APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.

1901. *November* 25.

KASANDAS RAGHUNATHDAS (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE ANKLESHVAR MUNICIPALITY (ORIGINAL DEFENDANT), RESPONDENT.*

Municipality—Levy of house-tax—House valuation—Fair selling value—Absence of malâ fides, perversity, or manifest error—Civil Courts—Jurisdiction.

In the absence of proof of *malâ fides*, perversity, or manifest error, Civil Courts ought not to interfere with the house valuation made by a municipality for the purpose of taxation, unless there is a breach of the rules prescribed by law for making the valuation.

SECOND appeal from the decision of G. D. Madgaonkar, Assistant Judge of Broach with Full Powers, confirming the decree of Ráo Sáheb B. S. Upasani, Subordinate Judge of Ankleshvar.

The plaintiff brought this suit to recover the sum of Rs. 7-0-0 from the defendant municipality, alleging that he had been compelled to pay a house-tax of Rs. 12-8-0 instead of Rs. 5 which was the proper amount leviable upon him. The amount sued for was the excess which he had paid under protest, together with one anna process fee. He also prayed for an injunction restraining the municipality from levying more than the amount properly leviable.

The plaintiff alleged that by its rules the municipality was authorized to impose a tax of four annas per Rs. 100 on the market value of all houses within the municipal limits; that his house had been valued by the municipality at Rs. 5,000 instead of Rs. 2,000, which latter was its true value. Hence the over-assessment.

The defendant municipality answered that the valuation complained of had been in existence for some years before suit, and that it had been made by competent experts.

The Subordinate Judge, relying on the decision in *Morar* v. *Borsad Town Municipality*,[1] held that he had no jurisdiction to

* Second Appeal No. 194 of 1901.

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entertain the suit as it sought a revision of the valuation of the plaintiff's house made by the municipality for the purpose of the house-tax. As regards the assessment the Subordinate Judge made the following remarks:

In addition to this (documentary) evidence the plaintiff called five witnesses, Nos. 41, 46, 47, 49 and 50, on his behalf, and these have deposed to the house in question being valued from Rs. 2,000 to 2,400. The witnesses appear to be respectable and I see no reason to disbelieve them. The defendant's own Secretary was questioned on this point and he deposed to the house being valued about Rs. 4,500 to 5,000. The only evidence on the defendant's behalf consists of witness No. 17, who is a Local Fund overseer in charge of this táluka. He has estimated the value of the plaintiff's house at Rs. 4,162 and the details of it are shown in his own examination. His estimate represents the value of the ground and the value of the structure as represented by its probable cost after making deduction for depreciation of material. The method adopted by the overseer to assess the market value may be admitted to be a fair one for purposes of departmental estimate of the value of the building, but under the express rule laid down by the defendant municipality the market value of a house is to be taken to mean "the price which may be expected to be obtained for the house at a sale held under circumstances neither very favourable nor very unfavourable." * * * This rule would require that the calculation is to be based on the probable actual market value of the property and not on the cost incurred on its construction. The market value must depend, apart from the cost of construction, on the situation of the house and the local demand for house property. Neither of these elements would appear to have been taken into consideration by the officer who made the original valuation, nor by the overseer who was asked to make the valuation for purposes of this case. The former had little local knowledge and experience and the latter would also not have made any inquiries as to the market value at which properties in the immediate neighbourhood of that in suit were sold. It may, moreover, be noted that while the ground-site of a house situated in a prominent place on the public road is valued at 4 annas per square foot, that of the house in suit would appear to have been valued at annas 5 per square foot in the original valuation—see the details given in the entry referring to this house in the defendant's field book. This was not to be expected, considering the fact that the house in suit is situate quite in a corner, removed from any public road. * * * Considering the present condition of the property and the evidence on both sides, I am of opinion that its market value cannot be assessed at more than Rs. 3,000 to 3,500 at the outside, and taking the mean I would assess it at Rs. 3,250. The house-tax should, therefore, properly have been charged on this value and its amount at annas 4 per Rs. 100 would come to Rs. 8-1-0 instead of Rs. 12-8-0, the amount actually charged. The plaintiff would thus appear to have been overcharged by Rs. 4-7-0 and a reduction by that amount he may fairly seek.

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The plaintiff having appealed, the Judge summarily dismissed the appeal under section 551 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff thereupon preferred a second appeal.

K. N. Javeri for the appellant (plaintiff) :—The ruling in *Morar* v. *Borsad Town Municipality*[1] is distinguishable. In that case the plaintiff sought to recover the excess on the ground that the house was over-valued and wrongly classed. But in this case we impeach the assessment on the ground that the mode of estimating it was illegal and not in accordance with the rules framed by the municipality. For the purpose of assessment the rule is that the market value should be taken into consideration, and the market value according to the rule is "the price which may be expected to be obtained for the house at a sale held under circumstances neither very favourable nor unfavourable." What the rule contemplates is that the assessment should be calculated on the fair marketable value of the house, having regard to its surroundings, the locality in which it is situate, and the state and quality of its structure. In this case in estimating the assessment the municipality took into consideration the value of the site and the probable costs of the structure on the date of the assessment. We contend that the main point to be considered in the marketable value of a house for the purposes of assessment is the locality in which the house is situate and the quality of the building. This circumstance was omitted from consideration. The first Court, on consideration of all the circumstances, came to the conclusion that the market value of the house for the purpose of assessment was Rs. 3,250 and not Rs. 5,000 as estimated by the municipality. We therefore submit that the mode adopted by the municipality was in contravention of the scope and object of the rules framed by it. Under these circumstances it was an error to dismiss the suit on the ground of want of jurisdiction.

Gokuldas K. Parekh for the respondent (defendant) :—If the plaintiff was dissatisfied with the assessment he ought to have appealed to the managing committee, and on his failure to obtain redress from that body he ought to have proceeded further

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by applying to higher authorities. The ruling in *Morar* v. *Borsad Town Municipality*[1] is in point. The question of estimating assessment is left by law entirely to the discretion of a municipality and Civil Courts have no jurisdiction to interfere unless the discretion is exercised illegally and perversely.

JENKINS, C.J.:—The plaintiff sues to recover from the defendant municipality Rs. 7-9-0 as the overcharged house-tax, but his suit has been dismissed by both the lower Courts on the ground that the matter is one in which the Civil Courts have no jurisdiction. This conclusion is based on the decision of this Court in *Morar* v. *Borsad Town Municipality*.[1] Mr. Javeri, however, contends that this case does not fall within the principle of that decision, that his complaint here is not merely that the valuation is wrong, but that it has been arrived at in contravention of the rules which are by law applicable. Had the appellant been able to make out that which is the basis of his argument, that the prescribed rules for arriving at a valuation had not been observed, then I agree he would have successfully distinguished this case, but in that he has failed. For the purposes of the house-tax it is provided by the rules relating to the Ankleshvar Municipality that the "market value of a house means the price which may be expected to be obtained for the house at a sale held under circumstances neither very favourable nor very unfavourable." The mode in which the municipality's officer arrived at his valuation is set out in the judgment of the first Court, and in our opinion it does not contravene the rule. It was a legitimate method of arriving at the fair selling value of the house. As no breach of the prescribed rules has been committed, then, in the absence of any proof of *mala fides*, perversity, or manifest error, we do not think we ought to interfere on the mere suggestion that the valuation is too high. The result is that the decree of the lower Court must be confirmed with costs.

Decree confirmed.

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