

APPELLATE CIVIL.

Before Mallik and Jack JJ.

DWIJABAR DAS

v.

HARIPADA BISWAS.*

1933

Dec. 20, 21.

1934

Jan. 31,

Feb. 7.

Village Self-Government—Union Board—Election of president—Persons residing within Union only on Sundays and gazetted holidays, if “resident” within Union—Persons owning no property within Union but managing ather’s property, if legally assessable and qualified to vote—Bengal Village Self-Government Act (Beng. V of 1919), s. 7 (2), Expl.

A person living six days out of seven in a week beyond the limits of the Union and living within the Union only on Sundays and gazetted holidays is not a person “ordinarily residing” within the meaning of the explanation to section 7, sub-section (2) of the Bengal Village Self-Government Act, 1919; such a person is not entitled to be a member of the Union Board and his election as president of the Board is illegal and *ultra vires*.

The assessment of a person (who is not the owner and/or occupier of a building within the Union but who is nominated by his father to manage the joint family affair of himself and his father) is legal; such a person is a qualified voter under the Act.

SECOND APPEAL by the plaintiff No. 2.

The material facts of the case and the arguments in the appeal appear from the judgment.

Upendrakumar Ray and *Nanigopal Das* for the appellants.

Roopendrakumar Mitra and *Amritalal Mukherji* for the respondents.

Cur. adv. vult.

MALLIK J. This appeal arises out of a suit for setting aside an election of the defendant as the chairman of the Barraekpur Union Board within the district of Khulna. The suit was instituted by two

*Appeal from Appellate Decree No. 1696 of 1933, against the decree of Manomohan Banerji, Additional Subordinate Judge of Khulna, dated May 5, 1933, reversing the decree of Sachikanta Ray, Third Munsif of Khulna, dated Jan. 3, 1933.

persons, Krishnagopal Das and Dwijabar Das, and the grounds, on which the election of the defendant, Haripada, was sought to be set aside, were, among others, that Haripada had not had the requisite qualifications of a voter according to the provisions of section 7 of the Bengal Village Self-Government Act, 1919, and that he was not a resident of the Union as contemplated by section 7, sub-section (2), of that Act. The court of first instance found both these points against the defendant and decreed the plaintiffs' suit. On appeal, this decision was reversed by the court of appeal below, and the learned Subordinate Judge, who heard the appeal, dismissed the suit, holding that Haripada had the requisite qualifications of a voter and that he was a resident within the Union. Dwijabar, plaintiff No. 2, is the appellant before us, plaintiff No. 1, Krishnagopal, not having joined in the appeal.

The controversy before us centered round the questions whether Haripada was a qualified voter or not and whether he was a resident within the Union of Barrackpur. It appears that Haripada's name was entered in the voters' list and it appears also that he has been assessed with the Union rate of Rs. 2 per year. It was contended that, as he was neither the owner nor the occupier of a building within the Union, he was not legally assessable and that the assessment made on him was, therefore, illegal and that, accordingly, he was not qualified as a voter. This contention may be technically correct, but, in my opinion, not so in substance. What happened, on this point, was this. Haripada's father was an old retired pensioner, who left all his family affairs in the charge of his only son, Haripada. Haripada was, as it were, the *kartâ* of a joint undivided Hindu family, consisting of himself and his father and the assessment shown on Haripada was really an assessment on the family. The record shows that Haripada's father duly nominated his son to manage the family affairs. In these circumstances, the first

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ground on which the election of the defendant was attacked, was not, in my judgment, of any real substance.

But the same cannot be said of the other ground, namely, that the defendant Haripada was not a resident within the Union. It appears that Haripada was in Government service, being attached to the office of the Deputy Accountant-General, Posts and Telegraphs, Calcutta, and it appears also that he lives in Calcutta and goes to Barrackpur only on Sundays and gazetted holidays. The question is whether, in these circumstances, he can be said to be a "resident" within the Union. I am of opinion that he cannot. A person, to be such a resident, must, according to the explanation to sub-section (2), section 7 of the Bengal Village Self-Government Act "ordinarily reside" within its limits. A man who lives six days out of seven in the week beyond the limits of the Union and lives within the Union only on Sundays and gazetted holidays cannot be said to be ordinarily residing within the Union. "Ordinary residence" connotes either permanent or usual abode; or, in other words, an abode where the person lives the greater part, if not most of his time. The learned Subordinate Judge was of the opinion that, by the occasional visits of the defendant to Barrackpur village, he was in a position to take a prominent effective part in the administration of the Union Board and that this was sufficient to give him the status of an ordinary resident within the meaning of the explanation to sub-section (2), section 7. The learned Subordinate Judge was perhaps thinking that the legislature had made "ordinary residence" within the Union a necessary qualification for a member, simply for the reason that a person, who would be ordinarily residing within the Union, would be able to take a practical and effective part in the administration of the Union Board and, as the defendant, by his occasional visits could take such effective part, his

occasional visits would give him the status of an ordinary resident. The simple answer to this is that, if the defendant would be ordinarily residing within the limits of the Union, the part which he could take in the administration of the Union Board would have been still more effective. I am clearly of opinion that, in the circumstances of the case, the defendant Haripada cannot be said to be a person ordinarily residing within the limits of the Union and, that being so, he was not entitled to be a member of that Union and, not being entitled to be a member, his election as president of the Board was illegal and *ultra vires*.

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As a last resort, a point was taken on behalf of the respondent that the appeal was incompetent, inasmuch as the plaintiff Krishnagopal, who was a member of the Board, had not joined in the appeal and Dwijabar, the sole appellant before us, was himself not a voter, but only a rate-payer. Apart from the question, whether a rate-payer can or cannot apply to have the election set aside, we have got sufficient materials before us to show that Dwijabar was a voter. Plaintiff No. 1, Krishnagopal, deposed that Dwijabar was a registered voter and his statement does not appear to have been challenged in the man's cross-examination. The voters' list and the assessment list were called for and they were placed before us. In the voters' list, there was the name of Dwijabar entered. The name, however, was penned through and the correction purported to have been made by the Circle Officer. The signature of the officer that is to be found does not appear to be like the admitted signature of the officer. The assessment list also shows the name of Dwijabar and, against his name, there was a figure "4 annas"—the amount that was to be paid in a quarter and that would make the assessee a voter. The figure "4 annas" has clearly been changed to 3 annas and, in order to have the total of the page intact, three other palpable changes have been made,

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by which two entries each of 5 annas have been changed to 5 annas 3 pies and another 6 annas to 6 annas 6 pies. These changes are palpable and are apparently unauthorised and subsequently made. I have no hesitation, therefore, to hold that Dwijabar was assessed at 4 annas a quarter and he is, therefore, a voter.

The result is that the appeal is allowed. The decree of the lower appellate court is set aside and that of the court of first instance, setting aside the election of Haripada, restored. The appellant will have his costs from the respondents throughout.

Let the assessment list and the voters' list be sent down in a sealed cover with the record and let a copy of the judgment be sent to the District Magistrate.

JACK J. I agree.

Appeal allowed.

A. K. D.