

APPELLATE CIVIL.

(30)

Before Mr. Justice Melvill and Mr. Justice Kemball.

1878

December 12. THE AHMEDABAD MUNICIPALITY, APPLICANT, v. MAHAMAD JAMAL,
OPPONENT.*

Municipality—Jurisdiction—Bombay Act VI of 1873, Section 7—Act X of 1876, Section 15.

In a suit by or against a Municipality constituted under the Bombay District Municipal Act (No. VI of 1873), every individual Commissioner must be regarded as a party within the meaning of Section 15 of the Bombay Revenue Jurisdiction (Act X of 1876); and, consequently, such a suit cannot be entertained by a Subordinate Judge or a Judge of a Court of Small Causes, but can be entertained by the District Judge alone.

THIS was an application against the order of Satyendranath Tagore, Judge of the District of Ahmedabad, refusing to receive a plaint presented by one Mahamad Jamal against the Ahmedabad Municipality, to recover from them a sum of Rs. 20. The District Judge was of opinion that section 5 of Bombay Act VI of 1873 invested the Municipal Commissioners of a place with corporate capacity, not only for the purpose of holding and conveying property, but for all the purpose of the Act, including litigation. He therefore held that, though every Municipality must necessarily contain Government servants, section 12 of the Bombay Revenue Jurisdiction Act did not apply, and he had no jurisdiction to entertain the suit. He accordingly directed the plaint to be returned to the plaintiff for presentation in the proper Court.

Dec. 12 :—*Nanabhai Haridas*, Government Pleader, for the Municipality.—The District Judge alone had jurisdiction to entertain the suit. In the Mofussal Municipalities some Government officers must, *ex officio*, be Commissioners, and a Subordinate Judge or a Court of Small Causes cannot try a suit against them in their official capacity. No notice was given to the plaintiff of this application.

MELVILL, J.—This suit is against the Municipality of Ahmedabad. By section 7 of Bombay Act VI of 1873, such a Municipality consists of a number of Commissioners therein mentioned, some of whom are officers of Government, and declared to be Commissioners *ex officio*. Having regard to what we believe to

* Extra-ordinary Application, No. 134 of 1878.

have been the intention of the Legislature in enacting section 15 of Act X of 1876; we think that, in a suit by or against a Municipality, every individual Commissioner must be regarded as a party within the meaning of that section, and, consequently, that such a suit cannot be entertained by a Subordinate Judge or Court of Small Causes. We, accordingly, reverse the order of the District Judge, and direct him to receive the plaint.

Order accordingly.

APPELLATE CIVIL.

(31)

Before Mr. Justice West and Mr. Justice Penhey.

VISHVANTH AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v.
MAHADAJI (ORIGINAL DEFENDANT), RESPONDENT.*

1879.
January 6.

Inamdar—Rights of Common.

Unless the terms of his *inam* grant authorize an *inamdar* to enclose a piece of land used immemorially as pasture ground by the inhabitants of his *inam* villages he cannot so at will merely by virtue of his being an *inamdar*.

THIS was a second appeal from the decision of Rav Bahadur Gopalrav Hari, Joint Judge of Thana reversing the decree of the Subordinate Judge of Panvel.

The plaintiffs were be the inhabitants and cultivators of the defendant's *inam* village of Chikle, in the Panvel Taluka, of the Kolba Collectorate. They alleged that they defendant enclosed and brought under cultivation a piece of land in the village which had been used by them from time immemorial as pasture ground and as a way of access for their cattle to the watering place.

The defendant stated that as *inamdar* of the village he was proprietor of all the soil comprised in the village, and could cultivate any land he pleased, or deal with it in any other way.

The Subordinate Judge awarded the claim, except as regards the right of way.

The Joint Judge reject the claim altogether. He said: "The defendant has cultivated the land at a considerable cost. He is *inamdar* and, therefore, proprietor of the soil. He has a perfect right to bring under cultivation such land as he likes, without

*Second Appeal, No 308 of 1878.