

APPELLATE CIVIL.

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

NATHURAM HIRARAM THAKOR AND ANOTHER (ORIGINAL PLAINTIFFS),
APPELLANTS, v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL
(ORIGINAL DEFENDANTS), RESPONDENTS^c.

1921.

December
23.

Land Revenue Code (Bom. Act V of 1879), sections 203 and 204—Land revenue, notice of demand made for—Demand notice not an order or decision—Suit for a declaration that land not liable to be taxed—Civil Court—Jurisdiction—Bombay Revenue Jurisdiction Act (X of 1876), section 11.

A notice of demand issued by the Mamlatdar that a certain amount was due for the payment of land revenue, is not an order or decision within the meaning of section 203 or 204 of the Land Revenue Code, 1879 and the jurisdiction of the civil Court to entertain a suit for a declaration that the Government had no right to assess any kind of claim or tax on the land is not barred under section 11 of the Bombay Revenue Jurisdiction Act, 1876.

FIRST appeal against the decision of R. S. Broomfield, District Judge of Ahmedabad.

Suit for a declaration.

In the Viramgaum Taluka there is a talukdari estate called the Bhankoda estate. The village of Kanj is included in the estate. In the village of Kanj, the plaintiffs owned several acres of land including Survey No. 656 in suit. In a previous litigation (Suit No. 22 of 1874) plaintiffs established their right to hold their lands rent free.

In 1910 a survey settlement of the estate was made. The plaintiffs protested that the entries in the register relating to their lands did not sufficiently indicate their rights and were informed by the Assistant Survey Settlement Officer that there would be no obstruction to their enjoyment of the land without payment of taxes.

In 1911, the Talukdars relinquished Survey No. 656 and the relinquishment having been sanctioned by the

^c First Appeal No. 191 of 1919.

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Collector steps were taken to levy assessment and local fund from the plaintiffs. They received a notice from the Mamlatdar on the 5th February 1913 calling upon them to pay Rs. 2-2-0 for the year 1912-13. In December 1914 they received a notice from the Talukdari Settlement Officer calling upon them to admit their liability to pay their share of the assessment in respect of all lands in their possession.

The plaintiffs refused to comply with the notice and sued for a declaration that Survey No. 656 belonged exclusively to the plaintiffs and that defendants had no right by "relinquishment" or otherwise, to impose any kind of tax upon it and claimed a refund of the amount paid under protest.

The defendant No. 1 contended *inter alia* that the suit was barred under section 11 of the Bombay Revenue Jurisdiction Act, 1876; that the relinquishment of the plaintiff land by the Talukdars and its subsequent assessment to land revenue were legal under sections 74 and 75 of the Land Revenue Code, 1879, and the plaintiffs were bound to pay.

The other defendants who were the Talukdars supported defendant No. 1.

The District Judge held on a preliminary issue that the suit was barred under section 11 of the Bombay Revenue Jurisdiction Act, 1876, as in his opinion the notice of demand issued by the Mamlatdar was an order within the meaning of sections 203 and 204 of the Land Revenue Code. He, therefore, dismissed the suit.

The plaintiffs appealed to the High Court.

G. N. Thakor, for the appellants.

S. S. Patkar, Government Pleader, for respondent No. 1.

N. K. Mehta, for respondent No. 2.

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MACLEOD, C. J.:—The plaintiffs filed this suit praying for a declaration that Survey No. 656 in the limits of the Talukdari village of Kanj was of their absolute ownership, and that the Talukdar-defendants had no right of any kind whatever over it, and that the first defendant, the Secretary of State, had no right of any kind whatever to sanction the relinquishment of the said Survey Number by the said Talukdars, and had no right to assess any kind of claim or tax on it, and for further and other relief.

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A preliminary issue was raised whether the suit was barred under section 11 of the Bombay Revenue Jurisdiction Act. The learned Judge held that the suit was barred on the ground that an order had been passed within the meaning of sections 203 and 204 of the Bombay Land Revenue Code, and that as the plaintiffs had not appealed against that order their suit could not lie.

Now it appears that in the previous litigation between the Talukdars and the plaintiffs the plaintiffs were able to establish their right to hold this particular land rent free. Thereafter the Talukdars relinquished this particular survey number in favour of Government, although it does not appear that the plaintiffs were heard on the question whether the relinquishment was or was not subject to their rights.

The next step taken by the Revenue Authorities was a notice of demand issued by the Mamlatdar that a certain amount was due for the payment of the land revenue, and that if it was not paid within 10 days from the receipt of the notice, steps would be taken according to law forcibly to recover the whole amount for the current year's land revenue which had not been paid.

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One would presume that the notice of demand of the Mamlatdar was based on an order by the Collector directing that this particular survey number was liable to pay assessment, and that evidently was the view taken by the first defendant when the written statement was filed, because in the first paragraph thereof, it is said :

"The jurisdiction of the Court to entertain the suit is barred by section 11 of the Bombay Revenue Jurisdiction Act, 1876, since the plaint does not state that the plaintiffs have preferred any appeals against the orders of the Collector imposing and levying assessment on the land in suit as provided by sections 203 and 204 of the Bombay Land Revenue Code."

Now it is admitted that no such order of the Collector can be produced. Consequently there could be no order from which an appeal lay. It seems that the first defendant urged that in the absence of the order of the Collector assessing the land, the notice of demand by the Mamlatdar was an order within the meaning of sections 203 and 204. Now the plaintiffs could have appealed to a higher authority objecting to the notice of demand issued by the Mamlatdar, but it does not follow that because they could have endeavoured by a resort to higher authority to get that notice of demand revoked, therefore, it was an order within the meaning of sections 203 and 204 of the Bombay Land Revenue Code. The learned Judge on this question says :

"Then it was contended that the notice of demand issued by the Mamlatdar was not an 'order'. Considering the number of years for which the dispute about these lands has been continuing one would suppose that before the Mamlatdar issued this notice there must have been a formal order by some Revenue Officer directing this to be done. But if there was such an order it has not been brought to the notice of the Court, and the learned pleader for the defendants, in arguing the issue, treats the demand notice as if it was the order and nothing else. In my opinion it is an order within the meaning of sections 203 and 204 of the Land Revenue Code. I see no reason to hold that the word 'order' used in those sections was meant to be understood in a narrow or technical sense, as a formal order passed after judicial inquiry or anything of that kind. A notice of demand is in effect an order to pay."

Now it may be said that a notice of demand which, if not complied with, can be made effective by execution proceedings, may be considered as akin to an order, but that could only be because of the results following from it. But it is not strictly logical to find that because the same results follow from two particular kinds of documents, therefore the documents are of the same kind also. One has to look to the wording of the document; and it appears to us that it would be going too far to say that this notice of demand, which admittedly is the natural consequence of an order imposing assessment upon land, can be treated as an order or decision within the meaning of sections 203 and 204 of the Bombay Land Revenue Code. The whole question regarding this demand of land revenue is somewhat involved in mystery, as the plaintiffs were allowed to continue to hold the land rent free, and yet apparently no opportunity was given to them, after the demand to pay land assessment was issued, to state their case for their being allowed to continue to hold rent free, whether the land was relinquished or not. It seems to us this is a case to which section 11 of the Bombay Revenue Jurisdiction Act does not apply, and that the suit would lie. The decree dismissing the suit must be set aside, and the suit must be remanded to the lower Court to be heard on its merits. The plaintiffs to get their costs of the appeal. Costs in the lower Court to be costs in the cause.

Decree reversed.

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