

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

December 6.

VISHNU VINAYAK VAZE (ORIGINAL PLAINTIFF), APPELLANT v. THE SECRETARY OF STATE FOR INDIA (ORIGINAL DEFENDANT), RESPONDENT^o.

*Bombay Irrigation Act (Bom. Act VII of 1879), sections 31 (d), 35 and 36—
Interruption of water supply—Claim for compensation—Collector's decision—
Civil Court—Jurisdiction.*

A civil Court has no jurisdiction to entertain a suit by a holder of land against Government for compensation for loss arising out of interruption to the supply of water to his lands when the claim has already properly been decided by the Collector under section 35 of the Bombay Irrigation Act, 1879.

FIRST appeal against the decision of C. V. Vernon, District Judge at Ahmednagar.

Suit to recover damages.

The plaintiff owned three Survey Nos. 132, 133 and 134, at Dhamori in Ahmednagar District. In February 1916, the plaintiff applied to the Executive Engineer for Irrigation, Pravara Canal, for a supply of water from the Godavari Left Bank Canal to his sugarcane crop for the years 1916 to 1918. The said application was granted and the Government issued a pass authorizing the plaintiff to obtain water from the canal at the rate mentioned in the pass.

The plaintiff complained that although the pass was issued for water supply, the Officers of Government in charge of the water supply wrongfully failed to supply water to plaintiff's lands in consequence of which plaintiff's crops were damaged to the extent of Rs. 2,500.

The plaintiff applied to the Collector for compensation under section 35 of the Bombay Irrigation

^o First Appeal No. 79 of 1921.

Act, 1879. The Collector declined to interfere. His order, dated the 8th January 1919 was as follows : "Very full inquiry has been made into all the complaints and nothing gives reason to believe that sugar cane crop failed (if it did fail) from any cause other than the applicant's own lack of skill, diligence and compliance with the proper orders of the Irrigation Officers".

The plaintiff thereupon applied to the Commissioner who confirmed the Collector's order on the 5th March 1919.

In June 1919 the plaintiff filed the present suit to recover Rs. 2,500 as damages from Government.

The District Judge raised a preliminary issue, viz., "Is the jurisdiction of this Court barred by the provisions of section 36 of the Bombay Irrigation Act, 1879" and answered it in the affirmative.

The plaintiff appealed to the High Court.

P. V. Nijasure, for the appellant.

S. S. Patkar, Government Pleader, for the respondent.

MACLEOD, C. J. :—The plaintiff filed this suit to recover damages for the alleged wrongful failure of the Officers of Government in charge of the water supply to give a sufficient supply of water to his survey numbers during the years 1916 to 1918. Under section 35 of the Bombay Irrigation Act, VII of 1879, the holder of land may apply to the Collector for compensation for any loss arising out of such interruption provided that such interruption does not come under section 31, clause (d). This case cannot come under section 31, clause (d), and if it did, compensation could not be awarded; but the person suffering loss might be entitled to such remission of water rate payable by him as might be authorised by the Governor

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in Council. If there is loss under section 35, the holder of land may present a petition for compensation to the Collector, and the Collector, after consulting the canal officer, shall award to the petitioner reasonable compensation for such loss.

Under section 36 the decision of the Collector either under section 34 or 35 as to the amount of the compensation to be awarded shall be final, unless there is an appeal to a higher authority, in which case the decision of the higher authority shall be conclusive. These words, in my opinion, show that it was intended that the jurisdiction of the civil Courts should be ousted, so that the holder of land should not be entitled to bring a suit, similar to the present one, for compensation for loss alleged to have arisen out of interruption to the supply of water to his lands. It seems to me that this was the obvious intention of the Legislature. Otherwise numerous suits might be filed by cultivators dissatisfied with the operations of the irrigation officers, though it is obvious that questions which arise between cultivators and irrigation officers, are questions which in the first instance must be dealt with by the officers in charge of irrigation operations on the spot, and then in appeal by the revenue officers. That being, in my opinion, the intention of the Legislature, I think it has been given effect to by the words used. Therefore I think that the jurisdiction of the Courts is ousted and the decision of the Court below was right. The appeal must be dismissed with costs.

— SHAH, J. :—I think it is clear that the compensation which the plaintiff claims, if it falls under section 31, proviso clause (d), cannot be allowed at all except the amount, if any, claimed by way of remission of water rates under the last paragraph of that proviso. But his claim is not for such remission, but for compensation. He is not entitled to such compensation so far

as it falls under clause (d) of the proviso. But if it does not fall under clause (d) of the proviso to section 31, it is clear that his claim is one which would fall under section 35. The claims falling under that section are to be dealt with by the Collector, or by the higher officer to whom an appeal would lie under the rules framed, and the decision of that officer is conclusive. The effect of that provision, in my opinion, is to oust the jurisdiction of the civil Courts in respect of such claims. The jurisdiction of the civil Courts is not ousted in terms; but in view of the scheme of the Act and the special procedure laid down for compensation for interruption to the supply of water to any land irrigated by a canal, it seems to me that the jurisdiction of the civil Courts is ousted. In either case the result is that the plaintiff's claim must fail.

Appeal dismissed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

TUNGABAI ALIAS RUKMINIBAI WIFE OF GOPAL ANANT DESAI
MINOR BY HER GUARDIAN KRISHNAJI ANANT DESAI (ORIGINAL
PLAINTIFF), APPELLANT *v.* KRISHNAJI RAMCHANDRA DESHPANDE
AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS^o.

1921.

December 7.

Vatan—Deshpandegiri - Vatan—Grant of land for Palkhi allowance—Such a grant can be considered as an appanage of the Vatan.—Gordon Settlement—Sanad under Gordon Settlement—Land referred to in the Sanad as part of Deshpandegiri Vatan.

A grant of the village in suit was made in favour of the defendant's ancestors, who were Deshpandes, at the end of the seventeenth century by the then King of Bijapur. It was given in Inam for Palkhi allowance.

^o Second Appeal No. 1105 of 1918 (with Second Appeals Nos. 1106, 1118, 1130 to 1132 of 1918).