

CASES

DECIDED IN THE

HIGH COURT OF BOMBAY.

Appellate Civil Jurisdiction.

Special Appeal No. 302 of 1862.

1863.
June 30.

JINA' RANCHHOD *Appellant.*

JODHA' GHIELLA' *Respondent.*

Jurisdiction—Building erected in a Public Thoroughfare—Suit to remove Nuisance—Complaint before Magistrate.

A person aggrieved by the erection of a building in a public thoroughfare, or on the waste land of a town or village, may institute a suit in a Civil Court for its removal, instead of preferring a complaint to the Magistrate.

THE appellant had instituted, under Act XXI. of 1841, a suit in the Court of the Munsif of Gogo, to compel the removal of a building erected by the respondent on a portion of waste land belonging to all the houses in the street in which the appellant lived.

The respondent, in his defence, alleged that he had not encroached on any land not his own, but only built up his house on the old foundations.

The case was tried by the Munsif of Gogo, in the Ahmedábád Zillá, who allowed the appellant's claim, but decided that the land in dispute was not the private property of any person.

On appeal, the Acting Judge of Ahmedábád, G. H. Cameron, reversed the Munsif's decree, holding that the spot in dispute was a portion of the Queen's highway, and in the town of Gogo, which was under the control of a Municipal Committee. Reg. XII., Sec. XIX., cl. 3, of 1827 declares public thoroughfares to be in the charge of the Magistrate, and cl. 7 authorises any private individual, conceiving his rights injured by the decision of the Magistrate, to sue the

1863.
 JINA RAN-
 CHHOD
 v.
 JODHA'
 GHELLA'.

Magistrate: the *locus in quo* being a public thoroughfare, and the Reg. XII. of 1827, amply providing for its preservation, the plaintiff ought not to have gone into a Civil Court, but preferred a complaint to the Magistrate.

The plaintiff presented a special appeal.

The appeal was argued before FORBES and NEWTON, JJ.

Dhirajlál Muthurádás for the appellant.

Kivámuddin Miyánji for the respondent.

For the appellant it was contended that the Municipal Commissioners are not empowered by Act XXVI. of 1850, or by any other Act, to order the removal of buildings erected upon public thoroughfares; that it is competent to a person to bring an action in the Civil Court for obtaining an order for the removal of a building erected on a portion of waste land belonging in common to all the houses in a street or upon a road, provided he is injured by it, without in the first instance applying to the Magistrate for its removal; that cl. 3, Sec. XIX. of Reg. XII. of 1827 is repealed by Act XXI. of 1841,* and there is nothing in that Act to prevent the appellant from bringing an action in the Court in the manner he had done.

PER CURIAM:—The Acting Judge was in error in holding that the plaintiff could not, under the circumstances, come to a Civil Court in preference to going to the Magistrate. The decree will be reversed, and the case remanded to be tried on its merits. Costs to follow the final decision.

Decree reversed.

* Repealed by Act XVII. of 1862. See Act XXV. of 1861, Secs. 62 and 308.