

Gangadhar Shivkarn Vs. the Collector of Ahmednagar and ors.

LegalCrystal Citation : legalcrystal.com/328875

Court : Mumbai

Decided On : Mar-06-1877

Reported in : (1877)ILR1Bom628

Judge : Michael Westropp, C.J. and ;Nanabhai Haridas, J.

Appellant : Gangadhar Shivkarn

Respondent : The Collector of Ahmednagar and ors.

Judgement :

Michael Westropp, C.J.

1. The acts alleged to have been committed by the respondents, and which are complained of by the special appellant as plaintiff, were so committed before Bombay Act VI of 1873 came into force. The District Judge, therefore, was mistaken in supposing that its 86th section is applicable to this suit. The enactment, which is applicable to it, is Act XXVI of 1850, which does not contain any provision as to notice of action.

2. But the Government Pleader has renewed an objection to the jurisdiction of the Subordinate Judge, made in his Court, but not apparently repeated in the District Court. To that objection, founded on Section 32 of the Bombay Courts' Act XIV of 1869, we must yield, inasmuch as we think that the Collector was, in his official capacity of District Magistrate, a member of the Municipality, under the 6th section of Act XXVI of 1850, when the causes of action accrued; and, therefore, the reasoning in *Nursingrav v. Luxumanrav* I.L.R. 1. Bom. 318 is applicable, and see also *Greaves v. Bhagwan Tulsi* 4 Bom. H.C. Rep. 93. Upon the possible question--whether a suit, under the new Bombay Act VI of 1873, must be commenced in the District Court--we do not now give any opinion. It may, perhaps, be argued that Section 5 of that Act merges the individuality of the members of the new municipalities in the corporation thereby created, and empowered to sue and be sued in its corporate name. As we have already said, this suit must be regulated by Act XXVI of 1850.

3. We reverse the decrees of the Courts below, and remand this cause to the Subordinate Judge, in order that he may refer the plaintiff, pursuant to Section 32 of Act XIV of 1869, to the District Judge, in whose Court the plaint must be presented. The District Judge should proceed in the cause in the ordinary way as upon the institution of a new suit, and should have regard to this judgment. The costs already incurred in the Subordinate Judge's and District Judge's Courts and in this special appeal must abide the final result of the cause.