

(1934) 08 BOM CK 0002

In the Bombay High Court

Case No : Civil Revision Application No. 105 of 1930

Maruti Savalaram Kumtekar

APPELLANT

Vs

Namdev Co-operative Society

RESPONDENT

Date of Decision : 03-08-1934

Acts Referred:

Bombay Co-operative Societies Act, 1925 — Section 70

Citation : AIR 1935 Bom 123 : (1935) 37 BOMLR 68

Hon'ble Judges : Sen, J;Murphy, J

Bench : Division Bench

Judgement

Murphy, J.—This is an application filed against an order of the learned Subordinate Judge, Poona, made in the course of the trial of suit No. 1809 of 1928 dismissing the claim as against defendant No. 4 in that suit. Defendant No. 4 was originally the Namdev Co-operative Society, and the ground for the dismissal of the suit against the Society was that the notice requisite for suing them u/s 70 of the Bombay Co-operative Societies Act, 1925, had not been served. The provision of the section is:-

No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

2. Admittedly, nothing in the shape of a formal notice was served in this case. Mr. Desai has argued that, in the first place, such a notice was not necessary, and in the second, that something nearly as good was done complying substantially with the requirements of the section.

3. The section is one of those similar to Section 80 of the Civil Procedure Code, and it has been held in *Bhagchand Dagadusa v. Secretary of State for India* (p.

357) :-

Section 80 is express, explicit and mandatory, and it admits of no implications or exceptions. A suit in which (inter alia) an injunction is prayed is still "a suit" within the words of the section, and to read any qualification into it is an encroachment on the function of legislation.

4. The argument, to begin with, that the suit was not instituted against the Society in respect of any act touching the business of the Society seems to us to be unsound, for the suit was in respect of a mortgage-the Society being the mortgagee-and the object of the suit was to get rid of the mortgage so far as the plaintiffs were concerned. The argument that substantially the section was complied with depends on the fact that the plaintiff in the first place filed an application to be allowed to sue as a pauper under Order XXXIII of the Civil Procedure Code, and the application was admitted and notice was ordered to issue to the defendant; and it appears that the Namdev Co-operative Society was present at the hearing and contested the allegation that the plaintiff was a pauper.

5. Mr. Desai has relied on the service of notice of the pauper application as being substantially service of a notice u/s 70 of the Bombay Co-operative Societies Act, 1925. But the service of the notice on the Namdev Cooperative Society has not strictly been proved ; neither did the application contain a statement that such a notice had been delivered or left on the Namdev Co-operative Society. But all this is really beside the point, for the requirement of the section is that the notice should be served on the Registrar, or served at his office, and by a definition in the Act the "Registrar " means the Registrar of Co-operative Societies for the time being.

6. Mr. Desai has suggested that his office would include also the office of the Society now in question. But this is hardly a serious argument. We think that it is clear that no notice was served on the Registrar as mentioned by Section 70, and this being so, no suit could be instituted against the Society.

7. The learned Subordinate Judge, when he found that no notice had been served, dismissed the suit against defendant No. 4, but, though applied for, refused to draw up a final decree saying that this would be done at the end of the suit, which seems to us to be irregular. As we have dealt with the question on the merits, and the contention fails, it does not appear necessary to take any further steps in the matter.