

(1938) 08 PAT CK 0040

In the Patna High Court

Registrar Co-operative Societies

APPELLANT

Vs

Ramkishun Mandar and Others

RESPONDENT

Date of Decision : 11-08-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1939 Patna 32

Hon'ble Judges : James, J

Bench : Division Bench

Judgement

James, J.—This appeal arises out of a suit which was instituted to set aside the summary decision of the certificate officer in a case of claim to attached property which had been made by the plaintiff. The attached property was a house which belonged to the certificate debtor. This man had incurred liabilities to a Go-operative Society which was in liquidation and the amount of his liability had been determined by an award of the Registrar of Co-operative Societies. A certificate was then issued in execution of which this house was advertised for sale. The plaintiff joined as parties to the suit, the Registrar of Co-operative Societies and the auction-purchasers. The Registrar objected that the suit against him was not maintainable, and that notice u/s 80, Civil P.C., had not been served on him as required by law.

2. He also objected that the plaintiff's purchase was a sham transaction. The Courts below found that the Registrar was a proper party to this litigation and that notice had been adequately served on him and they also found that the purchase by the plaintiff had not been shown to be a sham transaction. The suit was decreed, and the appeal was dismissed. In each instance the Registrar was required to pay the plaintiff's costs. This appeal is preferred by the Registrar of Co-operative Societies, who objects to so much of the decree as has made him liable to pay the plaintiff's costs on the ground that he was not a proper party and that notice on him was not served as required by law.

The learned Government Pleader arguing the appeal has also pointed out that

the trial Court omitted to notice that after the dismissal of the objection by the certificate officer, the burden lay on the plaintiff to prove that the transaction by which he acquired title to the house was a real and genuine transaction but, if the Registrar is not a proper party to these proceedings, he can hardly ask at the same time that he should be struck off as a defendant and that the suit should be remanded for farther hearing. In fact, as Mr. Bose points out on behalf of the plaintiff-respondent, the finding of the learned Subordinate Judge, though he speaks rather ambiguously here and there, is based more on appreciation of the plaintiff's evidence than on the absence of evidence on the side of the defendants,

3. The Registrar who made the award was not a proper party in this litigation. He ought not to have been joined by the Plaintiff, and he should have been struck out by the Munsif as soon as the plaint was received. In any event, the Registrar could not properly remain on the record as a party, because there was no proof of service of notice u/s 80, Civil P.C., and he had specifically taken the objection that notice had not been served. Some paper which purported to be a notice was sent by post addressed to the Registrar of Co-operative Societies through the Secretary of the Central Co-operative Bank of Monghyr; the notice was delivered to the Secretary at Monghyr on 3rd April 1934. There is no evidence of any kind to indicate that the Secretary conveyed the notice to the Registrar, and there is no admission that the Registrar ever received it. If this was to be proved as a valid notice, it would have to be proved that the Secretary, accepting the office of agent of the plaintiff, delivered this letter to the Registrar or to his office in Patna within two days of his having received it at Monghyr. Mr. Bose suggests that we ought to presume that all this was done by the Secretary; but, it was not part of the Secretary's duty to carry letters of this kind to the Registrar and it must be held that service had not been proved. The learned Subordinate Judge has remarked that a notice u/s 80 is sufficient if it substantially fulfils its objects in informing the party concerned generally of the nature of the suit intended to be filed, citing two decisions of the Bombay High Court which were disapproved by the Privy Council in AIR 1927 176 (Privy Council) .

4. It may be remarked that it has not been proved in this case that Registrar was informed of the nature of the suit within two months of its institution; and it certainly cannot be held that the provisions of Section 80, Civil P.C., were observed. That being so, since the provisions of Section 80 are imperative and must be strictly observed, the suit against the Registrar ought to have been dismissed on that ground alone, as was done by the Privy Council in the case which has been mentioned.

5 The appeal is accordingly allowed with costs. The decrees, under appeal are set aside so far as they affect the Registrar of Co-operative Societies; and the suit is dismissed as against the Registrar with costs throughout. The decree as against the other defendants is not affected by this order.