

the agreement and prevent you from obtaining any advantage over me. In either case I win and you lose." The Legislature could not have intended to put the opponent under a double disadvantage. The Indian Oaths Act would be reduced to a farce if a person offering to be bound by an oath were to be allowed to withdraw the offer after it has been accepted by the opposite party.

For these reasons, I would uphold the order of the trial Court and dismiss the petition with costs.

Joint Hindu
Family known
as Ganeshi
Lal-Naubat
Rai through
Ganeshi Lal,
and others
v.
Dalip
Chand

Bhandari,
C. J.

CIVIL APPELLATE

Before Falshaw, J.

PYARE LAL AND OTHERS,—Plaintiffs-Appellants.

versus

MUNICIPAL COMMITTEE, LUDHIANA, ETC.,—Defendant-Respondent.

Regular Second Appeal No. 124 of 1950

1955

Punjab Municipal Act (III of 1911)—Section 172—
Indian Limitation Act (IX of 1908)—Article 146-A—Powers of the Municipal Committee whether affected by Article 146-A of the Limitation Act—Platform built in a public street remaining in existence for more than 30 years—Right to recover possession lost under the general law—Whether Committee can recover its possession under Section 172 of the Municipal Act. February, 7th

Held, that the Municipal Committee having allowed the platform built on public street to stand for more than 30 years without taking any action to remove it, and so lost its right to bring an ordinary civil suit for possession of the site, cannot invoke the provisions of Section 172 of the Punjab Municipal Act and take action under it. If this were the case it would render the provisions of Article 146-A of the Limitation Act wholly nugatory, and moreover it would leave it open to Municipalities to take summary action under section 172(2) in the very cases in which, as they concern ancient encroachments, full enquiry by a civil Court into the parties' rights is most essential.

Tayabali Abdullabhai Vohra v. Dohat Municipality (1), *Abaji Ragho Whalas v. Municipality of Jalgaon* (2), followed; *The Public Prosecutor v. Varadarajulu Naidu* (3), *Basaweswaraswami v. The Bellary Municipal Council and the*

(1) A.I.R. 1920 Bom. 9

(2) A.I.R. 1922 Bom. 111

(3) A.I.R. 1925 Mad. 64

Secretary of State for India in Council (1), distinguished; and *Municipal Committee, Amritsar v. Mt. Gujri* (2), dissented from.

Second Appeal from the decree of Shri Gurcharan Singh, Senior Sub-Judge, Ludhiana, with enhanced appellate powers, dated the 7th February, 1950, affirming that of Shri Hans Raj, Sub-Judge, 1st Class, Ludhiana, dated the 27th October, 1949, dismissing the plaintiffs' suit with costs.

P. C. PANDIT, for Appellants.

F. C. MITTAL, for Respondents.

JUDGMENT

Falshaw, J.

FALSHAW, J.—This second appeal has arisen in the following circumstances. The plaintiffs-appellants are the owners of a shop in Dal Bazar Ludhiana, along the frontage of which runs a platform about three feet wide. The plaintiffs applied to the defendant, the Municipal Committee of Ludhiana, for permission to rebuild their premises so as also to build on the platform. The Committee refused to sanction the plan on the ground that the plaintiffs could not be allowed to build on the platform which formed a part of the public street. The plaintiffs therefore instituted the present suit for a permanent injunction restraining the defendant from obstructing them from constructing their shop on the site including the platform, which they claimed belonged to them either by title, or in the alternative by prescription. The findings of the Courts below were that the plaintiffs had neither proved the ownership of the site under the platform nor had they become owners by prescription, and the suit and the first appeal were accordingly dismissed. The plaintiffs have come in second appeal.

The finding that the plaintiffs had failed to prove their title to the site under the platform must be upheld, though it is clear from the evidence, that they were asserting their title as long

(1) I.L.R. 38 Mad. 6

(2) A.I.R. 1936 Lah. 182

ago as 1928 and 1937 in certain mortgage deeds. It is, however, quite clear and the Courts below have concurred in finding, that the platform has been in existence and use for more than thirty years.

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The plaintiffs' case as argued before me was that even if the site on which the platform was built in front of the plaintiffs' shop was originally a part of the public street, the Municipal Committee has lost all right to reclaim it by virtue of Article 146A of the Limitation Act, which fixes the period of limitation for a suit by or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed, or of which it has discontinued the possession, at thirty years from the date of dispossession or discontinuance. On the other hand the case of the Committee is that the powers of the Committee under section 172 of the Punjab Municipal Act are not in any way affected by the provisions of the Limitation Act and that the Committee under sub-section (2) of section 172 is entitled at any time to require the owner or occupier of a building to remove an encroachment, the only proviso being that reasonable compensation must be offered where the encroachment has been in existence for more than three years. It is, however, to be noted in the present case that no action appears to have been taken by the Committee under section 172 (2) until after February 1950 when the plaintiffs' first appeal was dismissed.

Falshaw, J.

There is, however, a conflict of authority on this point and in the only Lahore decision on the point which has been cited before me, *Municipal Committee, Amritsar v. Mt. Gujri* (1), Beckett, J., has taken the view that the powers of the Committee under section 172 are not in any way affected by Article 146A of the Limitation Act. On the

(1) A.I.R. 1938 Lah. 182

Pyare Lal and others v. M. C., Ludhiana, etc. Falshaw, J. other hand in *Tayabali Abdullabhai Vohra v. Dohat Municipality* (1), Macleod, C.J., and Heaton, J., held that where a verandah has been standing on a part of a public street for over thirty years, the site becomes the property of the person to whom the verandah belongs by the operation of section 28 and Article 146A of the Limitation Act and in such a case the Municipality have no power to issue a notice under section 122, Bombay District Municipal Act, for removal of the verandah, this being the section corresponding with section 172 of the Punjab Municipal Act. This view was followed by Macleod, C.J., and Shah, J., in *Abaji Ragho Whalas v. Municipality of Jalgaon* (2).

The case, *The Public Prosecutor v. Varadarajulu Naidu* (3), which Beckett, J., followed in preference to the Bombay decision, does not really appear to support the view on closer examination. This is a decision by a Single Judge, Venkatasubba Rao, J., from which it is clear that the terms of the corresponding section of the Madras District Municipalities Act, Section 182, differed very materially from the terms of section 172 of the Punjab Municipal Act. Subsection (2) of section 182 of the Madras Municipalities Act, which takes the place of the proviso to section 172 (2) of the Punjab Municipal Act, reads—

“If the owner.....of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of Limitation to give any person a prescriptive title thereto or.....the Municipal Council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.”

(1) A.I.R. 1920 Bom. 9
 (2) A.I.R. 1922 Bom. 111
 (3) A.I.R. 1925 Mad. 64

In other words, the Madras Municipalities Act specifically provided for the removal of obstructions etc., even after the Municipal Committee might have lost its right to bring a suit for possession of a part of the street which had been encroached on by such obstruction, whereas the Punjab Municipal Act merely provides for payment of compensation for the removal of something which has existed for three years, and seems only to contemplate action by a Committee within a reasonable period.

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The other Madras case cited on behalf of the Committee, *Basaweswaraswami v. The Ballary Municipal Council and the Secretary of State for India in Council* (1), does not help the Committee's case at all, since it was held therein by *Sundara Ayyar and Sadasiva Ayyar JJ.*, that although the plaintiff in that case had established a right by prescription against the Municipality, the latter was saved by the Government, which claimed to be the owner of the land, the Secretary of State being impleaded as a defendant, and the case was decided against the plaintiff on the rule of sixty years' limitation against the Government.

The question appears to be whether the Municipality governed by the Punjab Act can, after it has stood by for more than thirty years without taking any action to remove a platform built on a part of a public street, and so lost its right to bring an ordinary civil suit for possession of the site, invoke the provisions of section 172 of the Act and take action under it. It seems to me that if this were the case it would render the provisions of Article 146-A of the Limitation Act, wholly nugatory, and moreover it would leave it open to

(1) I.L.R. 38 Mad. 6

Pyare Lal and
others
v.
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Falshaw, J.

Municipalities to take summary action under section 172 (2) in the very cases in which as they concern ancient encroachments, full enquiry by a civil Court into the parties' rights is most essential. I am therefore of the opinion that the view taken by the learned Judges of the Bombay High Court is correct, and in the present case the plaintiffs have become the owners of the site under the platform by prescription. I would, however, qualify this by saying that this finding does not necessarily mean that the Municipality will automatically have to sanction the plaintiffs' building plans, since local considerations may make it undesirable to advance the building line up to the point to which the plaintiffs may wish to extend their building. All that it means is that the Municipality will not be entitled to reject the plaintiffs' building plans simply on the ground that the platform forms a part of the public street and belongs to the Municipal Committee. In the circumstances I accept the appeal to the extent of granting the plaintiffs a declaration that they are owners of the site which lies under the platform and an injunction restraining the Municipal Committee from rejecting their building plans on the ground on which they have previously been rejected, and I order that parties be left to bear their own costs throughout.

APPELLATE CIVIL

Before Falshaw, J.

RAM CHANDER,— Appellant.

versus

PRABHU DAYAL AND OTHERS,—Respondents

Regular Second Appeal No. 789 of 1951

1955
February, 9th 148—One co-mortgagor redeeming the mortgage—Suit by the other co-mortgagor for possession by redemption of his share—Period of limitation for such suit—Whether Articles 134, 144 or 148 applies—Transfer of Property Act (IV of 1882)—Section 95.