

(1912) 02 BOM CK 0019

Bombay High Court

Case No: None

The Talukdari Settlement Officer

APPELLANT

Vs

Bhaijibhai Ishwardas

RESPONDENT

Date of Decision: Feb. 29, 1912**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 80

Citation: 16 Ind. Cas. 445**Hon'ble Judges:** N.G. Chandavarkar, J; Batchelor, J**Bench:** Division Bench

Judgement

1. The Collector, holding powers of the Talukdari Settlement Officer, served upon the plaintiff, on the 16th of October 1908, a notice acting u/s 79A of the Land Revenue Code, as amended by Section 33 of the Gujarat Talukdars Act (Bombay Act VI of 1888). By that notice, the plaintiff was distinctly informed that he must vacate the land because he held it illegally without any right. That notice was practically a declaration by the Collector that the sale and the mortgage, on the strength of which the land was occupied by the plaintiff, were null and void, and that, therefore, he was not entitled to possession. The plaintiff was warned that if he did not comply with the notice, then steps would be taken to evict him. The declaration and the notice were distinct acts on the part of the Collector done by him in his official capacity and, therefore, on the authority of the rulings of this Court in Chhaganlal Kishoredas v. The Collector of Kaira 12 Bom. L.R. 825 : 35 B. 42 : 7 Ind. Cas. 993 and Secretary of State v. Gajanan Krishnarao 13 Bom. L.R. 273 : 35 B. 362 : 10 Ind. a notice to the Collector by the plaintiff was necessary u/s 80 of the CPC as a condition precedent to the maintenance of the present suit. Without such a notice, the suit cannot lie. It is argued by the learned Pleader for the respondent that a notice u/s 80 of the CPC had been served by the plaintiff upon the Collector. And he has read out to us Exhibit 21, which, it is contended, is a notice as required by the section in question. Assuming that notice to be proved, it cannot be regarded as a notice in

conformity with the conditions prescribed in Section 89 of the Code of Civil Procedure, because all that that notice says is: "Therefore I do inform you by this notice that you have no right to take possession of the said land, and if you are of opinion that you have that right, you may take the same (possession) after (and by) having recourse to the Civil Court. Unless you do that, or if you try to take illegally the possession forcibly, I shall take such legal steps as I may be advised, and you will be responsible for the costs I may have to incur for the same. Please to note that." Now, here the respondent-plaintiff does not say that he intends to sue the Collector on account of the Collector's declaration. The notice, Exhibit 21, does not state the cause of action as required by the section, but simply intimates to that official that as he has no right to take possession of the land, he, i.e., the Collector, must sue him, and that he has no right whatever to evict him without recourse to law. And as to the action which the plaintiff says he will bring, the plaintiff informs the Collector that he will bring such action only after the Collector has evicted him without recourse to law. Such a notice as this is not as required by Section 80 of the Code of Civil Procedure. Therefore, the suit is bad for want of notice. The decree is, therefore, reversed and the suit dismissed with costs throughout on the respondent.