

APPELLATE CIVIL.

Before Sir C. F. Farnon, Kt., Chief Justice, and Mr. Justice Parsons.

1897.
January 23.

HARILAL RANCHODLAL (ORIGINAL PLAINTIFF), APPELLANT, v. HIMAT MANEKCHAND AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Municipality—District Municipal Act Amendment Act (Bom. Act II of 1884)—Suit for an injunction to restrain municipality—Sections of the Act not applicable.

A suit was brought by the plaintiff against a municipality for an injunction to restrain them from laying water pipes on his land. The lower Courts dismissed the suit for want of notice under section 48 of the District Municipal Act Amendment Act (Bom. Act II of 1884).

Held, reversing the decree, that the suit was not a suit for anything done in pursuance of the Act, but to prevent the municipality from doing what the plaintiff alleged to be an illegal act, and that section 48 did not apply.

SECOND appeal from the decision of G. McCorkell, District Judge of Ahmedabad, confirming the decree of Ráo Bahádur V. V. Vagle, First Class Subordinate Judge.

The plaintiff sued to obtain a perpetual injunction restraining the defendants from laying water pipes on his land.

The defendants denied that the land was the plaintiff's and alleged that it was public property. They further contended that the suit would not lie without notice under section 48 of the District Municipal Act Amendment Act (Bom. Act II of 1884).

The Subordinate Judge dismissed the suit, holding that it was not maintainable for want of notice under the Act (section 48).

On appeal by the plaintiff the Judge confirmed the decree. The plaintiff appealed to the High Court.

Govardhanram M. Tripathi, for the appellant (plaintiff):—We sued for an injunction. Section 48 of the District Municipal Act relates to something done in pursuance of the Act. A suit for an injunction is not a suit for anything done. We rely on *President of the Taluk Board, Sivaganga v. Narayanan*⁽¹⁾.

Ramdatt V. Desai for the respondents (defendants):—The plaintiff seeks to prevent the municipality from acting in pursu-

* Second Appeal, No. 577 of 1896.

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

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

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*⁽²⁾; *President of the Taluk Board, Sivuganga v. Narayanan*⁽³⁾; *Manohar Ganesh v. The Dékor Municipality*⁽⁴⁾; *Shidmallappa v. Gokak Municipality*⁽⁵⁾.

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.