

YADAVENDRA BHATTU
v.
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against the defendant for breach of his contract or they may redeem the mortgage on payment of the sum due."

The English cases on the point are referred to in *Sheikh Galim v. Sadarjan Bibi*(1).

It was open to the mortgagor to sue the mortgagee for damages, but a right to obtain damages cannot be transferred—see section 6 (e) of the Transfer of Property Act.

The Second Appeal therefore fails and is dismissed with costs.

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APPELLATE CIVIL.

Before Mr. Justice Jackson.

VENKATASUBBA CHETTIAR (RESPONDENT), PETITIONER,

v.

SESHA AIYAR (PETITIONER), RESPONDENT.*

Madras District Municipalities Act (V of 1920), sec. 303 (2) (b)—Election rules—Rule 6—Petition filed before District Judge to declare an election void—Application for interim injunction to restrain elected candidate from sitting in council and exercising rights—Jurisdiction of Court to issue injunction—Civil Procedure Code (V of 1908), ss. 94, 151 and O. XXXIX, r. 2—Inherent powers.

The District Judge before whom a petition to declare void an election, presented under the rules framed under section 303 (2)(b) of the Madras District Municipalities Act (V of 1920), is pending, has no power to grant a temporary injunction restraining the elected candidate from taking his seat in the Municipal Council and exercising his powers as a councillor until the disposal of the petition.

Rule 6 of the Election Rules does not empower the District Judge, while holding an inquiry into an election petition, to

* Civil Revision Petitions Nos. 808 and 809 of 1922.

(1) (1916) I.L.R., 43 Cal., 59.

exercise the powers specified in section 94 or Order XXXIX, rule 2, Civil Procedure Code; nor does section 151 of the Code empower the Court to grant a temporary injunction pending disposal of the election petition.

Aslatt v. Corporation of Southampton (1881), 16 Ch. D., 143, referred to.

PETITION under section 115, Civil Procedure Code, and section 107 of the Government of India Act to revise the order of A. S. BALASUBRAHMANYA AYYAR, District Judge of Trichinopoly, in I.A. No. 625 of 1922 and I.A. No. 630 of 1922 in Original Petition No. 147 of 1922.

The material facts appear from the Judgment.

Dr. S. Swaminathan for petitioner.

T. R. Venkatarama Sastri and *K. S. Sankara Ayyar* for respondent.

JUDGMENT.

This is a petition under section 115 of Act V of 1908 and section 107 of the Government of India Act.

Petitioner and respondent were the only two candidates at the election held on 22nd September 1922 for the appointment of a councillor to represent the 12th Ward of the Trichinopoly Municipality. The petitioner was declared duly elected and respondent filed a petition before the District Judge of Trichinopoly under the rules framed in accordance with section 303 (2) (b), Madras Act V of 1920. While the inquiry into this petition was pending, the respondent applied in I.A. No. 625 of 1922 purporting to be under sections 94, 141 and 151 and Order XXXIX, rule 2, of the Code of Civil Procedure, that the present petitioner be restrained by a temporary injunction from taking his seat in the Municipal Council until the disposal of the petition. In his order on this application, dated 30th October 1922, the District Judge restrained the petitioner by an interim injunction from taking his seat in the council. Hence this revision petition.

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The question for determination is whether the District Judge had jurisdiction to pass such an injunction. Rule 1 of the Rules for the decision of disputes as to the validity of an election lays down that no election held under the Madras District Municipalities Act shall be called in question except by an election petition presented in accordance with these rules. Under rule 6 "Every election petition shall be inquired into by the Judge as nearly as may be in accordance with the procedure applicable under the Civil Procedure Code, 1908, to the trial of suits."

It is argued for the petitioner that "the procedure applicable to the trial of suits" cannot include the power to pass an interim injunction; while on behalf of respondent it is contended that rule 6 does convey such power and in any case the District Judge has a residuary power which enables him to take such action under the Code as may seem proper during the course of the inquiry.

It is to be noted that the application of Civil Procedure Code to these inquiries is definitely restricted in rule 6 to the trial of suits. Had the Government intended that the Judge in an election inquiry should have the same powers as he has in the exercise of his original jurisdiction this presumably would have been stated in terms. In this connexion rule 6 may be compared with section 5 of the Provincial Insolvency Act where full powers are conferred upon the Insolvency Court; and the differences in the wording of the respective clauses is significant. An interim injunction can only be within the jurisdiction of the Judge holding an inquiry into an election petition if that injunction is for the purposes of, and in furtherance of, the trial which he is conducting. But a temporary injunction under Order XXXIX, rule 2, is not necessarily for the purposes of the trial. Section 94, Civil Procedure Code, out

of which Order XXXIX arises, is framed generally in order to prevent the ends of justice from being defeated, and then, under Order XXXIX, rule 2, "In any suit for restraining the defendant from committing . . . an injury the plaintiff may apply to the Court for a temporary injunction to restrain the defendant from committing the injury."

An injunction restraining an elected candidate from taking his seat may be in the ends of justice, assuming that there is *prima facie* ground for holding his election to have been so irregular that any act consequential upon that election is a fraud upon the defeated candidate, but such an injunction in no way affects the conduct of the trial. A Court which issues such an injunction is really proceeding as if it were seised of the case in the ordinary exercise of its civil jurisdiction, and not as a Court inquiring under special rules into the validity of an election. And under rule 1 an election can only be called into question by a petition presented under the rules. When the party is specially proscribed from invoking the Civil Courts in the ordinary exercise of their judicial functions, I can see no warrant for a Court importing into the inquiry its ordinary civil powers of its own motion. And, of course, if a Court cannot act under section 94 and Order XXXIX, section 151 does not extend its powers. The learned District Judge has justified his Order in I.A. No. 630 of 1922 on the ground that it is better that a councillor, whose qualifications for his office are questioned, does not take part in an election (i.e., does not sit as councillor and vote for the election of chairman) as that may lead to questions about the validity of the election. Had the disqualification in question been one falling within the provisions of section 50 there could be no such difficulty because it is expressly provided in section 51, clause (3), that,

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pending the decision of the District Judge after inquiry into the alleged disqualification, *the councillor shall be deemed to be qualified*. By parity of reasoning I think that the councillor whose election is impugned on account of alleged irregularities, may also be deemed to be qualified pending the Judge's decision.

The rules under section 302 (2) (b) do not contain a provision similar to that in section 51, but in rule 13 it is laid down that when an election is declared void the seat of the returned candidate shall be deemed to be vacant from the date of the Judge's order, which implies that up to the date of the Judge's order the unseated councillor shall be deemed to have been qualified.

Therefore I find no reason to hold that Government must necessarily have intended that a power of granting interim injunctions should vest in the Judge inquiring under rule 6. The English decisions to which my attention has been directed, *Aslatt v. Corporation of Southampton*(1) and *Richardson v. Methley School Board*(2), establish that the Court of Chancery has exercised this power of granting injunctions, but I do not think it is denied that in the exercise of their ordinary judicial functions the Indian Courts acting under Order XXXIX, rule 2, can exercise this power; cf. *Sarvothama Rao v. Chairman, Municipal Council, Saidapet*(3). The question is whether this power has been carried into the special rules for election inquiries, and in this connexion the English cases are valuable chiefly as showing that such powers should be exercised with the greatest discrimination. In *Aslatt v. Corporation of Southampton*(1) the Corporation was restrained from declaring the office held by the plaintiff void. Here it may be noted, the *status quo* was preserved by the interim order of the Court which is

(1) (1881) 16 Ch. D., 143.

(2) [1893] 3 Ch., 510.

(3) (1924) I.L.R., 47 Mad., 585.

very different from temporarily unseating an elected candidate.

In the course of that ruling, JESSEL, M.R., observes (page 148) that the mere fact that some proceeding was being taken to test a right to continue in an office was never considered a ground for interfering by injunction; because the old Court of Chancery never interfered if a legal right only was in question. The Judicature Act, 1873, conferred upon Courts the right of granting injunctions, but as a general rule the Court only interferes when there is some question of property, though there may be interference even when personal status is the only thing in question.

This case is considered in *Richardson v. Methley School Board*(1), where certain doubts in respect of *Aslatt v. Corporation of Southampton*(2) are discussed, but the Court concludes by granting a similar injunction. That the Court of Chancery has exercised this power is no warrant for assuming that it was meant to be included by Government within the provisions of rule 6, and it is not disputed that Indian Courts', in the exercise of their ordinary functions under the Civil Procedure Code, would have such power of granting injunction. I find that the District Judge acted without jurisdiction in granting an interim injunction by his order on I.A. No. 625 of 1922, dated 30th October 1922, and order that it may be cancelled. Respondent will pay the costs to the petitioner.

The District Judge, after hearing the present petitioner, reaffirmed the interim injunction in his order of 3rd November 1922, and that order is sought to be revised in C.R.P. No. 809 of 1922 which must also be allowed on the same grounds but without costs.

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(1) [1893] 3 Ch., 510.

(2) (1881) 16 Ch. D., 143