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sign it himself; but the effect of this order cannot be regarded as invalid because the District Sub-Registrar signed it for him. The Sub-Registrar when he was moved to issue process under section 36 of the Act, ought to have applied to the prescribed local court for issue of a summons; but the fact that he did not take the proper steps to secure the attendance of the defendants cannot in any way prejudice the right of the plaintiffs to institute a suit under section 77 of the Registration Act, when registration was refused. The utmost which could have been claimed by the defendants would have been for them to be excluded from liability for costs, because they have had no proper notice of the execution proceedings; but it was hardly possible for them to plead in the present case that if proper notice had been served they would have attended and admitted execution, because they attempted in the present litigation to demonstrate that the documents had not been properly executed at all and that they therefore ought not to be registered.

There is no merit in this appeal, which must be dismissed with costs.

DHAVLE, J.—I agree.

S. A. K.

Appeal dismissed.

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July, 30.

Before James and Dhavle, JJ.

CHAIRMAN, ARRAH MUNICIPALITY

v.

RAMKUMAR CHOUDHURY.*

Bihar and Orissa Municipal Act, 1922 (*B. & O. Act VII of* 1922) *sections* 99 *and* 119—*procedure prescribed by section*

* Civil Revision no. 617 of 1936, from an order of Babu R. A. Narain, Small Cause Court Judge of Arrah, dated the 21st August, 1936.

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99(b), *when is to be followed—laying down of tests, whether is a condition precedent to an assessment—failure to apply for review of assessment or exemption on the ground of non-occupation or non-liability, whether debars assessee from raising such objections in a suit—section* 119.

Section 99(b) of the Bihar and Orissa Municipal Act, 1922, comes into operation only when the question arises of how the words in clause (9) of section 3 " held under one title or agreement " are to be interpreted. Then the Commissioners are to decide at a meeting what tests shall be applied. The section does not require them to decide these questions before they may be raised by any person affected by the assessment.

If an assessee desires to dispute his occupation of any holding or his liability to be assessed, it is necessary, under section 116 of the Act, that he should apply to the Commissioners for review of the assessment or for exemption; his failure to do so debars his right, under section 119, to raise such an objection in a suit.

Application in revision, under section 25 of the Provincial Small Cause Courts Act, by the plaintiff.

The facts of the case material to this report are set out in the judgment of James, J.

Mahabir Prasad and *Harinandan Singh*, for the petitioner.

D. N. Verma, for the opposite party.

JAMES, J.—This is a proceeding under section 25 of the Provincial Small Cause Courts Act, arising out of a suit which was instituted by the municipality of Arrah for recovery of arrears of municipal taxes from the defendant. The defendant did not claim that he had paid the taxes; but he contested the suit on other grounds: that the assessment was invalid, because the Commissioners had failed to comply with the provisions of the Bihar and Orissa Municipal Act; that the assessment was excessive and that he was not himself the person in actual occupation of

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the holding. The Small Cause Court Judge dismissed the suit, finding that the assessment was invalid, because the Commissioners had not at a meeting before the assessment was made decided, in regard to holdings in general or to this class of holdings in particular, what tests should be applied for determining whether particular property should be treated as held under one title or agreement.

Mr. Mahabir Prasad on behalf of the petitioning municipality argues that the learned Small Cause Court Judge has misunderstood the effect of section 99 of the Municipal Act, that the provisions of sub-section (*b*) of the section are not mandatory and that it ought not to be considered that the laying down of any such tests as are described in the section should be a necessary condition precedent to the validity of a municipal assessment. Mr. D. N. Varma on behalf of the respondent contends that the word 'shall' in sub-section (*b*) implies that the direction is mandatory and that the failure to obey must be fatal to the legality of an assessment. The learned Small Cause Court Judge and the defendant appear to have been misled by some remarks made in a judgment of this Court which they misunderstood, and also by a report of the special inspecting officer of municipalities under the Local Government. In a suit which was instituted by other assessees, whose holdings had been assessed under similar circumstances, for the purpose of setting aside their assessments, the learned Judges of this Court remarked in their judgment that there was nothing in the evidence before them to show that the municipal commissioners had not observed the procedure laid down in section 99 (*b*) of the Act; and so it must be presumed that they had prescribed tests at a meeting in regular form. This remark appears to have been misunderstood in this way, that it was taken to mean that if there had been evidence to show that no meeting had been held for the purposes described in

section 99(*b*), the assessment would have been invalid. Nothing of the kind was actually said in the judgment of the High Court; and indeed it should be clear to anybody reading the decision of Mr. Justice Wort that he considers that it is only when the question actually arises, of what is to be treated as the meaning of the words " held under one title or agreement " in section 3(9) of the Act, that the procedure described in clause (*b*) of section 99 must be followed. The Inspector of Municipalities in a report of the 15th of February, 1936, gave some encouragement to this misunderstanding of the effect of the decision of this Court, when he criticised the municipality for having failed to prescribe formal tests for determining whether property within the municipality should be treated as held under one title or agreement, apparently regarding section 99(*b*) as prescribing a procedure which must necessarily be followed before an assessment could be made. The municipal commissioners actually had by that time formally at a meeting prescribed such tests on the 14th of September, 1935; but this was long after the assessment of the holding with which we are here concerned.

The question remains of whether the provisions of section 99(*b*) of the Act are to be regarded as mandatory in the strictest sense of the word; that is to say, whether assessment of municipal taxes cannot legally be made unless before assessment the commissioners at a meeting have decided that certain tests shall be applied for determining whether property is to be treated as held under one title or agreement. The clause says that the commissioners shall decide at a meeting what tests shall be applied; but it does not say that they must be decided in regard to holdings in general, nor does it say that they must decide in regard to any class of holdings in particular. They are to decide in regard to holdings in general or to any class of holdings in particular, so that strictly

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speaking if the clause were to be regarded as mandatory, the requirements would be satisfied by a decision as to the tests which should be applied to any single class of holdings without reference to any of the others. Section 99 does not prescribe the procedure which as a matter of course and on all occasions must be followed by municipalities before assessment is made. It comes into operation only when the question arises of how the words in clause (9) of section 3 "held under one title or agreement" are to be interpreted. Then the commissioners are to decide at a meeting what tests shall be applied. That is to say: the matter is not one which can be decided by the executive officers of the municipality, the Chairman or the Vice-Chairman or the assessment committee. It must, if the question arises, be decided by the commissioners at a meeting. The effect of section 99 is to vest in the commissioners the power to decide for holdings in general or particular holdings the meaning of the expression "held under one title or agreement" which might otherwise form the subject-matter of a suit in a civil court; but it cannot be held to require them to decide these questions before they may be raised by any persons affected by the assessment.

After the assessment has been completed, the defendant's partner objected to the assessment taking various grounds; but nothing in his objections raises the question of whether each of these parcels of land which was separately assessed properly constituted one holding, so that there was nothing in his objection which called for decision under section 99 of the Act. Mr. D. N. Varma on behalf of the defendant now objects that the defendant is actually not in possession of much of the property contained in these holdings assessed to municipal tax.

The learned Small Cause Court Judge disallowed this objection quite rightly; and it is manifest that there can be no basis for it in fact. If the assessee

disputed his occupation of any holding or his liability to be assessed, it was necessary under section 116 of the Act that he should apply to the commissioners for review of the assessment or for exemption; and section 119 of the Act provides that no objection shall be taken to any assessment in any other manner than provided by the Act. The objections taken were based on the ground that municipal taxes were not payable, because the land was assessed to cess; that the land was outside the municipal limits or that if the land was not outside the municipal limits, it should be treated as if it were. No objection was taken on the ground that the parcels separately assessed did not properly constitute holdings within the meaning of the Municipal Act; and no objection was taken on the ground that the objector was not in occupation of the land in respect of which he was assessed. These new grounds of objection cannot be taken here; and in any view of the matter, although we may have no right to interfere if the statement of facts now put forward were true, we feel assured that it is not true. If it had been true, it would certainly have been put forward in the petitions of objection. The objector has not claimed that he has paid these taxes; and since he is clearly liable to pay them the suit of the municipality should have been decreed.

The order of the learned Small Cause Court Judge is set aside. This application is allowed and the plaintiff's suit is decreed with costs throughout.

DHAVLE, J.—I agree.

S. A. K.

Rule made absolute.