

1952

Present : Pulle J. and L. M. D. de Silva J.

V. R. MURUGESU, Appellant, *and* THE NORTHERN
DIVISIONAL AGRICULTURAL PRODUCERS' CO-OPERATIVE
UNION LTD., Respondent

S. C. 208—D. C. Jaffna, 5,496

*Injunction—Circumstances when application for interim injunction and main action
may be heard together—Co-operative Societies Ordinance (Cap. 107)—“ Officer ”
—“ Secretary ”—By-law 32—Section 45, 54.*

• An action in connection with which an interim injunction is sought may be heard and disposed of by Court without a preliminary hearing in respect of the interim application if the material upon which the case rests is all relevant to the hearing of the application for the interim injunction.

By-law 32 read with section 54 of the Co-operative Societies Ordinance enables a co-operative society to have an honorary secretary in addition to a paid secretary.

APPEAL from a judgment of the District Court, Jaffna.

S. J. V. Chelvanayakam, Q.C., with *C. Shanmuganayagam*, for the plaintiff appellant.

N. E. Weerasooria, Q.C., with *H. W. Tambiah*, for the defendant respondent.

Cur. adv. vult.

October 30, 1952. L. M. D. DE SILVA J.—

The plaintiff brought this action against the Northern Division Agricultural Producers' Co-operative Union Limited of which he described himself as "the secretary". The action relates to certain arbitration proceedings which were initiated under section 45 of the Co-operative Societies Ordinance (Chapter 107). In the plaint the plaintiff prayed "(a) for a declaration that all actions taken or purported to have been taken by its managing committee since October, 1948, regarding the plaintiff were *ultra vires* and illegal, and, (b) for an injunction on the defendant union restraining it from referring or proceeding with their application for arbitration under section 45 pending the final decision of this action". In the replication the plaintiff prayed that "the defendant society be restrained by an injunction of this Court from proceeding with the proposed arbitration". It is clear that the substantive relief which the plaintiff was asking for was an injunction.

The first point raised by counsel for the appellant was that there has been no hearing of this case and that the learned District Judge has erroneously dismissed the case itself upon the hearing of an application for an interim injunction.

The material upon which the case rested was all relevant to the hearing of an application for an interim injunction. In such circumstances it is not unusual for courts to proceed to the hearing of the case itself without a preliminary hearing in respect of the interim application because such a course avoids the necessity which would otherwise arise of covering the same ground twice.

In the case before us it appears on a perusal of the proceedings that on September 2, 1949, counsel for the plaintiff submitted all points which arose in the case on the pleadings for the consideration of the court and there are indications that the parties had invited the court not merely to hear an interim application but to try the case itself. The learned District Judge after hearing evidence and submissions of counsel dismissed the plaintiff's case with costs and the only basis on which he would have done so was that he was trying the case and not merely hearing the interim application. Counsel for the appellant points out that the proceedings are headed "inquiry" and are followed by an "order". The learned District Judge would have been well advised to have recorded formally that he was trying the case and not merely hearing an interim application.

But we are not disposed to give way to the technical argument arising from the failure of the learned Judge to do so. In the circumstances of this case we think that we should act on the presumption that arises from the dismissal of the action by the learned District Judge, namely, that the proceedings which have been recorded are those of a trial to which the parties were submitting.

Two other points have been urged by the appellant. The first is based upon the contention that the proceedings under section 45 would be invalid if the plaintiff is not "an officer of the society" within the meaning of that section. An "officer" is defined in the interpretation section 54 to include a "secretary". Section 45 was resorted to on the basis that the plaintiff was at the material dates secretary of the society. It is contended that another secretary had been appointed and that the plaintiff was not a secretary on the date on which action under section 45 was taken. For the purpose of establishing this proposition the appellant relies upon two minutes R3 and R4 of the Annual General Meeting of the Union and of its Managing Committee. R3 made on the 16th of October is to the effect "that we have an executive secretary and two assistants and a peon on the paid staff and we elect an honorary secretary and honorary treasurer each of whom may be paid a travelling allowance of Rs. 30 a month. Approved". R4 is to the following effect: "the meeting of the Managing Committee of the Northern Division Agricultural Producers' Co-operative Union was held with Muhandiram M. Krishner the Vice President, elected at the Annual General Meeting held on 16/10/48, in the chair. Mr. N. T. Sivagnanam was elected the Hony. Secretary and Mr. E. P. Rasiah was elected the Hony. Treasurer". These minutes indicate that an honorary secretary and honorary treasurer were appointed in addition to the existing secretary. They do not in our view indicate that the plaintiff had in any way been ousted from the office of secretary. We are invited to consider the difficulties that may possibly arise in having two secretaries functioning but these difficulties, if they did exist, are not relevant to the decision of this case. By-law 32 says "the Committee shall appoint a secretary and a treasurer" and it is clear that more than one secretary can be appointed under it as the singular in law includes the plural.

The next point urged arises from the definition of "officer" in the ordinance, namely, "officer includes a chairman, secretary, treasurer, member of the Committee or other person, empowered under the rules or by-laws to give directions in regard to the business of a society" (section 54). It is contended that the secretary under this definition must be a member of the Committee and hold honorary office. It is clear from by-law 32 (above) that the Committee may appoint a paid secretary. Nothing has been pointed out to us which compels us to the view that the word "secretary" must be taken to mean an "honorary secretary".

The appeal is dismissed with costs.

PULLE J.—I agree.

Appeal dismissed.