APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.
July 14.

THE SHOLAPUR MUNICIPALITY (ORIGINAL DEFENDANT), APPELLANT *v.* SHANKAR SHESHBHAT AMBALJI (ORIGINAL PLAINTIFF), RESPONDENT*

Bombay District Municipal Act (Bom. Act III of 1901), section 59—Bye-laws† made by Sholapur Municipality for levying house tax—Double house tax—Levy of rate on owners of houses—Levy of separate rate on owner of land underneath—Legality thereof.

The plaintiff was the owner of two survey numbers for which he paid assessment to Government. He divided the land into small plots and let the plots to 350 tenants. Each of the tenants built his own house on the plot demised to him and paid ground rent to the plaintiff not exceeding Rs. 3-8-0 a year. The Municipality of Sholapur, within whose limits the lands were situate, made rules for the levy of a general rate on the buildings or lands.

* Second Appeal No. 688 of 1920.

† The bye-laws run as follows :—

Rules of the levy of a general rate on buildings and lands.

1. A general rate of buildings and lands on the scale defined below shall be recoverable in respect of all buildings and lands which are not the property of the Government :—

(*a*) In the case of every building or any plot of lands yielding or capable of yielding a yearly rent of more than Rs. 10 but not more than Rs. 15... 0-12-0 per annum.

(*b*) In the case of every building or any plot of lands yielding or capable of yielding a yearly rent of more than Rs. 15 but not more than Rs. 20... Re. 1 per annum.

(*c*) In the case of building or any plot of lands yielding or capable of yielding a yearly rent of more than Rs. 20 for every Rs. 10 or portion of Rs. 10...0-8-0 per annum.

(*d*) In the case of mills, factories and buildings connected therewith the rate on buildings shall be levied at the rate of 0-4-0 annas per hundred square feet or portion thereof for each storey, floor or cellar.

2. Buildings or lands yielding or capable of yielding a yearly rent not exceeding Rs. 10 shall be exempted from the payment of the rate on buildings and lands.

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Those yielding a yearly rent not exceeding Rs. 10 were exempt from payment of the rate ; but a graduated scale of rates was provided in the case of buildings or lands yielding rent of more than Rs. 10 a year. House tax was levied by the Municipality from each one of the tenants. The ground rent paid to the plaintiff amounted in the aggregate to Rs. 800 a year and on this also the Municipality levied a rate of Rs. 40. The plaintiff having sued for a refund and for an injunction restraining the Municipality from levying double house tax on his land,

Held, that as it had not been made clear that the Municipality was levying from the owners of the various buildings on the plaintiff's land a rate calculated on that part of the hypothetical rental which represented merely the return on the cost of the building, it might in the circumstances safely be presumed that the Municipality had assessed the buildings at their full letting value, including therein the value of the land.

(2) That though the Municipality could levy a rate either on the building or on the land on which the building stood, or could levy one rate for both building and land, it could not levy a rate which would include the rate on building and land and a second rate on the land itself.

SECOND Appeal against the decision of D. D. Cooper, Assistant Judge of Sholapur, reversing the decree passed by T. N. Desai, Subordinate Judge at Sholapur.

Suit for injunction and refund of money.

The plaintiff owned two Survey Nos. 209 and 210 which were situate within the limits of Sholapur Municipality. The land was divided into a number of small plots which were let out for building purposes to tenants numbering 350. Each of the tenants built a house on the plot demised to him ; and paid ground rent to the plaintiff at a rate not exceeding Rs. 3-8-0 a year. Each of them was assessed by the Municipality to house tax, the total amount so realized by the Municipality being Rs. 250. The total ground rent realised by the plaintiff was Rs. 800. The Municipality levied a rate of Rs. 40 from the plaintiff for the land, based on the total rental of Rs. 800 under the bye-laws framed under the District Municipal Act, 1901.

The present suit was filed to get a refund of Rs. 52 levied from the plaintiff and to restrain the defendant Municipality from levying double house tax on plaintiff's land.

The Subordinate Judge held that the levy of the rate, under section 63 of the Bombay District Municipal Act was not illegal because it was in addition to the rate levied on buildings from plaintiff's tenants and that the levy of the rate on the aggregate land rent was not illegal.

The Assistant Judge, on appeal, reversed the decree and decreed the suit, for the following reasons:—

"The only question for consideration is whether the basis of taxation adopted by the defendant Municipality is sustainable. My opinion is in the negative. Each of the 350 huts constructed by the plaintiff's tenants together with the land whereon it stands, is a 'Building' standing with reference to the rest of the huts. I may go further and say that there are more unmistakeable indications of severance in this case than are found in *Rango's case* (P. J. 1881, 41) and it is illegal of the defendant to proceed under cover of a rule sanctioning a tax on a building or land to lump together the rental of distinct parcels of land, each of which parcel is severed from the rest by the superstructure standing thereon. It further appears from the plaintiff's deposition, Exhibit 12, that though the two numbers are in the vicinity of each other, there are agricultural lands lying between the two. Lastly it is an admitted fact that for house tax purposes each of the huts is given a separate house number and is taxed by the defendant on that basis. Section 59 (i) of the Act empowers the Municipality to impose a rate on building or lands or both.

Section 68 deals with the method of collection of the rate and it reiterates that it may be imposed on buildings or lands or on both. In this case each of the plaintiff's three hundred and fifty tenants has an interest in the super structure only as against the plaintiff who has an interest in the land, whereon it stands. There being two interests vested in two bodies, each of them, so far as the provisions of the Act go, comes within the range of taxation. Neither is there anything in the rules (Exhibit 33) to derogate from this."

The Municipality appealed to the High Court.

Coyajee with *N. V. Gokhale*, for the appellant.

G. P. Murdeshwar, for the respondent.

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MACLEOD, C. J.:—The plaintiff sued to get a refund of Rs. 52 from the defendant Municipality, and for an injunction restraining the defendant from levying double house-tax for the plaintiff's land bearing Survey Nos. 209 and 210. The suit was dismissed by the trial Court, but on appeal a decree was passed that the defendant should refund to the plaintiff Rs. 51, and the plaintiff was granted the injunction prayed for.

The facts, which are not disputed, are that the plaintiff is the owner of two Survey Numbers for which he pays assessment to Government. He has let out the lands in those Survey Numbers to 350 tenants who have built their own houses on them, each paying a ground rent to the plaintiff which is less than Rs. 10 a year. The Municipality has assessed the plaintiff for these Survey Numbers on the aggregate rental which he received per annum from all his tenants.

Two questions arise, first, whether the levying of the rate on plaintiff's land was illegal; secondly, whether the rate could be levied on the aggregate rental received from all the tenants, or whether the plaintiff was not entitled to a separate assessment for each plot let out, in which case the rate could not be levied, as each plot was not capable of yielding a rent of Rs. 10 a year. Undoubtedly under the bye-laws passed by the Municipality under section 59 of the Bombay District Municipal Act III of 1901, the Municipality may impose a rate on buildings, or lands, or both, situated within the municipal district, and under the Bye-laws, which have not been assailed, a general rate on buildings and lands on the scale defined therein was recoverable in respect of all buildings and lands which were not the property of Government. In the case of every building or any plot of land yielding or capable of yielding a yearly rent of more than Rs. 10, but not

more than Rs. 15, the rate is 12 annas per annum. Further rates are given for buildings or lands yielding higher rents, but it is provided that buildings or lands yielding or capable of yielding a yearly rent not exceeding Rs. 10 should be exempted from the payment of the rate on buildings and lands.

Unfortunately an important question which should have been found for the purpose of this case has altogether escaped the notice of the Courts and the parties, namely, how have the tenements of the various owners to whom the plaintiff has let out building plots been assessed? If they have been assessed at the full letting value of the tenements, then that would include the value of the land, and obviously in levying a rate on the full letting value, the Municipality would be levying a rate not only on the buildings but also on the land; but it may safely be presumed that the Municipality have assessed these houses at their full letting value, because that is the only way in which buildings are assessed, and moreover it provides the easiest way for collecting the rate. If an owner of a house has to pay ground rent, he pays that ground rent out of the rent which he receives from his tenants. That rent, therefore, is made up of the ground rent and the return on the capital expended by the owner of the house. Therefore unless it has been made clear that the Municipality were levying from the owners of these various buildings on the plaintiff's land a rate calculated on that part of the hypothetical rental which represented merely the return on the cost of building, it would be most probable that the Municipality were already taxing these particular properties at their full amount.

If it were necessary, we would send down the case in order to obtain a finding on this particular question of fact. But on the other question, we think the lower

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appellate Court came to a right decision. The Municipality can levy a rate either on the building or on the land on which the building stands, or it can levy one rate for both building and land. But it cannot levy a rate which would include the rate on building and land and a second rate on the land itself. It cannot include in the land on which the building stands other land surrounding that building plot which may belong to the same owner. We think it is clear from the bye-law that if an existing building is to be taxed separately from the land, then the Municipality can only levy rate on the plot on which the building stands. It is a different matter if the plot of land is vacant, and the rate is levied on it because it is capable of yielding a rental of more than Rs. 10. Then, if after the land has been rated, a portion of it is let out for building purposes, that portion would be deducted from the whole, and the rate on the land would suffer a proportionate reduction, while the plot of land on which the building was erected, with the building, would be rated at the annual letting value of the building and the land. If in this case before the plaintiff had let out his land to these 350 tenants, the Municipality had levied a rate, then no doubt they might continue to levy a rate on the land, and as the plots were let out and the buildings were erected they could levy either the rate on the land according to the number of plots let out, or they might continue the rate on the land and rate the buildings, taking care to see that they did not include in that rate the rate of the land. But as things are, in this particular case, no rates having been levied on these Survey Numbers before they were let out, it seems to us that the Municipality have been levying a rate on the building and the land in one, and having done that, they cannot levy a separate rate on the land. If they did, they would have to do so on each plot

underneath each building and not on the whole Survey Numbers. It seems to us, therefore, on these grounds, the appeal should be dismissed with costs.

Decree confirmed.

J. G. R.

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Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

NAGINDAS KAPURCHAND (ORIGINAL PLAINTIFF), APPLICANT *v.* MAGANLAL PUNACHAND (ORIGINAL DEFENDANT), OPPONENT*.

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Indian Limitation Act (IX of 1908), section 14—Exclusion of time—Suit brought in a Court without jurisdiction—Order of return of plaint for presentation to the proper Court—Actual return of plaint some days later—Time from the date of the order to the date of return should be excluded.

The plaintiff filed a suit in a Court without jurisdiction. The Court, on the 24th June 1920, ordered the plaint to be returned for presentation to the proper Court; but the plaint was not actually returned till the 29th June 1920. The plaint was presented to the proper Court the same day; but the Court declined to deduct the five days from the 24th to 29th June 1920 from the period of limitation, and held a greater part of the claim to be time-barred. The plaintiff having applied to the High Court:—

Held, that the lower Court was wrong in disallowing the five days which elapsed between the 24th and 29th June.

THIS was an application under the Extraordinary Jurisdiction of the High Court, from a decree passed by P. M. Bhatt, First Class Subordinate Judge at Broach.

The plaintiff filed a suit in the Small Cause Court at Surat to recover Rs. 214-11-6 from the defendant.

The Surat Court was of opinion that it had no jurisdiction to try the suit; and ordered, on the 24th June 1920, the plaint to be presented to the proper Court, viz., Small Cause Court at Broach. The plaint was not returned that day, but was detained in Court for the purpose of being copied, and was not actually

* Civil Extraordinary Application No. 67 of 1921.