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correct view. But taking that view, the Court said that it was not an equitable agreement and, therefore, refused to give effect to it. The only course then open to the plaintiff in accordance with the provisions of the Act was to obtain a certificate from the conciliator and to file a suit, if so advised. This he did not do. Nor, on the other hand, did he take any steps which might have been open to him to challenge the decision of the Court. Therefore, it seems to me impossible to argue, having regard to the provisions of the Dekkhan Agriculturists' Relief Act, that we have in this case anything which could be termed a valid award. If that is so, the basis of the present suit fails, and it must necessarily be dismissed.

*Appeal allowed.*

R. R.

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### APPELLATE CIVIL.

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*Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and  
Mr. Justice Crump.*

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NATHALAL RAMDAS VAGHJI AND OTHERS (ORIGINAL PLAINTIFFS),  
APPELLANTS v. THE NADIAD MUNICIPALITY (ORIGINAL DEFENDANT),  
RESPONDENT<sup>a</sup>.

*Bombay District Municipal Act (Bom. Act III of 1901), section 50A—Survey introduced in Municipal area—Decision of Survey Officer declaring a plot as "street land"—Suit for a declaration of ownership—Government, whether a necessary party.*

In the municipal limits of the town of Nadiad, a survey was undertaken as contemplated by section 50A of the District Municipal Act, 1901. The City Survey Enquiry Officer held that the land in dispute was a "street land" as defined in section 3, clause 12, under District Municipal Act, 1901. The plaintiffs filed a suit in the Subordinate Judge's Court at Nadiad for a declaration that the plaintiff land was of their ownership and for an injunction restraining

<sup>a</sup> Appeal from Order No. 10 of 1921.

the defendant municipality from obstructing them in the enjoyment thereof. A question having arisen whether the Government was a necessary party to the suit,

*Held*, that the Government was not a necessary party, as the decision of the Survey Officer that the site in question formed part of a street did not mean that the Government had any interest in the land, the decision, so far as it went, being entirely a matter in which the Municipality and the plaintiffs were interested and the adjudication sought in the suit being with reference to the rights of these two parties.

APPEAL from order passed by Dr. F. X. DeSouza, District Judge of Ahmedabad, reversing the decree passed by B. H. Desai, Subordinate Judge at Nadiad.

Suit for a declaration.

This suit and several other suits were filed against the Municipality at Nadiad by certain persons aggrieved by the decision of the City Survey Enquiry Officer. The Municipality of Nadiad by a unanimous resolution, dated the 11th July 1913, resolved to address Government to introduce the City Survey in the town. In pursuance of this resolution Government by a G. R. No. 110241 (Revenue Department), dated the 27th November 1914, directed under sections 95 and 131 of the Land Revenue Code that survey should be made of the land other than those used for agriculture only within the site of the town of Nadiad and appointed a City Survey Enquiry Officer to declare the respective rights of the Municipality, of Government and private owners. The Officer after enquiry declared several sites, which are in dispute in these suits, to be either "Government land" or "Public street land" or "street land". The site in the suit out of which the present appeal arose was held to be "street land". The plaintiffs therefore sued for a declaration that the land Chalta No. 709, Tika No. 2, situate in Mota Por at Nadiad was of their ownership and for a permanent

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injunction restraining the defendant Municipality from obstructing them in their enjoyment thereof.

The defendant Municipality disputed the plaintiff's ownership of the land and contended that it had been used as a road land for a very long time, that it was held to be a street land, that it was necessary to keep it open for sanitary purposes, and that the plaintiff's suit was barred by limitation and also barred under section 167 of the District Municipal Act.

In the trial before the Subordinate Judge four preliminary issues were raised.

(1) Whether the plaintiffs' claim is time-barred ?

(2) Whether the plaintiffs' suit is barred under section 167 of the District Municipal Act ?

(3) When the disputed site is decided to be a street land, whether it vests in and belongs to the Municipality ? Whether Government and street people have any and what interest therein ? Whether this suit can be heard in their absence ? When Government is held to be a necessary party, whether this Court has jurisdiction to hear this suit ?

(4) Whether the defendant Municipality can dispute plaintiffs' right when the disputed site is a street land ?

On the first issue the finding of the Court was in the affirmative and on the second it was in the negative ; on the third issue it was found that the disputed site did not vest in nor did it belong to the Municipality ; that the street people were not necessary parties but Government was a necessary party because it reserved its right therein ; and that the suit could not be heard in the absence of Government and when Government was made a party the Court had no jurisdiction. On the fourth issue, the finding was in the affirmative. As a result of the above findings, the Court dismissed the suit.

On appeal the District Judge was also of opinion that the Secretary of State for India in Council was a necessary party to the suit. He reversed the decree on the point of limitation, however, and directed that the plaint be returned to the plaintiff for presentation to the proper Court.

The plaintiffs appealed to the High Court.

*Thakor* with *R. J. Thakor*, for the appellants.

*N. M. Desai* and the *Government Pleader*, for the respondent.

SHAH, Ag. C. J.:—This is one of the several companion appeals which we have to decide; but it will be convenient to deal with this appeal first before considering what orders should be passed in the other appeals. It arises out of a suit filed by the plaintiffs for a declaration that a certain land situated at Nadiad was of their ownership and for a permanent injunction restraining the defendant Municipality from obstructing them in their enjoyment thereof. The occasion for the suit was that in pursuance of a resolution passed by the Nadiad City Municipality, the Government had, in accordance with the provisions in the Land Revenue Code, directed a survey within the Municipal limits of the town of Nadiad, and the City Survey Officer had held that the land in question was a "street land", as defined in section 3, clause 12, under the Bombay District Municipal Act (Bom. Act III of 1901). That would involve the result that the Municipality would have certain rights in respect of the site in question under the Bombay District Municipal Act, and the whole purpose of the suit was to prevent the Municipality from interfering with the plaintiffs' enjoyment of this site. With that view a declaration and an injunction as stated above were sought by the plaintiffs.

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The defendant Municipality raised several objections to the suit, but no objection was raised that the suit was defective for want of a necessary or proper party. Four preliminary issues were raised :—

1. Whether the plaintiffs' claim is time-barred ?
2. Whether the plaintiffs' suit is barred under section 167 of the District Municipal Act ?
3. When the disputed site is decided to be a street land, whether it vests in and belongs to the Municipality ? Whether Government and street people have any and what interest therein ? Whether this suit can be heard in their absence ? When Government is held to be a necessary party, whether this Court has jurisdiction to hear this suit ?
4. Whether the defendant Municipality can dispute plaintiffs' right when the disputed site is a street land ?

The trial Court held that the street people were not necessary parties, but that the Government was a necessary party, that the suit could not be heard in the absence of Government, and that, if Government were joined as a party, the Court could have no jurisdiction to entertain the suit. The Court also held that the suit was time-barred. In the result the suit was dismissed with costs.

The plaintiffs appealed to the District Court. The learned District Judge who heard the appeal held that Government was a necessary party, and that the other issues could not be, and should not be, considered. He set aside the order dismissing the suit, and made an order returning the plaint for presentation to the proper Court.

It is from that order returning the plaint that the present appeal is preferred to this Court, and the only question that we are really concerned with on this appeal is whether the lower Courts are right in their view that the Government is a necessary party.

It is important to remember at the outset that the question of the joinder of Government as a party in

this case is one of great practical importance, for, if the Secretary of State for India in Council is a necessary or a proper party, it is clear that the suit must be tried in a different Court altogether. It is only the District Court that would have jurisdiction to try such a suit under section 32 of the Bombay Civil Courts Act (XIV of 1869). It is not, therefore, a simple question of adding a party as a matter of additional caution or convenience, but it is a question of importance as affecting the constitution of the suit.

The lower Courts have proceeded upon the view that the decision of the City Survey Officer that this land is "street land" is one which requires to be set aside; and secondly, that as the plaintiffs claim a declaration as to the ownership of the land in suit, the interests of the Government are necessarily involved. They hold that in the case of "street land", the property would not be vested in the Municipality, and, though the Municipality would have certain control over the land, and certain statutory rights with reference to the land, the real dispute must be taken to be between the plaintiffs and the Government.

Though Government was not a party in the lower Courts, notice was issued in this case to the Government Pleader here on this appeal. We have heard the Government Pleader on behalf of Government, though not a party to the suit. We think, however, after a consideration of the arguments urged before us on both sides, and of the relevant provisions of the District Municipal Act and of the Land Revenue Code, that Government is not a necessary party to the present suit. The survey was undertaken in this case as contemplated and provided by section 50A of the District Municipal Act. This section was inserted by Bombay Act X of 1912, and by another Act in the same year a similar provision was inserted in the Land

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Revenue Code by way of addition to section 37 of the Land Revenue Code. For our present purpose it is enough to point out that in this Municipal area the survey was undertaken as contemplated by section 50A. Sub-section (2) of that section clearly provides that any suit instituted in any civil Court after the expiration of one year from the date of any order passed by the Collector under sub-section (1), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined, according to section 204 of the Bombay Land Revenue Code, 1879, shall be dismissed, if the suit is brought to set aside such order, or if the relief claimed is inconsistent with such order, provided that the plaintiff has had notice of such order.

The order in the present case was passed first by the City Survey Officer, and then by the superior officer in appeal, and the decision was that it was "street land". The definition of the word "street" as given in section 3, clause (12), does not in any sense negative the idea of private ownership. "Street" shall mean "any road, footway, square, Court, alley or passage, accessible whether permanently or temporarily to the public, whether a thoroughfare or not; and shall include every vacant space, notwithstanding that it may be private property, and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon, and if it is used by any person as a means of access to or from any public place or thoroughfare, \* \* \* but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid". The decision of the Survey Authorities that the site in question formed part of a street, as defined in the District Municipal Act, does

not mean that the decision was that the Government had any interest in the land. It was really a decision relating to a dispute between private owners and the Municipality, that it was part of street land, which would mean that the Municipality would have certain powers with reference to such land which had been given under the Statute. For instance, under section 90 of the District Municipal Act, the Municipality will have power to call upon the owners of the houses in the street to do certain things, and to declare it to be a public street if so advised under certain conditions. That affects the rights of private owners, and to that extent the Municipality is interested in upholding the decision of the City Survey Officer, and the plaintiffs are interested in questioning that decision. That is a dispute between the private owners and the Municipality in which, so far as I can see, the Government have no manner of interest. At least the cause of action as stated in the plaint does not disclose any such interest, and, whatever view may be taken of the effect of the vesting clause in the District Municipal Act with reference to public streets, I do not think that the cases which relate to the decision of the City Survey Authorities that the land in question was a street land, would be affected by those considerations. The decision, so far as it goes, is entirely a matter in which the Municipality and the plaintiffs are interested, and in the suit the adjudication is sought with reference to the rights of these two parties. It is not necessary formally, in my opinion, to sue to set aside the decision of the Survey Authorities. Even if there was a prayer to set aside that decision, it would not render it necessary to join Government as a party. That is a mere matter of form, and the wording of subsection (2) of section 50A, in my opinion, clearly indicates that whether the relief claimed is inconsistent

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with that order or whether the relief is to have the order set aside, the suit has to be filed within a particular time, and that the suit as there contemplated is clearly a suit between a private party and the Municipality.

I do not desire to say anything more in this appeal as to whether, where the decision of the Survey Authorities was that a particular piece of land formed part of public street, Government would be a necessary party or not.\* For the purpose of this appeal it is enough to say that Government is not a necessary party, because the decision of the Survey Authorities is not in favour of Government in any way, and the parties interested in that decision are the plaintiffs and the Municipality, who are before the Court.

We have to consider what course we should adopt now in view of the fact that the trial Court has decided the question of limitation. We think that on the whole the best course, and practically the only legal course, under the circumstances, is to set aside the order made by the lower appellate Court, and to remand the appeal to that Court for disposal according to law. If after remand the learned District Judge upholds the view of the trial Court on the question of limitation, so far as that Court is concerned, the suit will end there. If the learned District Judge, however, comes to the conclusion that the suit is not time-barred, it will be for him to consider what order to make in order that the suit may be disposed of according to law. We, therefore, allow this appeal, set aside the order of the lower appellate Court, and remand the appeal to that Court for disposal according to law. We think the respondent should pay the costs of this appeal. The other costs will be dealt with by the

\* See *Bai Parwati v. Nadiad Municipality*, reported post p. 315 [Ed.].

District Court when the appeal in that Court is disposed of. The Government Pleader to bear his own costs of this appeal.

*Appeal allowed.*

J. G. R.

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## APPELLATE CIVIL.

*Before Sir Lallubhai Shah, Kt., Acting Chief Justice,  
and Mr. Justice Cramp.*

BAI PARWATI WIDOW OF CHHOTALAL VITHALDAS (ORIGINAL PLAINTIFF), APPELLANT *v.* THE NADIAD MUNICIPALITY AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS\*.

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*September 21.*

*Bombay District Municipal Act (Bom. Act III of 1901), section 50A—  
Decision of Survey Officer declaring a plot as "public street"—Suit for  
a declaration of ownership—Government, whether a necessary party.*

As a result of the decision of City Survey Authority, the land in dispute which the plaintiff claimed as of her ownership, was declared to form part of a public street. The plaintiff, thereupon, sued the defendant Municipality for a declaration that the plaintiff land did not form part of a public street and prayed for an injunction restraining the Municipality from disturbing the plaintiff in the enjoyment of the land. Both the lower Courts held that Government was a necessary party to the suit inasmuch as the vesting of all public streets in the Municipality did not mean that Government had no interest in the land. On appeal by the plaintiff to the High Court,

*Held*, that the mere fact that Government would have some interest in all public streets vested in Municipalities was not any reason for holding that Government was a necessary party in a suit of this nature which really concerned a private party on the one hand and the Municipality on the other.

APPEAL from order passed by Dr. F. X. DeSouza, District Judge of Ahmedabad, reversing the decree made by B. H. Desai, Subordinate Judge at Nadiad.

This action was instituted by the plaintiff against the Nadiad Municipality. The facts material for the

\* Appeal from Order No. 20 of 1921.