

(1963) 12 OHC CK 0002

In the Orissa High Court

Case No : Second Appeal No. 154 of 1962

Rajendranath Dhar and Others

APPELLANT

Vs

Assistant Registrar Balasore Co-operative Central Bank Ltd.
and Another

RESPONDENT

Date of Decision : 18-12-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1965) 31 CLT 154

Hon'ble Judges : Narasimham, C.J

Bench : Single Bench

Advocate : B.K. Pal, D.P. Mohapatra and G.B. Patnaik, for the Appellant; G.G. Das, for the Respondent

Judgement

Narasimham, C.J.—This is an appeal from the judgment of the Additional Subordinate Judge, Balasore, maintaining the judgment of the Munsif of Balasore and dismissing the Plaintiff's suit for setting aside an award No. 171 passed by the Assistant Registrar of Co-operative Societies, Balasore Circle, against the Plaintiffs. In the original plaint, only the Assistant Registrar of Co-operative Societies was impleaded as Defendant. Subsequently, by an amendment dated 21-8-1957, the Secretary, Central Cooperative Bank, Balasore, was impleaded as Defendant No. 2. One of the important issues raised was whether the suit will fail on account of the omission to serve a notice u/s 80, Code of Civil Procedure. So far as Defendant No. 1 was concerned notice u/s 80, CPC was duly served but it was admitted that no such notice was served on Defendant No. 2, Secretary of the Central Co-operative Bank, Balasore. The lower appellate Court held that service of notice on him was mandatory as he was a Public officer and that on account of the omission to serve such a notice the entire suit must fail. On merits, however he was inclined to accept the contention of the Plaintiff that the award was void.

2. Mr. Pal for the Appellant contended that Defendant No. 2 was not a necessary

party and that consequently the omission to serve notice u/s 80, CPC on him would not be fatal to the suit. Mr. Das for the Respondent contended, on the other hand, that he was a necessary party. Strangely enough the most important document which would have shown whether Defendant No. 2 was a necessary party or not, was not filed in this case. I refer to the actual award given by the Assistant Registrar of Co-operative Societies against the Plaintiff. An adjournment was also given for that purpose, but Mr. Das for the Respondent has not been able to produce it here till now.

3. The proceedings before the Assistant Registrar of Cooperative Societies took place under the provisions of the Bihar and Orissa Co-operative Societies Act, 1935 which (see Section 48) confers on him jurisdiction to decide disputes between co-operative societies and their members. Section 52(e) refers to the award passed by the Assistant Registrar of Co-operative Societies, and further says that any sums payable under the award shall be recoverable as a public demand and that the officer who passed the award shall be deemed to be a person to whom money is payable. But there can be no doubt that under the scheme of the Bihar and Orissa Co-operative Societies Act the Assistant Registrar of Co-operative Societies functions like a quasi-judicial officer deciding disputes, the real parties being the persons who raised the dispute before him namely the Plaintiff on the one hand and the Co-operative societies and the Central Co-operative Bank on the other. But as a copy of the award has not been filed here it is difficult to know who the other party was. In my opinion a copy of the award is absolutely necessary to decide this question, and it ought to have been filed in this litigation.

4. Counsel for both parties then urged that if an opportunity is given a copy of the award will be produced and proved and then both parties will get an opportunity to say whether the rival party in the award is also a necessary party in the present litigation.

5. Mr. Pal further contended that if the rival party in the award was not a human person but, an incorporated body such as a Co-operative bank, service of notice u/s 80, CPC may not be necessary on such an incorporated body because it will not be a "public officer" within the meaning of Section 80, Code of Civil Procedure. It is unnecessary to decide this question here and it must be left open for consideration by the Court who hears the appeal on remand.

6. In the interests of justice, therefore, I consider that the appeal should be reheard by the lower appellate Court after giving Respondent No. 1 an opportunity to prove the award and further to show that Respondent No. 2 was a necessary party. The Plaintiff should also be given an adequate opportunity to adduce rebutting evidence on this point by the lower appellate Court who may then dispose of the appeal according to law.

7. For these reasons, the judgment and decree of the lower appellate Court are set aside and the appeal is remanded to that Court for rehearing after giving

both parties an opportunity to put in additional evidence as indicated in this judgment, and then dispose of the appeal according to law. Costs will abide the result.