

ance of the District Municipal Act. Such a suit is governed by section 48 of the Act—*Nagusha v. Municipality of Sholapur*<sup>(1)</sup>.

FARRAN, C. J.:—In this case the plaintiff, who has resisted the municipality in laying pipes on his land, now sues for an injunction to restrain them from doing so. It is clearly not a suit for anything done in pursuance of the Act, but to prevent the municipality from doing what the plaintiff alleges to be an illegal act. The sections conversant with this subject have always been held not to apply to actions for an injunction—*Flower v. Local Board of Low Leyton*<sup>(2)</sup>; *President of the Taluk Board, Sivuganga v. Narayanan*<sup>(3)</sup>; *Manohar Ganesh v. The Dékor Municipality*<sup>(4)</sup>; *Shidmallappa v. Gokak Municipality*<sup>(5)</sup>.

We must reverse the decrees of the lower Courts and remand the suit to be heard upon the merits by the Court of first instance. We make all costs costs in the cause.

*Decrees reversed and suit remanded.*

(1) I. L. R., 18 Bom., 19.

(3) I. L. R., 16 Mad., 317.

(2) 5 Ch. D., 347.

(4) *Ante* p. 289.

(5) *Ante* p. 605.

## APPELLATE CIVIL.

*Before Mr. Justice Parsons and Mr. Justice Ranade.*

THE MUNICIPALITY OF FAIZPUR (ORIGINAL DEFENDANT), APPELLANT,  
v. MANAK DULAB SHET (ORIGINAL PLAINTIFF), RESPONDENT.\*

1897.

June 8.

*Municipality—Bombay District Municipal Act Amendment Act (II of 1884), Sec. 48—Suit for specific performance of a contract or for damages for breach thereof.*

Section 48 of the Bombay District Municipal Act Amendment Act (II of 1884) does not apply to a suit for the specific performance of a contract or for damages for breach thereof.

SECOND appeal from the decision of Ráo Bahádur Chunilal Maneklal, Subordinate Judge, First Class, with appellate powers at Dhulia, in Appeal No. 232 of 1896.

\* Appeal, No. 8 of 1897 from order.

1897.

MUNICIPALITY OF  
FAIZPUR  
v.  
MANAK  
DULAB.

The plaintiff brought this suit against the Municipality of Faizpur, alleging that there were three *otas* in front of his house, which he allowed the municipality to pull down in July, 1894, for the purpose of constructing a gutter under an agreement that they should rebuild the *otas* at their own cost after the gutter was constructed; that after the completion of the gutter the municipality refused to rebuild the *otas* in accordance with the agreement; that thereupon he applied to the general body of the municipal councillors, who decided against him on 24th August, 1895.

Under these circumstances the present suit was filed on 9th January, 1896, to compel the municipality to rebuild the *otas*, or, in the alternative, to recover damages for breach of the agreement.

The Court of first instance rejected the claim, holding that the suit was time-barred under section 48 of Bombay Act II of 1884, as it was not filed within three months from the date of the act complained of.

On appeal, this decision was reversed by the Subordinate Judge, A. P., who held that section 48 of Bombay Act II of 1884 had no application to the present case. The suit was, therefore, remanded for a fresh decision on the merits.

Against this order of remand the defendant municipality appealed to the High Court.

*D. P. Kirloskar* for the appellant:—Section 48 of Bombay Act II of 1884 is wide enough to cover a case like this. The plaintiff complains of a breach of agreement by the municipality and seeks to recover damages for such breach. Such a suit is within the scope of the section—*Nagusha v. The Municipality of Sholapur*<sup>(1)</sup>. Moreover, in pulling down the plaintiff's *otas* in order to construct a gutter, the municipality were acting in exercise of the powers vested in them by the Act; the present suit is, therefore, an action against the municipality for an act done in pursuance of the Act. On this ground also the suit falls within section 48 of the Act, and ought to have been brought within three months after the accrual of the cause of action.

(1) I. L. R., 18 Bom., 19.

*N. F. Gokhle* for respondent:—The contract made by the municipality with the plaintiff before his *otas* were pulled down, may no doubt be said to be an act done in pursuance of the District Municipal Act. But the Act does not, and cannot authorize the municipality to commit a breach of a contract. This suit is, therefore, not “an action for anything done or purporting to have been done in pursuance of the Act” within the meaning of section 48 of Bombay Act II of 1884. Our cause of action is not the contract, but the breach thereof. The section does not apply to suits based on contracts—*Mayandi v. McQuhae*<sup>(1)</sup>; see also *Manohar v. The Dákor Municipality*<sup>(2)</sup>, where Ranade, J., remarks that “claims based on contracts can never be included under this section.” The ruling in *Nagusha v. The Municipality of Sholápur*<sup>(3)</sup> is practically overruled by the Full Bench decision in the case of the *Dákor Municipality*<sup>(4)</sup>.

PARSONS, J.:—This suit was brought on the allegations that the plaintiff allowed the defendant municipality to remove some *otas* belonging to him, and that the latter agreed that they would rebuild them on the completion of a gutter which they intended to build beneath the site, but that they now refuse to perform their agreement. It is thus a suit for specific performance of a contract, or for damages for breach thereof. Such a suit is not an action for anything done or purporting to be done in pursuance of the Bombay District Municipal Act; for the Act, though it may give the municipality power to make contracts, does not authorize them to refuse to perform them, and no section of the Act has been quoted as one under which they are now purporting to act. That section 48 does not apply to actions on contracts was ruled in *Mayandi v. McQuhae*<sup>(1)</sup>, and was also stated in the judgment of Ranade, J., in *Manohar v. The Dákor Municipality*<sup>(2)</sup>.

We confirm the order with costs.

*Order confirmed.*

(1) I. L. R., 2 Mad., 124.

(3) I. L. R., 18 Bom., 19.

(2) *Ante* p. 239.

(4) *Ante* p. 239.