
(1928) 02 BOM CK 0018

In the Bombay High Court

Case No : First Appeals No"s. 402 and 405 of 1925

Kasanji Kuverji

APPELLANT

Vs

The Surat Municipality

RESPONDENT

Date of Decision : 15-02-1928

Acts Referred:

Citation : AIR 1928 Bom 247 : (1928) 30 BOMLR 673

Hon'ble Judges : Mirza, J;Fawcett, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Fawcett, J.—The facts of the case are fully stated in the order of the lower Court. After considering the arguments I can see no sufficient reason to say that that order is wrong. The case of Nur Mahomed v. Secretary of State (1925) 28 Bom. L.R. 582 is distinctly in favour of the respondents, because that also was a case for an injunction, and yet pleader"s fees were assessed on the value of the subject-matter which happened to be land. In the judgment, it is said (p. 587):-

There is a considerable distinction between a question in dispute which will affect the result of the suit according to the manner in which it is decided by the Court, and the subject-matter of the suit which clearly is the thing about which a dispute has arisen.

2. These observations, I think, apply to the present case. The question in dispute, no doubt, was the legal powers of the Municipality to pass certain resolutions. But, at the-same time, the subject-matter in dispute, undoubtedly, covered certain payments which plaintiff thought there was a danger of the Municipality making and which it was the object of the suit to prevent. I think the principle of the ruling in Bai Meherbai v. Maganchand ILR (1904) Bom. 229: 7 Bom. L.R. 131 is that the valuation of a suit for the purpose of assessing pleader"s fees should not depend purely upon the caprice of a plaintiff, so as to prevent his opponent recovering proper pleader"s fees, if the suit fails and Sir

Lawrence Jenkins said (p. 233):-

This can best be secured by adopting the actual value as the basis of taxation.

3. In the present case it is possible to say what is the value of the subject-matter in dispute, and therefore I think that the lower Court was right. I would dismiss the appeal with costs.

Mirza, J.

4. I agree.