

## APPELLATE CIVIL.

Before Mr. Chief Justice Scott and Mr. Justice Knight.

1908

June 10.

THE SURAT CITY MUNICIPALITY (ORIGINAL DEFENDANT), APPELLANT, v. TYABJI DAUDEHAL (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Surat City Municipality—Rules framed in the year 1905, Rules 1 (2), 4 (a), (f) (3), (5), 7<sup>(1)</sup>—Water-supply by the Municipality—Notice to cut off the water-supply—Waste—Domestic purposes—Legitimate household purposes—Use of water by bonâ fide occupiers of a house.*

The plaintiff, an owner and occupier of a house in Surat, brought a suit against the Surat City Municipality for an injunction restraining the Municipality from cutting off the water-supply which had been provided for him under certain rules in force in the year 1898.

\* Second Appeal No. 444 of 1907.

(1) Rules 1 (2), 4 (a), (f) (3), (5), 7 of the rules framed by the Surat City Municipality in the year 1905:—

- 1 (1) \* \* \* \* \*
- (2) In the serules, unless there is something repugnant in the subject or context,
- \* \* \* \* \*

*Domestic purposes* mean and include drinking, cooking, washing and other such legitimate household purposes of a family, but do not include house-building or ornamental or kitchen gardening where the area of the garden, exclusive of walks and footpaths, exceeds 200 square yards.

4. Applications for water-connections may be granted by the Municipality subject to the following conditions:—

(a) That the applicant shall not permit any other person except the *bonâ fide* occupier of the house to use the water; and that he shall not sell it.

(f) That the Municipality may at any time cut off the supply or the connection in any of the following events:

- (1) \* \* \* \* \*
- (2) \* \* \* \* \*

(3) If water is allowed to run to waste after the owner or occupier has been warned by a written notice issued by the Municipality not to allow it to be so wasted.

- (4) \* \* \* \* \*

(5) In case of breach of any of the conditions mentioned in this rule.

7. Water used for domestic purposes, except in the case of buildings inhabited by more than three families, shall be supplied by pipes not exceeding  $\frac{3}{4}$ ths of an inch in diameter at the following rates:—

(1) For a pipe one-half inch in diameter—one rupee per month.

(2) For a pipe three-fourths inch in diameter—two rupees per month.

The Municipality as defendants contended that under the rules which they had made in the year 1905, they were entitled to cut off the water-connection with the plaintiff's house because he allowed the water to run to waste, inasmuch as it was used by families of tenants who were not of the family of the plaintiff.

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*Held*, that under the rules framed by the Surat City Municipality in the year 1905, so long as the plaintiff occupied a house not inhabited by more than three families (rule 7), he was intitled to the water-supply which he had enjoyed.

*Held*, further, that the application of the words "run to waste" in rule 4, clause (f) (3) depended upon the construction of the definition of "domestic purposes" in rule 1 (2). The definition of "domestic purposes" meant nothing more or less than legitimate household purposes. The user for legitimate household purposes by more than one family in the house was not waste within the meaning of the definition.

SECOND appeal from the decision of Dayaram Gidumal, District Judge of Surat, confirming the decree of J. E. Mody, First Class Subordinate Judge.

The plaintiff, who owned and occupied a house at Surat, sued the defendant Municipality for an injunction, alleging that in the year 1898 the Municipality had constructed water works for the supply of water to the inhabitants of Surat, and had granted to the plaintiff's house a water-connection with the main pipe under certain conditions; that subsequently in the year 1905 the Municipality framed a new set of rules with the sanction of Government and under those rules required the plaintiff to make a separate water-connection for each of the families living in his house on pain of cutting off the water-connection in case of non-compliance with the notice and that on non-compliance with the requisition had threatened to cut off the connection. The plaintiff accordingly brought the present suit for an injunction to restrain the Municipality from so doing. He contended that the defendant was not entitled to compel him to make a separate connection for each of the two other families occupying his house and that the new rules gave the defendant no such power.

The Municipality contended that :—

(a) When the plaintiff first made his application for making a connection with the street main, he had agreed that he would

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conform himself to all rules which the Municipality might lawfully make from time to time.

(b) That connection was granted subject to those conditions.

(c) That under the new rules sanctioned by the Government, the plaintiff was bound to make a separate connection for each family living in his house, and that the sanction originally granted for the use of one family only could not be utilized for use by other additional families, and further that in case of breach of this rule the Municipality was entitled to cut off the connection. The water was not used for the purpose for which it was given and on this ground also the connection was liable to be cut off.

(d) The rules, if read together, clearly showed that each family was to have a separate connection. The decision of the Managing Committee in this respect had been approved of by the Municipality and that it was not open to the plaintiff to contest that decision.

(e) The demand made by the defendant was therefore quite justifiable and lawful and there was no reason to restrain their action.

(f) The suit for injunction would not lie.

(g) The Court should not interfere with the management of affairs by public bodies like the defendant Municipality.

The Subordinate Judge found that the rules which were passed in the year 1905 and which purported to be framed under section 46 of the District Municipal Act (Bom. Act III of 1901) were not legally binding on the plaintiff, that the rules did not make it compulsory in a house occupied by not more than three families that each one of the families living in the house should have a separate water connection direct from the defendant's street main, that the said rules did not empower the defendant to cut off the plaintiff's water-connection, (a) in case such separate connection were not taken for each of the families living in the plaintiff's house, or (b) in case the plaintiff allowed them to take water from the connection originally granted to him, that independently of the rules of 1905 the defendant had no power in any other way or under any other rules to cut off the plaintiff's

water-supply on the grounds mentioned above in clauses (a) and (b), that the Civil Court had jurisdiction to entertain the suit, and that the plaintiff was entitled to the relief asked for. The Subordinate Judge, therefore, passed a decree "restraining the defendant from cutting off the plaintiff's water-supply."

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

The defendant preferred a second appeal.

*L. A. Shah* for the appellant (defendant):—The plaintiff got the water-connection from us before the passing of the rules of 1905. In his application for the water-connection he had stated that he wanted the connection for his family and he agreed to abide by any rules which the Municipality might frame. Thus under his agreement the plaintiff was entitled to the water-supply only for his family. In the plaint he admitted that he acted according to the said rules. He is, therefore, bound by them.

It is admitted that the water was used not only by plaintiff's family, but it was also used by two other families residing as tenants in his house. Having regard to the plaintiff's agreement to use water for the purposes of his family, the user by other families amounts to waste according to the definition of that term as given in the rules. That definition means and includes "any use made of water for purposes other than those for which the supply is granted." Thus the plaintiff has allowed the water "to run to waste." The Municipality is therefore entitled to cut off the water-supply under rule 4, clause (f) (3).

Apart from the original agreement, under the rules the plaintiff cannot use water for the domestic purposes of more than one family. The expression "domestic purposes" is defined in rule 1, clause 2. It lays down that water is to be used for the purposes of a family, that is, one family only. Reading this interpretation with the definition of the term waste, we submit, that the Municipality is entitled to cut off the supply under rule 4, clause (f) (3).

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It was wrong to grant an injunction against the Municipality, and further no case was made out for a perpetual injunction. The most that could have been done was to grant an injunction in a modified form.

*V. G. Ajinkya* for the respondent (plaintiff) was called upon to answer the contention with respect to the injunction only :— It is discretionary with the Court to grant an injunction. A perpetual injunction was granted because it was considered to be necessary under the circumstances of the case. If the injunction had not been granted the Municipality would have cut off our water-supply at any time. A mere declaration in favour of plaintiff's right without an injunction would be useless inasmuch as a mere declaratory decree cannot be executed and the plaintiff would have to bring a suit every time the Municipality sought to curtail his right. Further if the Municipality frames new rules under the District Municipal Act so as to be binding on the plaintiff, the Municipality would not be prejudiced by the present injunction.

Scott, C. J. :—The plaintiff who is a house owner in Surat brought this suit against the Surat City Municipality praying for an injunction restraining the Municipality from cutting off the water-supply which had been provided for him under certain rules in force in the year 1898.

The Municipality as defendants contend that under the rules which they have made in the years 1905, they are entitled to cut off the water-connection with the plaintiff's house.

Now the plaintiff occupies a house which is inhabited by not more than three families, and the water-connection with that house is provided by a pipe half an inch in diameter for which under rule 7 of the Municipal Rules of 1905 the plaintiff is chargeable one rupee a month.

It is not suggested that the plaintiff has not paid the charge of one rupee a month for the water supplied to him, but it is said that he has allowed tenants in the house to use the water-connection, and has therefore rendered himself liable to have his water-supply cut off.

Both the lower Courts have decided in favour of the plaintiff, and we are also of opinion that the plaintiff is entitled to succeed. We think that under the rules so long as the plaintiff occupies a house not inhabited by more than three families, he is entitled to the water-supply which he has heretofore enjoyed; and we think that he has not rendered himself liable to have that water-supply cut off under any of the rules that have been brought to our notice.

It is argued by Mr. Shah on behalf of the defendants that they are entitled to cut off the water-supply under the provisions of Rule 4 (f) (3) which says that—"If water is allowed to run to waste after the owner or occupier has been warned by a written notice issued by the Municipality not to allow it to be so wasted, the Municipality may at any time cut off the supply," and it is contended that the water is allowed to run to waste because it is being used by families of tenants who are not of the family of the plaintiff. This application of the words "run to waste" depends upon the construction of the definition of "domestic purposes" which is contained in the first rule. That definition says that "*domestic purposes* mean and include drinking, cooking, washing and other such legitimate household purposes of a family,....." and we are asked by Mr. Shah to hold that "of a family" means "of one family only". We however think that the words "of a family" are really surplusage. The "domestic purposes", the subject of this definition, means nothing more or less than legitimate household purposes; and if this is the proper meaning of "domestic purposes" then the user for legitimate household purposes by more than one family in the house is not waste within the definition of "waste" in that rule.

It is next argued by Mr. Shah that the plaintiff has been guilty of a breach of the conditions of Rule 4 in allowing other families than his own to use the water-connection. But if the other families to whom Mr. Shah alludes are *bonâ fide* occupiers of the house then according to Rule 4 (a) the plaintiff is entitled to permit them to use the water; and there has, therefore, been no breach of the conditions which would entitle the Municipality

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under Rule 4 (f) (5) to cut off the water-supply. It is not contended by Mr. Shah that the tenants in the plaintiff's house are not *bonâ fide* occupiers.

We, therefore, are of opinion that the plaintiff is entitled to relife. We think that the relief should take the form of a declaration and a modified injunction. We pass the following decree:—

This Courts doth declare that the defendants are not entitled to cut off the water-supply to the plaintiff's house and doth restrain the defendants from cutting off such supply. And this Court doth decree that the defendants do pay the costs of the plaintiff throughout and this decree shall be without prejudice to the future exercise by the defendants of any powers vested in them at any time by statue or rules thereunder or by contract.

*Decree modified.*

G. B. R.

### PRIVY COUNCIL.

P. C.  
 1905  
 May 13.  
 June 2.

BANK OF BOMBAY (DEFENDANT) v. SULEMAN SOMJI (PLAINTIFF).

[On appeal from the High Court of Bombay.]

*Presidency Banks Act (XI of 1876), section 50—Bank of Bombay—Right of a shareholder to inspect register of Shareholders of the Bank—Object of such inspection—Common law right of member of Corporation to inspect books of the Corporation—Companies' Acts (X of 1866), section 231, (VI of 1882) section 256.*

The respondent as a shareholder in the appellant Bank claimed a right to inspect, copy, and make extracts from the register of shareholders which the Bank refused to allow, but offered to furnish him with the list he asked for if he could satisfy them that he required it for use in his own interest as a shareholder. Without accepting this offer the respondent brought a suit against the Bank in which he based his claim on irregularities which he alleged existed in the management of the Bank, in the election of Directors and in other matters, and stated that he claimed inspection of the register to enable him to communicate with the other shareholders

\* *Present*: LORD MACNAGHTEN, LORD JAMES OF HEREFORD, LORD ATKINSON, SIR ANDREW SCOBLE, and SIR ARTHUR WILSON.