

APPELLATE CIVIL.

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

SABHAPAT SINGH (PLAINTIFF) *v.* ABDUL GAFFUR AND OTHERS (DEFENDANTS).^a 1896
Aug. 12.

Jurisdiction of Civil Court—Civil Procedure Code (1882), section 11—Bengal Municipal Act (Bengal Act III of 1884)—Election of Municipal Commissioners—Right to vote and stand as candidate at an election—Suit for declaratory decree.

At an election of Municipal Commissioners held under the Bengal Municipal Act (Bengal Act III of 1884), *S*, one of the candidates, was declared to have been elected: a poll was demanded and *S* was again declared by the presiding officer to have been duly elected. An objection was then taken by the defeated candidates before the Magistrate of the district on the ground that some of the voters gave more votes than there were vacancies, and also on the ground that *S* was not qualified to be registered as a voter and to stand as a candidate for election. The Magistrate set aside the election on both grounds; and *S* brought a suit in the Civil Court for a declaration of his right to vote and stand as a candidate and for a declaration that he was duly elected.

Held, that the suit was one of a civil nature, and under section 11 of the Code of Civil Procedure (XIV of 1882) such a suit would lie in the Civil Court.

Held, also, that the Magistrate should not have been made a defendant in the suit, and that the plaintiff was not entitled to a declaration that the election of the plaintiff was good and valid; but that the decree of the first Court granting a declaration of plaintiff's right to vote and stand as candidate was correct.

THIS was a suit for adjudication and declaration of plaintiff's right to vote and stand as candidate at an election of Municipal Commissioners held in Chupra in December 1893, and for a declaration that he was duly elected at that election. The facts necessary for this report are fully given in the judgment of the High Court.

^a Appeal from *Abdul Gaffur and others v. Sabhapat Singh*, No. 723 of 1895 against the decree of G. W. Place, Esq., dated the 5th of February 1895, affirming the decree of Babu Jogendra Nath Chuekerbutty, Munsif of Chuprah, dated the 14th of September 1894.

1896

SABHAPAT
SINGH
v.
ABDUL
GAFFUR.

Both the lower Courts decided adversely to the plaintiff's claim, and the plaintiff appealed to the High Court.

Babu *Umakali Mukerjee* and Babu *Nalini Nath Sen* for the appellant.

The *Government Pleader* (Babu *Hem Chandra Banerjee*), Babu *Tarak Nath Palit*, and Babu *Kritanta Kumar Bose*, for the respondents.

Babu *Umakali Mukerjee*.—The lower Appellate Court was wrong in holding that the Civil Court had no jurisdiction. Section 15 of the Bengal Municipal Act, as amended by Bengal Act IV of 1894, saves the jurisdiction of the Civil Court. [TREVELLYAN, J.—Does a suit lie for a public office like this?] Section 42 of the Specific Relief Act is wide enough for declarations like these, and section 11 of the Civil Procedure Code gives a right of suit in all cases of a civil nature. There is a suit allowed on the Original Side of this Court under section 45 of the Specific Relief Act, and it is not probable that a different law was intended for the *mofussil*. [TREVELLYAN, J.—That seems to be the old jurisdiction of the Supreme Court to issue a writ of *mandamus*.] At all events, there is nothing to prevent a suit under section 11 of the Procedure Code, and section 15 of the Municipal Act is in favour of my contention. Then as to the merits of the case, the question of the legality of the election could have been decided by the presiding officer only and in a summary way then and there—see Rules 32 and 34, passed under the Bengal Municipal Act. All proceedings taken by the Magistrate after the order of the presiding officer are *ultra vires*. Even if the polling was bad in law, there having been no objection on that ground before the presiding officer, the declaration duly made by him was final in this case. As to the plaintiff's qualification, his name was registered as a voter and was included in the list of candidates, Rules, 13 and 20. The objection raised was founded upon a want of qualification as a voter, but the register was a final record of voters, and no such objection could be raised at the election.

Babu *Hem Chandra Banerjee* for the respondent, the Magistrate of Sarun.—The question of qualification refers to the particular election held on the 14th December 1893; the Court cannot declare the plaintiffs to be qualified for future elections for which there

would be new lists. [BEVERLEY, J., referred to Rule 8.] The District Magistrate, Mr. Manisty, has been sued by name. He is not the Magistrate now, but supposing the suit to be directed against the Magistrate in his official capacity it ought to have been brought against the Secretary of State, and there should have been a notice as required by the law. Then the present suit itself is not one which can be dealt with by the Civil Court; no damages are claimed by plaintiff, but simply a question of election to an honorary public office is raised. Reading the sections of the Act and the Rules passed in 1889, it does not appear that election matters were intended to be brought before the Civil Court. The present suit is nothing better than an application for a temporary injunction under section 493 of the Civil Procedure Code; but no injury has been done; the order of the Magistrate as to the illegality of the election was a good order, and even if the suit lay for a declaration, this Court would in the exercise of its discretion decline to make any declaration in this case.

Babu *Tarak Nath Palit* for the respondents 2 and 3 followed the Government Pleader.

The judgment of the High Court (TREVELYAN and BEVERLEY, JJ.) was delivered by

TREVELYAN, J.—This appeal raises a question of importance. The object of the suit was to obtain a declaration that the plaintiff was qualified to vote and to stand as a candidate at the election of Municipal Commissioners which was held in Chupra in December 1893. The plaintiff also asked for a declaration that at that election he had been duly elected.

The Munsif before whom the case first came gave the plaintiff a declaration as to his qualification, but held that the election at which the plaintiff contended that he was elected had not been validly held. The District Judge before whom the case came on appeal and cross-appeal has dismissed the whole suit. The plaintiff has now appealed to this Court, and the questions which have been argued before us are, *firstly*, whether a suit of this kind will lie at all in the Civil Court; and, *secondly*, whether, assuming that the Civil Court has jurisdiction to deal with questions as to the qualifications of voters and candidates and the validity of

1896

SABHAPAT
SINGH
v.
ABDUL
GAFFUR.

1896
 SABHAPAT
 SINGH
 v.
 ABDUL
 GAFFUR.

elections, this is a case in which the Court can, and ought to, give a declaration of the kind asked for here.

The facts necessary for the purposes of our decision are not many. The plaintiff, when he became a candidate for this election, was on the Register of persons qualified to vote, and, therefore, it would follow under the law (Bengal Act III of 1884, section 15) that he was a person qualified for election to be a Commissioner. There were three vacancies. At the election the presiding officer, on a show of hands, declared three persons, Bunsidhur Gupta, Suraj Prashad, and Sabhapat Singh, the present plaintiff, to be elected. A poll was claimed against two of these three candidates, namely, Suraj Prashad and Sabhapat Singh. No poll being claimed against Bunsidhur Gupta, he was declared duly elected. The election then proceeded for the purpose of filling up the remaining two vacancies. There can be no doubt that under rule 24 of the Rules of the 14th August 1889, which were made in pursuance of the Municipal Act and which have the force of law, each voter is entitled to vote for as many candidates as there are vacancies. The same Rule provides that he may give all or any number of the votes to which he is entitled to any one candidate, and that being so, and there being after Bunsidhur Gupta had been declared duly elected only two vacancies, it follows that each voter had two votes. As a matter of fact some, if not all, of the voters gave three votes. This mistake arose from the circumstance of there originally having been three vacancies. At this election the two vacancies were declared to have been filled up by the plaintiff and Suraj Prashad. That was on the 14th December. On the same day the defeated candidates put in a petition to the Magistrate, first of all complaining of the error of each voter being allowed to give three votes when they were only entitled to two. They also made a complaint with regard to the votes for Suraj Prashad, a matter which is not before us now, and they added an objection to the present plaintiff's right to be a candidate, that is his right to be on the Register. These objections were considered by the Magistrate, who held that the objection to the qualification of the plaintiff was a valid one, and that the election was irregular. He set aside the election and directed a fresh election to be held. The plaintiff then brought this suit making

as party defendants thereto the three defeated candidates at the election at which he had been elected, and the Magistrate of the district, Mr. Manisty, the then Magistrate, being described by name as a defendant. The Munsif restrained the fresh election by a temporary injunction. That injunction only operated up to the time when the Munsif gave his decision. The Munsif having in his decision held that the election was a bad one, a new election, we are told, has been held. These are the facts.

1896

SABHAPAT
SINGH
v.
ABDUL
GAFFUR.

The first question is, does a suit lie at all for a purpose of this kind. This question must be determined with reference to section 11 of the Civil Procedure Code, which enacts that "the Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force." The learned Government Pleader who appears in this case, as we understand, for the Magistrate and the learned Vakil Babu Tarak Nath Palit, who appeared for two of the defeated candidates, were unable to draw our attention to any enactment barring the cognizance of a suit of this kind by a Civil Court. There is no doubt that the suit is one of a civil nature. It is for the purpose of maintaining a civil right of a most important description, and in reality when we come to examine it there can be no reason whatever why a civil court should not determine a question of the kind. This Court in its Original Jurisdiction has power given to it by the Specific Relief Act (section 45) to determine a right like this and many other questions connected with the exercise of a similar franchise in this city. It would, as pointed out to us, be somewhat extraordinary to suppose that whereas rights of voters and candidates in this city can be amply safe-guarded and questions with regard to them determined in Calcutta, there can be no way of upholding and maintaining rights in the districts. The contention of the defendants would make the election officers the sole tribunal for the determination of a question of this kind. For this we know of no authority. Before we can say that the jurisdiction of the Civil Courts is excluded, it is necessary for us to find that there is an enactment barring their jurisdiction. There is nothing in the Municipal Act or any other enactment which would bar such jurisdiction, and

1896
 SABHAPAT
 SINGH
 v.
 ABDUL
 GAFFUR.

we can well understand that the Legislature did not desire to exclude all remedy for what might be a serious wrong. Moreover, on the question as to whether the Legislature intended to exclude the jurisdiction of Civil Courts, we have the language of a subsequent enactment on the same subject by the same Council. It is true that *that* enactment was passed after this particular election was held, but there are occasions where expressions used by the Legislature in subsequent enactments can be used for the purpose of interpreting earlier enactments. In 1894 an Act was passed amending the Act under which this election was held, and by that amending Act the following proviso was inserted in section 15, which deals with the matters now in question, namely, the mode of electing Municipal Commissioners: "Provided that nothing contained in this section, nor in any rules made under the authority of this Act, shall be deemed to affect the jurisdiction of the Civil Courts." That obviously shows that it was in the mind of the Legislature which passed this amending Act, that the Civil Courts had some jurisdiction (whatever it may be) with regard to elections under section 15, that is, the section relating to the election of Municipal Commissioners. This reference can only relate to suits. The provisions of section 45 of the Specific Relief Act do not apply to elections under the Act now in question, so the only way Civil Courts can exercise jurisdiction with regard to Municipal elections outside Calcutta is by way of suit. We invited the learned Government Pleader to suggest to us any suit except a suit of the class now in question over which the Civil Courts, according to his contention, might have jurisdiction in determining any question under section 15. He was unable to suggest any possible suit other than a suit of the kind we are now discussing. To carry his argument further the learned Government Pleader invited our attention to a letter from the Officiating Secretary to the Government of Bengal to all the Commissioners of Divisions. There can be no doubt that a letter of that kind could not be used for the construction of an Act. As a matter of fact there is nothing in it in the smallest degree favouring the view of the defence, and it only shows, as is shown by the amending Act, that it was contemplated that the Civil Courts had some jurisdiction, at any rate, in matters of this kind.

Lastly, we would refer to the terms of section 42 of the Specific Relief Act, which, if anything, furnishes an argument in favour of the suit. That section says: "Any persons entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled." The words "legal character" are wide enough to include the right of franchise and also a right of being elected as a Municipal Commissioner. The defendants are persons who, both before and after the institution of this suit, denied the title of the plaintiff to such character. Therefore, we think that section 42 of the Specific Relief Act tends to show that a suit like the present can be brought under that section.

Holding, as we do, therefore, that a suit lies, the next question which arises is, against whom does it lie? The suit has been brought against the defeated candidates, at whose instance the Magistrate set aside the election, that is to say, at whose instance the Magistrate interfered with the right which is claimed in this suit. Section 42 of the Specific Relief Act allows a suit against any person denying or interested to deny the right of the plaintiff to any legal character. So far as the persons who filed the petition to the Magistrate are concerned the suit must lie against them, if it lies at all. They denied the right of the plaintiff and put in force machinery which excluded his exercise of that right. Of all persons they must be the proper persons to be sued for the purpose of determining questions as to the right, which they have denied. It is said by Babu Hem Chandra Banerjee that the suit is not properly instituted against the Magistrate, and that it ought to have been instituted against the Secretary of State. The learned Judge also seems to have been of that opinion. It does not appear that at the time when the law requires objections of that kind to be taken, any objection was made to the omission of the Secretary of State from the category of defendants, so an objection as to his being omitted cannot now be entertained, and, indeed, we are not prepared to say that the Secretary of State was a necessary party. The question remains as to whether the Magistrate ought to have

1896

 SABHAPAT
 SINGH
 2.
 ABDUL
 GAFFUR.

1896
 SABHAPAT
 SINGH
 v.
 ABDUL
 GAFFUR,

been made a defendant. Some question was raised in the lower Courts as to whether the Magistrate ought to be made a party by name; and the learned Judge has held that it was incorrect of the plaintiff to sue the Magistrate by name. This is not a suit, as we understand, brought against Mr. Manisty personally, and although it may be an error, it is merely surplusage to put in the name of the gentleman who happens to be holding the office of Magistrate. No one has in any way been misled by the mistake of adding Mr. Manisty's name on the record. We find that the gentleman who succeeded him in office puts in a written statement which he described as being filed on behalf of the Magistrate of Sarun. He at that time, in May 1894, accepted the position that the Magistrate was being sued and not Mr. Manisty personally; and as far as we can make out it was the Magistrate of the district who has conducted this defence. Therefore, we think, that the case must be treated as if the Magistrate was sued.

It is exceedingly doubtful whether there is any right at all against the District Magistrate as such. What he did was done in pursuance, or at any rate purported to be done in pursuance, of authority given to him by law. There is a question whether he had any authority to do what he did, and whether the presiding officer was not the only person who could have acted in the matter; but even if that be so, the Magistrate acted *bonâ fide* in pursuance of what he believed to be the duties of his office, and therefore he would not be liable to an action in respect of it. He would certainly not be liable to any action for damages, and as far as a declaration against him is concerned, this is not a matter in which he really had any interest. It is true that in a written statement he raises a defence, but the Vakil for the appellant does not insist upon a decree against him. We think it very doubtful whether such a decree could be given, and certainly as a matter of policy it would not be right for us to do anything which would compel Magistrates of districts to be brought in in suits of this kind when the contest is really one between the parties who have opposed one another at an election. So far therefore as this appeal is against the Magistrate, we think it must be dismissed.

To proceed with the case as regards the other defendants, we have held that the suit lies and lies against them. So far as the

suit is for a declaration that the election of the plaintiff was a good election we agree with both the lower Courts that the plaintiff is not entitled to that declaration.

1896

SABHAPAT
SINGH
vs.
ABDUL
GAFFUR.

There is no doubt that the election was invalidated by the defect to which we have referred, namely, that the voters were allowed three votes although there were only two vacancies at the time. Even if we accede to the contention of the appellant that this question of the validity of the election could only have been determined there and then by the presiding officer under the terms of Rule 34 of the Rules to which we have referred, and although he may be correct in his contention that the subsequent proceedings before the Magistrate were *ultra vires*, yet we think we ought not to give a declaration that the election was a good one unless we are satisfied that it was free from reproach in every respect. There can be no doubt that the voters wrongly were allowed more votes than they were entitled to, and that was a defect which in our opinion ought to have vitiated the election at the time, and would have justified the presiding officer in setting it aside. We ought not to do anything to validate an election which is open to this very grave objection.

To deal with the further questions, the plaintiff claimed to be entitled to vote at this election as being on the Register. The defendants' objection was that the plaintiff did not come within the definition of a "resident" to be found in Rule 1, paragraph (d) of the Rules of the 14th August 1889 to which we have referred. It is unnecessary for us to discuss the application of that Rule to this case, as in the first place this question has been determined in favour of the plaintiff, and, in the second place, it was not an objection which could be raised at that stage. Rule 13 provides: "The register as amended by the Magistrate after the hearing and decision of claims and objections shall be considered as the final register of persons entitled to vote at the election, and no person whose name does not appear in the register shall be permitted to vote." The plaintiff's name was on the register.

Then as regards his right to be a candidate for election, we come to Rule 20, which says: "The final list of candidates shall be published in each Ward and at the Municipal Office, or if there is no Municipal Office, at such place as the Magistrate may appoint, at least

1896

SABHAPAT
SINGH
v.
ABDUL
GAFFUR.

one week before the date fixed for the commencement of the elections. No candidate whose name is not contained in such list shall be eligible for election." The plaintiff's name was included in that list.

Then with regard to the manner of holding elections we find it laid down how objections are to be made and what objections can be made. Rule 32 says: "When a poll is demanded the names of the voters and the votes given by them shall then and there be recorded by the presiding officer, or by the members of the election committee under his personal supervision. All objections to voters, shall, if possible, be summarily decided by the presiding officer after reference to the register. No objections shall be entertained other than objections arising out of matters subsequent to registration under Rule 10." So far therefore as voters are concerned the presiding officer cannot deal with matters antecedent to the registration. Then Rule 34 says: "The presiding officer shall then and there declare such candidates as have a clear majority of votes to be duly elected." (That is what he did as a matter of fact in this case.) "Provided that if the majority for any candidate consists only of votes to which objections have been raised, and if the presiding officer has been unable to decide such objections summarily as provided by Rule 32, he shall adjourn the proceedings and report the matters to the Magistrate." But this Rule must be read with Rule 32, which states clearly that no objections can be entertained at an election other than objections arising out of matters subsequent to registration. It is true that the objection raised was not an objection to the plaintiff *quâ* voter but *quâ* candidate. But that objection was based upon his right to vote, and so it follows, we think, that the objection could not be taken at the time of the election. The effect of the objection put forward by the defendants was to dispute the right of the plaintiff not only to be a candidate but also to be a voter in the Municipality. This, in our opinion, is a matter reaching far beyond the election of December 1893. It is a matter which affects not only the plaintiff's right to vote as long as that register of voters remains unaltered, but which may seriously affect his right to vote and to be a candidate on future occasions. From every point of view we think it is a right in respect of which he is entitled to demand an adjudication by a Civil Court.

The learned District Judge, although he agrees with the Munsif in holding that the plaintiff was at the time of the election duly qualified both as voter and candidate, gives no reason for refusing to the plaintiff the relief to which he was entitled on the basis of that finding, and for setting aside the decree of the Munsif. In our opinion the decree of the Munsif is correct and must be restored so far as the defendants other than the Magistrate are concerned. We have already said that the appeal as regards the Magistrate must be dismissed. But we think that in this litigation, particularly for the reason that the plaintiff has failed to obtain a declaration that he was duly elected to be a Municipal Commissioner, which was the main object of this suit, the right order to make is that each party do bear his own costs.

The result is that the decree of the lower Appellate Court is set aside and that of the first Court restored so far as concerns the defendants other than the Magistrate. As regards the Magistrate this appeal is dismissed, except that the decree of the lower Appellate Court is altered by setting aside that portion of it which orders the plaintiff to pay the Magistrate's costs, the costs throughout being borne by the parties respectively.

S. C. C.

Appeal allowed.

ORIGINAL CIVIL.

*Before Mr. Justice Ameer Ali.*DHORONEY DHUR GHOSE *v.* RADHA GOBIND KUR.*

Practice—Inspection of Property—Civil Procedure Code (Act XIV of 1882), section 499—Judicature Acts, Order 50, Rule 3—Form of order for inspection.

1896

AUG. 11 & 19.

The plaintiff brought an action against the defendant for damages alleged to have been caused to his house by the erection by the defendant of an adjoining house. On an application by the defendant for an order allowing him or his agents 'to enter into the house of the plaintiff for the purpose of inspecting, examining and surveying the alleged injuries and for the purpose of examining the materials employed therein and the formations thereof and to dig excavations for the purpose of exposing the foundations,' it was objected by the plaintiff that the Court had no jurisdiction to make the order, as the

* Application in Original Civil Suit No. 475 of 1895.

1896

 SABHAPAT
 SINGH
v.
 ABDUL
 GAFFUR.