

APPELLATE CIVIL.

Before James and Dhaole, JJ.

THAKUR PRASAD MARWARI

v.

CHAMAN RAM MARWARI.*

Registration Act, 1908 (Act XVI of 1908), sections 34, 36 and 77—order extending time signed by District Sub-Registrar for District Registrar, legality of—failure of Sub-Registrar to take proper steps to procure attendance of defendant, whether bars a suit under section 77.

Although it is more proper for the District Registrar, when he makes an order extending time under section 34(1) of the Registration Act, 1908, to sign the order himself, the order does not become invalid merely because the District Sub-Registrar signs it for him.

The fact that the Sub-Registrar, when he is moved to issue process under section 36 of the Registration Act, fails to take the proper steps to secure the attendance of the defendant cannot in any way prejudice the right of the plaintiff to institute a suit under section 77 of the Act when registration is refused.

Appeal by the defendants.

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

Dr. P. K. Sen and *K. P. Sukul*, for the appellants.

G. N. Mukharji, for the respondents.

JAMES, J.—The suit out of which this appeal arises was instituted under section 77 of the Indian Registration Act, praying for an order for the registration of two documents which had been executed by the defendants. The suit has been decreed, and

* Appeal from Appellate Decree no. 981 of 1934, from a decision of Mr. S. C. Mukharji, District Judge of the Santal Parganas, dated the 24th August, 1934, affirming a decision of Babu Akhileswar Prasad, Deputy Magistrate Sub-Judge, Godda, dated the 2nd January, 1934.

the defendants' appeal has been dismissed by the District Judge of the Santal Parganas. It appears that the plaintiffs immediately after execution of the document applied for registration; but they could not secure the attendance of the defendants to admit execution. On the last day on which such an application could be made under section 34 of the Registration Act, the plaintiffs applied for extension of time in order to secure the attendance of the defendants and prayed also for issue of process to compel their attendance. The application was referred to the District Registrar who granted it after imposing a fine; but it appears that the notice which should have been served in the form of a summons under the Code of Civil Procedure was issued as a mere notice from the office of the Sub-Registrar. The defendants did not appear, and on the expiry of the second period of four months, the Sub-Registrar refused registration. The plaintiffs appealed to the District Registrar who dismissed their appeal, whereupon they instituted a suit under section 77 of the Indian Registration Act.

Dr. P. K. Sen on behalf of the appellants suggests that the plaintiffs could not properly prosecute a suit under section 77 of the Act because in the first place the original order extending time was not legal; and, in the second place, the refusal to register could not be properly regarded as in accordance with law, because the Sub-Registrar had not observed the proper procedure in the issue of process on the defendants. The learned District Judge has remarked that it may be questioned whether the District Sub-Registrar had power to issue an order extending time under section 34(1) of the Indian Registration Act; but from the form of the order it appears to be clear that it was issued by the District Registrar, but signed for him by the District Sub-Registrar. It might perhaps be more proper for the District Registrar when he makes an order of this kind to

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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.

REVISIONAL CIVIL.

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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