1861, 163. But this decision has no bearing on Act X of 1859.

5. I draw a distinction between the procedure inculcated in sections 25, 26, 27, and 28, and that of suits under sections 23 and 24 of the Act, because section 34 prescribes that--"suits under this Act shall be instituted by presenting to the Collector a plaint, or statement of claim, which "shall contain the name, description, and place of abode of the plaintiff; "the name, description, and place of abode of the defendants, so far as "they can be ascertained; the substance of the claim, and the date of the "cause of action 5" whereas the form prescribed in sections 25, 26, 27, and 28 is not by plaint, but by application, and though the application when made is to be "dealt with as a suit," or in the manner provided for suits under the Act, yet it is clearly not instituted as suits are instituted, and consequently the orders passed by the Collector are not "judgments in suits; "nor orders passed by a Collector "in the course of suits and relating to the trial thereof, or orders passed after decree, and relating to "the execution thereof," and are, therefore, in my opinion appealable u/s 151, to the Court of Revenue. I would, moreover, remark that the procedure in the suits under this Act is specially laid down in sections 34, 35, 36, and following sections; and the rules applicable respecting the nature of the suits referred to in sections 23 and 24 are given in detail, while no further reference is made to such matters as are treated of in sections 25, 26, 27, and 28. It appears to me that if the matters therein referred to were intended to have been made the subjects of suits, some detail regarding the conduct of such suits would have been likewise given in the Act; whereas while the cause of action detailed in sections 23 and 24 are separately treated, no mention whatever is made either as to the conduct of an execution of decree in cases arising out of applications made under the other sections. As, therefore, the law does not contemplate that they shall be considered as suits, I do not think the orders applicable to judgments and orders passed on suits can apply to them; and I therefore adhere to the opinion previously expressed by the late Sudder Court on this point on the 7th November 1861 S.D.A., 1861, 163.

Raikes, J.

After giving every attention to the opinion recorded by the majority of the Court, I adhere to the view of the law adopted by the Court on the 7th November 1861 S.D.A., 1861, 163. There are, it appears to me without question, difficulties found in the wording of the law, and these difficulties seem to me to be unnecessary by allowing the Collector and the ordinary Court concurrent jurisdiction. Whereas I consider an application u/s 28 not a suit, but a mere application, the action of the ordinary Civil Courts is not interfered with by the concurrent jurisdiction. As, however, the majority are of another opinion, it is unnecessary for me to pursue the matter further.