

APPELLATE CIVIL.

Before Mitter and Mallik JJ.

SIBESH CHANDRA PAKRASHI

1928

v.

March 26.

BIDHU BHUSAN ROY.*

*Jurisdiction—Civil Courts, when can entertain suits in election disputes—
Election Rules under the Local Self-Government Act (Beng. III of
1885), rr. 1(A) and 42.*

The decision of the presiding officer as to whether the proposer and the seconder of a certain candidate were or were not duly qualified voters came within rule 42 of the Election Rules framed under the Local Self-Government Act (Beng. III of 1885) and as such was excepted from the operation of rule 1(A) of the said rules. The Civil Courts had jurisdiction to entertain a suit challenging such a decision of the presiding officer.

SECOND APPEAL by defendant No. 1.

The plaintiff's case *inter alia* was that he stood as a candidate for election as a member of the Local Board at Serajgunj from Thana Chouhali. The rival candidates were defendant No. 1 and the *pro forma* defendants. There were two centres for recording votes, namely, one at Sadiya Chandpur and the other at Chouhali. Before the polling at Sadiya Chandpur began, the plaintiff's name was proposed and seconded by two persons named Tarak Chandra Banerji and Kameswar Chatterji. The Assistant Presiding Officer ruled that these persons were not qualified voters. The name of the plaintiff was thereafter removed from the list of nominated candidates at Sadiya Chandpur. He brought a suit for setting aside the election of defendant No. 1, and prayed that the latter might be restrained from sitting as a member of the said Local Board. The trial Court set aside the election of defendant No. 1 and restrained him by an injunction from sitting and acting as a member of

* Appeal from Appellate Decree, No. 1229 of 1926, against the decree of Rohini Kumar Mitra, Subordinate Judge of Pabna, dated Jan. 26, 1926, affirming the decree of Trailakya Nath Roy, Munsif of Serajgunj, dated May 9, 1925.

the said Board. An appeal preferred by defendant No. 1 was also dismissed. Thereupon he preferred this Second Appeal.

Dr. Radha Binode Pal (with him *Babu Jatindra Mohan Banerji*) for the appellant. The Civil Court had no jurisdiction to entertain the suit. The dispute arose under the Election Rules and the decision of the Assistant Presiding Officer was given under rule 39. Rule 1 (A) lays down that such decision is final. The plaintiff's remedy was to go to the Magistrate. The rules have the force of law and when a rule lays down that such decision shall be final the Civil Court can have no jurisdiction. The cases under the Municipal Act are no authorities because there is no such provision in the Act as rule 1(A).

Babu Panchanan Ghose (with him *Babu Krishna Lal Banerji* for *Babu Girish Chandra Banerji*) for the respondent. The Civil Court had jurisdiction to entertain the suit. The dispute did not come under rule 39 at all but was covered by rule 42 and hence the power of the Civil Courts was not affected by rule 1(A). It had no application. There cannot be any infringement of a right without a remedy. Cited *Sabhapat Singh v. Abdul Gaffur* (1), and *Nishi Kanta Chaudhury v. Gopeswar Chatterjee* (2).

MITTER AND MALLIK JJ. This is an appeal by the defendant from a decision of the Subordinate Judge of Pabna, dated the 26th January, 1926, which affirmed the decision of the Munsif of Serajgunj, dated the 9th May, 1925. The suit in which this appeal arises was for setting aside the election of defendant No. 1, who was elected as a member of the Serajgunj Local Board and for an injunction restraining him from taking his seat as a member of the said Board. The main ground on which the plaintiff came to Court seems to be this:—that one Tarak Chandra Banerji proposed the plaintiff as a candidate

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(1) (1896) I. L. R. 24 Calc. 107. (2) (1925) I. L. R. 53 Calc. 570.

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for election. Objection was taken by defendant No. 1 to Tarak's proposing the plaintiff as a candidate for the election, as it was said that Tarak was not a qualified voter. This objection of defendant No. 1 seems to have prevailed with the Presiding Officer. The plaintiff was also duly seconded by another qualified voter and that seconder also was held by the Presiding Officer not qualified to vote. The result was that the name of the plaintiff was removed from the list of nominated candidates. Both the Courts below concurrently found that the Presiding Officer did erroneously hold that Tarak and the seconder were not qualified voters and that the decision of the Presiding Officer was wrong. The Munsif, accordingly, declared "that
 "the plaintiff was duly proposed and seconded as a
 "candidate for election as a member of the Serajgunj
 "Local Board at the Sadiya Chandpur centre and his
 "name was wrongly removed from the list of candidates
 "there, that the election of defendant No. 1 as a member
 "of the said Board from the Chouhali Thana be set
 "aside as invalid and that he, the said defendant No. 1,
 "be restrained by an injunction from sitting and acting
 "as a member of the said Board for the said Thana". This decision was, as I have already stated, affirmed by the learned Subordinate Judge.

In Second Appeal, the only substantial ground which has been taken by Dr. Radha Binode Pal, who has appeared for the appellant, is that a suit of this description does not lie in a Civil Court and that the Civil Court has no jurisdiction to entertain the present suit. Reliance has been placed on the Election Rules under the Local Self-Government Act and special reference is made to rule 1(A). These rules were framed under section 138(a) of the Bengal Local Self-Government Act (Beng. III of 1885). It appears, however, that rule 1(A) is of no assistance to the defendant appellant, for it seems to us that the objections which were taken by the plaintiff were such objections as fell within rule 42 of the Election Rules. In order to determine as to whether Tarak was a qualified voter, it was necessary for the

Presiding Officer to determine the objections to voters within the meaning of rule 42. Rule 1(A) provides that all disputes arising under these rules other than objections under rules 15 and 42 shall be decided by the Magistrate and his decision shall be final. So, according to this rule, any objection decided by the Presiding Officer under rule 42 is exempted from the rule which makes all other decisions of the Magistrate final and not liable to be challenged in a Civil Court. Objections which were determined, as it appears clear from paragraph 5 of the plaint, do come under rule 42 and are therefore cognizable by the Civil Courts. We think, in this view, the decision of the Lower Court is correct and that the appeal must, accordingly, be dismissed with costs.

A. C. R. C.

Appeal dismissed.

TESTAMENTARY JURISDICTION.

Before Costello J.

SANTASILA DASI

v.

NARENDRA NATH PAL.*

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March 27.

Probate—Holograph will—Application by widow executrix—Caveat by testator's brother—Allegations of testamentary incapacity, undue influence and forgery of will in caveator's affidavit—Notice under Chapter XXXV, rule 29 of the Rules of Original Side—Liability for costs.

Rule 29 of Chapter XXXV of the Rules of the High Court, Original Side, is a reproduction of the English rule 18 of Order XXI of the Rules of the Supreme Court in England. A notice such as is contemplated by the rule must be served with the defence.

It is to be observed that the rule contains the word "merely" and therefore the last paragraph of the affidavit of the caveator in the present case is not sufficient to bring the matter within the terms of the rule. A plea of undue influence or fraud is inconsistent with notice.

Ireland v. Rendall (1), *Cleare v. Cleare* (2) and *Harrington v. Bowyer* (3) referred to.

* Testamentary suit No. 15 of 1927.

(1) (1866) 1 P. & D. 194.

(2) (1869) 1 P. & D. 655.

(3) (1871) 2 P. & D. 264.