

The decree must be set aside and the case remanded for trial on the issues 4, 5 and 6 raised by the Subordinate Judge. And by the agreement of the parties further evidence may be recorded, if forthcoming, on the question as to when the plaintiff attained majority.

Decree reversed. Case remanded.

R. R.

1906.
MINALAL
SHADIRAM
v.
KHARSETJI.
KHARSETJI
v.
MINALAL
SHADIRAM.

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.

THE SURAT CITY MUNICIPALITY (ORIGINAL DEFENDANT 1), APPELLANT, v. CHUNILAL MANEKLAL GHANDI (ORIGINAL PLAINTIFF), RESPONDENT.*

1906.
January 25.

District Municipal Act (Bom. Act III of 1901)—District Municipal Election Rules, Rule 13⁽¹⁾—Plaintiff candidate for election as Councillor—Plaintiff's name not published in the list of candidates—Receiving Officer—Suit against Municipality—Declaration—Injunction.

The plaintiff offered himself as a candidate to be elected a Councillor in the Municipal elections, but his name was not included in the list of candidates

* Appeal No. 20 of 1905 against an order of remand.

(1) District Municipal Election Rules, Rule 13 (see Jamietram and Chimanlal's Bombay Acts and Regulations, Volume II, page 595).

13. (1) Every person who desires or is willing to become a candidate for a Municipal Commissionership must be nominated in writing for this purpose by two persons entitled to vote at the election for such Municipal Commissionership, and the nomination paper must bear an endorsement signed by the nominee signifying his willingness to serve, if he should be elected, and be delivered to the officer appointed by the Collector for this purpose, at least seven days before the date fixed for the election.

(2) The said officer shall, if any nomination paper is prepared and delivered to him in accordance with sub-section (1), and if the nominators establish to his satisfaction that they are entitled to vote at the election and that the nominee is qualified as a candidate, include the nominee's name in a list of candidates which shall be prepared under his signature and posted up at the Municipal Office, or, in the case of a new Municipality, at the Village Chavdi or such other place as the Collector appoints for this purpose, and at the place at which the election is to be held and in other conspicuous places, at least five days before the date fixed for the election.

(3) When, in a Municipal District, which has been sub-divided for electoral purposes into wards, elections are to be held at or about the same time in two or more wards, one and the same person may be nominated for election in all or in any number of the said wards.

1906.

THE
SURAT CITY
MUNICIPALITY
v.
CHUNILAL.

published by the Receiving Officer appointed by the Collector under Rule 13 of the District Municipal Election Rules. The plaintiff thereupon brought a suit against the Municipality for a declaration that he was entitled to be elected a Councillor at the elections and for an injunction restraining the Municipality from holding the elections without accepting him as a candidate and without receiving the votes of his voters.

The first Court rejected the plaint on the ground that it disclosed no cause of action. On appeal by the plaintiff the Judge reversed the order and remanded the proceedings for decision of the suit according to law.

On appeal by the Municipality,

Held, reversing the order of remand, that the suit for a declaration against the Municipality could not lie because the Municipality neither denied nor was interested to deny the character or right which the plaintiff sought to establish. It was the officer mentioned in Rule 13 of the District Municipal Election Rules that was concerned with that question and over him the Municipality had no control.

The claim for an injunction could not be sustained against the Municipality when it had done no wrong and had proposed to proceed in accordance with the District Municipal Act (Bom. Act III of 1901) and the Rules so far as they relate to it.

APPEAL against the order of remand passed by H. L. Hervey, District Judge of Surat, reversing the order of J. E. Modi, First Class Subordinate Judge, rejecting a plaint.

At the time of the election of Councillors for the Surat City Municipality, the plaintiff offered himself as one of the candidates, but his name as such candidate was not included in the list of candidates published by the Receiving Officer appointed by the Collector under Rule 13 of the District Municipal Election Rules. The plaintiff thereupon brought a suit against the Municipality for (a) a declaration that he was entitled to stand as a candidate and to be elected a Councillor and (b) an injunction restraining the Municipality from holding the elections without accepting the plaintiff as a candidate and without receiving the votes of his voters.

The Subordinate Judge rejected the plaint, holding that it disclosed no cause of action against the defendant Municipality.

On appeal by the plaintiff the Judge, relying on *Sabhapat Singh v. Abdul Gaffur* ⁽¹⁾ and *Rogers v. Rajendro Dutt* ⁽²⁾, reversed the

(1) (1896) 24 Cal. 107.

(2) (1860) 8 Moo. I, A. 103.

order and remanded the proceedings in order that the plaintiff might be admitted and the suit proceeded with according to law.

Against the said order of remand the defendant appealed.

H. C. Coyaji for the appellant (defendant):—The Judge in appeal has taken a wrong view of the law. The Subordinate Judge was right in holding that the plaintiff did not disclose any cause of action against the Municipality. Up to the time of the presentation of the plaintiff the Municipality had not done any act for which a suit could lie at the instance of the plaintiff. Whatever was done was done by the officer appointed by the Collector to receive the nomination papers under Rule 12 of the Surat Municipal Election Rules. According to Rule 13, if the nominators satisfy the Receiving Officer that they are entitled to vote, and that the proposed candidate is qualified, the officer shall include the name of the candidate in the list of candidates to be published. If the officer commits an error and omits to include in the list the name of a candidate, a suit may lie against him but not against the Municipality, because the Municipality has no discretion or power in the matter. The Municipality cannot accept any candidate whose name is not included in the list published by the Receiving Officer. It has merely to arrange for conducting the election work.

The case of *Sabhapal Singh v. Abdul Gaffur*⁽¹⁾ referred to by the Judge is not in point. It was a suit brought by one candidate against rival candidates after the election was held and set aside. Further, the Bengal Amendment Act expressly reserves the jurisdiction of Civil Courts.

The present suit is premature. The plaintiff ought to have waited till the election took place and then he might have questioned the validity of the election by applying to the District Judge under section 22 clause (1) of the District Municipal Act. There being a special remedy provided for by the Act, the present suit for a declaration and an injunction against Municipality cannot lie. *Rogers v. Rajendro Dutt*⁽²⁾ is also not in point.

L. A. Shah (with *M. K. Mehta* and *N. M. Samarth*) for the respondent (plaintiff):—The plaintiff does disclose a cause of

(1) (1896) 24 Cal. 107.

(2) (1860) 8 Moo. I. A. 103.

1906.

THE
SURT CITY
MUNICIPALITY
v.
CHUNILAL.

1306.

THE
SURAT CITY
MUNICIPALITY
v.
MUNICIPAL.

action and the order of the Judge is correct. Under section 12 of the District Municipal Act the plaintiff is qualified to stand as a candidate at the bye-election to be held under section 18 to fill up the vacancy caused by the plaintiff's being disabled under paragraph 2 of section 15 of the Act. Disability is quite a different thing from disqualification. The Receiving Officer appointed by the Collector under Rule 12 of the Surat Municipal Election Rules ought to have included the plaintiff's name in the list of candidates. On the 13th August 1904 the Receiving Officer returned the nomination papers to the plaintiff, who on the same day filed a suit against the officer for a declaration as to his qualification and for an injunction restraining him from publishing the list of candidates without including the plaintiff's name in it. The Subordinate Judge refused to grant the *interim* injunction. On the 18th August the Receiving Officer published the list of candidates without including the plaintiff's name in it. Hence the present suit against the Municipality was filed on the 19th August 1904.

The duty of holding the election is cast by the District Municipal Act upon the Municipality. It cannot escape liability by saying that it is not responsible for any error committed at an early stage by the officer appointed by the Collector to receive the nomination papers. We submit that the process of election from beginning to end should be treated as one whole transaction. After a certain stage the Municipality has to see that the election is carried through. Though it may not be responsible for what the officer might do, still the effect of the election being carried out will be the denial of a legal right to the plaintiff. The Municipality may not have directly denied the plaintiff's right, but by proceeding with the election it does an act the effect of which is to deny the plaintiff's right, and thus in effect denies and becomes interested in denying the plaintiff's right. To treat the different stages in the election as entirely disconnected would be to ignore the scheme of the Election Rules and to leave the plaintiff without a remedy for a wrong: *Rogers v. Rajendro Dutt*⁽¹⁾. The Judge has rightly held that no Court of equity

(1) (1860) 8 Moo. I. A. 103.

will view such result with equanimity. Under the English Statutes there is express provision as regards the remedy when the right of any person to stand as a candidate is denied, see 35 and 36 Vict., ch. 60, section 12; 38 and 39 Vict., ch. 40, section 3; 45 and 46 Vict., ch. 50, section 87 and Sch. III, Part II, cl. 14. The Bombay District Municipal Act makes no such provision, therefore, the ordinary remedy by a suit under section 11 of the Civil Procedure Code ought to be open to the plaintiff against all those who were concerned in carrying out the election.

Under section 42 of the Specific Relief Act such a suit would lie. The plaintiff is entitled to a legal character and he can institute a suit to establish his status: *Sabhapat Singh v. Abdul Gaffur*.⁽¹⁾ No doubt the Bengal Amendment Act of 1894 expressly reserves the jurisdiction of Civil Courts, but in the case referred to the election was held under the old Act before the Amendment Act was introduced, still it was held that the suit was maintainable in a Civil Court.

It was argued that a remedy is open to the plaintiff under section 22 of the Bombay District Municipal Act, therefore, the present suit cannot lie. We contend that the section does not afford any remedy. Under clause 5 of that section an election cannot be set aside for any error, irregularity or informality. So even if the plaintiff had applied to the District Judge under clause (1) of section 22 and had questioned the validity of the election on the ground that his name was wrongfully omitted from the list of candidates, still the plaintiff would not have got adequate relief because it is doubtful whether the Judge could, under clause (5) of the section, set aside the election on the ground that the Receiving Officer wrongly omitted the plaintiff's name from the list of candidates. Therefore the only way for the plaintiff to get relief was by a suit in a Civil Court. No doubt it is discretionary with the Court to give the declaration and injunction, but when there is no other remedy, a Court of equity will always give relief.

Under section 45 of the Specific Relief Act the High Courts have, within the limits of their original jurisdiction, power to

1900.

THE
SURAT CITY
MUNICIPALITY
v.
CHUNILAL.

(1) (1896) 24 Cal. 107.

1906.

THE
SUBRAJ CITY
MUNICIPALITY
v
CHUNILAL.

make an order requiring any specific act to be done or forborne by a corporation when there is no other specific and adequate legal remedy. Under section 42 of the Act the Mofussil Courts have the power to give relief similar to that provided by section 45.

Coyaji was not called upon to give a reply.

JENKINS, C. J.:—The suit admittedly is now to be treated as one only against the Municipality. It seeks a declaration and an injunction.

A declaration can only be sought in a suit against any person denying or interested to deny the title of the plaintiff to a particular character or right.

But the Municipality neither denies nor is interested to deny the character or right which the plaintiff seeks to establish. It is the officer mentioned in Rule 13 that is concerned with that question, and over him the Municipality has no control. Therefore the suit for a declaration fails.

The claim for an injunction too cannot be sustained. The Municipality has done no wrong and is threatening to do no wrong; it only proposes to proceed in accordance with the Act and the Rules so far as they relate to it. Therefore no ground is established for an injunction.

And as a declaration and an injunction are the only reliefs sought against the Municipality, and as the ground for each of those reliefs fails, it is clear that the Judge of the first Court rightly held that the plaintiff's suit disclosed no cause of action. We are therefore of opinion that the order of the District Judge should be set aside and the decree of the first Court restored with cost throughout.

Order set aside.

G. B. R.