

APPELLATE CIVIL.

Before Mr. Justice Mitra and Mr. Justice Bell.

MUKH LAL SINGH

v.

JAGDEO TEWARI.*

1908
May 29.

Civil Procedure Code (Act XIV of 1882) s. 30—Notice, service of—Dismissal of suit.

It is the duty of the Court to cause service of the notices or advertisements to be published as required by s. 30 of the Civil Procedure Code (Act XIV of 1882). If a plaintiff omits to move the Court for that purpose, his suit should not be dismissed on account of the failure of the Court to perform the duties imposed upon it by that section.

APPEAL by the plaintiffs, Mukh Lal Singh and others.

Certain inhabitants of village Basarhi in Chupra instituted a suit against some inhabitants of villages Manna and Dumaria for a declaration of their right to the use of the water of a *jhil*. All the persons interested in the disputed right were not parties to the suit.

Permission of the Court as required by s. 30 of the Civil Procedure Code was applied for in the plaint, but not obtained, nor were notices of the institution of the suit served personally or by public advertisement on all the parties interested, though their names were mentioned in the written statement. The plaintiffs had not moved the Court for that purpose. This point was not considered by the learned Munsif, who decreed the plaintiff's suit. On appeal the District Judge of Saran held that the failure to serve notices on the persons interested in the dispute was fatal to the plaintiff's case and, reversing the decree of the learned Munsif, dismissed the plaintiff's suit with costs.

The plaintiffs appealed to the High Court.

* Appeal from Appellate Decree No. 4180 of 1907 against the decree of A. Mellor, District Judge of Saran, dated the 1st December 1906, reversing the decree of Ali Ahmed, Munsif of Chupra, dated the 19th June 1906.

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Babu Dwarka Nath Mitter, and Babu Sailendro Nath Palit,
 for the appellants.

Moulavi Mahomed Mustafa Khan for the respondents.

MITRA AND BELL JJ. The suit has been dismissed on the ground that the notices required to be served under section 30 of the Civil Procedure Code were not served, nor was any advertisement published. We find, however, that the defendants in their written statement gave the names of the tenants interested in the piece of water, which was the subject matter of dispute on the question of irrigation of the land of the plaintiffs.

We are of opinion that the suit should not have been dismissed on the ground stated in the judgment of the lower Appellate Court. The plaintiffs asked for permission in the plaint and, though there was no express order granting it, it should be presumed that it had been granted, because the plaint was admitted and registered. It was the duty of the Court to cause service of notices or cause an advertisement to be published.

The plaintiff's suit should not have been dismissed for the failure of the Court to perform the duties imposed upon it by section 30 of the Civil Procedure Code. All that the plaintiffs were guilty of was that they did not move the Court as they should have done. The case must, therefore, be remanded to the lower Appellate Court for the proceedings being commenced *de novo* from the stage of the admission and registration of the suit with liberty to it to send it to the first Court. The notices required by section 30 must now be served or an advertisement published. The dismissal of the suit on the ground stated in the judgment of the lower appellate Court can, under no circumstances, be justified. We order accordingly and direct that each party do bear his or their own costs in the lower Courts as well as in this Court.

Appeal allowed.