CIVIL REVISION.

*Before Bhandari, C.J.*

JOINT HINDU FAMILY KNOWN AS GANESHI LAL-NAUBAT RAI THROUGH GANESHI LAL, AND OTHERS,—
*Defendants-Petitioners*

*versus*

DALIP CHAND,— *Plaintiff-Respondent.*

**Civil Revision No. 113 of 1954**

1955

January, 31st

*Indian Oaths Act (IX of 1919) Section 11—Offer made by one party and accepted by the other to be bound by oath—Party making the offer resiling therefrom—Whether can escape the consequences of section 11.*

*Held*, that a person who offers to be bound by an oath under the Indian Oaths Act and later resiles from the said oath cannot escape the consequences set out in section 11 for an offer of this kind on being accepted by the opposite party is in the nature of a binding contract and cannot be withdrawn. 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.

*Allah Rakha* v. *Punnun* (1), followed; *Rup Singh Naval* v. *Mrs. Arjun Sen* (2), not followed.

*Petition under section 44 of Act IX of 1919 read with section 115 of Civil Procedure Code for revision of the order of Shri Banwari Lal, Sub-Judge, 1st Class, Gurgaon, dated the 10th November, 1953, deciding the suit against Ganeshi Lal.*

PREM CHAND PANDIT, for Petitioners.

D. N. AGGARWAL, for Respondent.

JUDGMENT

Bhandari, C. J

BHANDARI, C.J.—This petition raises the question whether a person who offers to be bound by an oath under the Indian Oaths Act and later resiles from the said oath can escape the consequences set out in section 11 of the said Act.

The plaintiff in this case is one Dalip Chand while the defendants are a firm Ganeshi Lal-Naubat Rai and its two partners Ganeshi Lal and his son Naubat Rai. On the 4th October 1952 the

(1) A.I.R 1941 Lah. 173
(2) A.I.R. 1935 All. 276

plaintiff brought a suit for the recovery of a sum of Rs. 12,700 on the basis of a pronote by which Naubat Rai promised to pay a sum of Rs. 10,000 to Dalip Chand. On the 1st July 1953 Naubat Rai made an offer that if the plaintiff took an oath on all the four Vedas that the pronote was for consideration, he would be bound by the oath and would have no objection to a decree being passed in favour of the plaintiff. The plaintiff accepted the challenge and agreed to take the oath required of him. On the 26th October 1953 Naubat Rai informed the Court that when he had offered to be bound by the oath, he was under the impression that if the plainitff took the oath on the Vedas, a decree would be passed against Naubat Rai alone and that the case against his father Ganeshi Lal would be dismissed. This impression was later dispelled when the Court expressed the view informally that if the plaintiff took the oath in question, the suit would be decreed against Naubat Rai and that proceedings would continue against his father Ganeshi Lal. He accordingly requested the Court to permit him to withdraw the offer. The Court declined to accede to this request and adjourned the case to another day to enable the plaintiff to take the oath. On the 10th November 1953 the trial Court made the following order:—

> "The plaintiff has taken the prescribed oath on all the four Vedas as offered by the defendant Naubat Rai in his statement, dated 1-7-1953. This case so far as it relates to Naubat Rai defendant is to be decided on this oath. The trial of this suit as against Ganeshi Lal is to proceed on merits."

The defendants are dissatisfied with this order and have come to this Court in revision.

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Bhandari, C. J.

Mr. P. C. Pandit, who appears for the defendants, invites my attention to *Rup Singh Naval* v. *Mrs. Arjun Sen* (1), in which Bennet, J., expressed the view that where a party offers to be bound by an oath and later resiles from that agreement, the agreement terminates and the appellate Court has no jurisdiction to order that the trial Court should determine the case on oath. Mr. D. N. Aggarwal, on the other hand, relies upon *Allah Rakha* v. *Punnun* (2), in which Bhide, J., observed that the offer by a party to a suit as to being bound by a statement on oath of his opponent on being accepted by the opponent, is in the nature of a binding contract and cannot be withdrawn. After a careful consideration of the reasons on which each of these authorities is based I am inclined to concur in the view taken by Bhide, J.

There is another aspect of the case which needs to be considered. Section 12 of the Oaths Act provides that if a party or a witness refuses to make the oath, he shall not be compelled to make it, but that the Court shall record, as part of the proceedings, the nature of the oath, the fact that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal. This provision has been made with the object of enabling the Court to draw the presumption that if a person who is required to take an oath refuses to do so and is unable to assign any good reason for his refusal, he is not telling the truth. The Legislature could not have intended that a person who offers to be bound by an oath should be at liberty to tell his opponent "If you refuse to take the oath, I shall ask the Court to draw an adverse inference against you. If you agree to take the oath, I shall resile from

(1) A.I.R. 1935 All. 276
(2) A.I.R. 1941 Lah. 173

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.

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

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

February, 7th

*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.*

*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.

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.

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. 1936 Lah. 182

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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. *Veradarajulu 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.

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

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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.