

(1918) 04 CAL CK 0044
In the Calcutta High Court

Amrita Lal Ghose and Another and Nim Taran Naskar

APPELLANT

Vs

Narain Chandra Chakrabarty and Another

RESPONDENT

Date of Decision : 09-04-1918

Acts Referred:

Citation : 46 Ind. Cas. 395

Hon'ble Judges : Smither, J; Charles Chitty, J

Bench : Division Bench

Judgement

Charles Chitty, J.—In this case the plaintiffs sued three brothers Purna Chandra Ghose, Amrita Lal Ghose, and Ganesh Ghosh to recover a sum of Rs. 458 annas 14 and gandas 15 as rent and damages. The suit was filed on 14th April 1913. In 1911 Purna Chandra Ghose had been adjudicated an insolvent in the Alipur District Court and the Nazir had been appointed Receiver of his estate. In the plaint it was stated that the defendant No. 1 was represented by such Receiver. The Receiver was served with a summons in the case, but did not appear at the hearing or file a written statement, nor did defendant No. 1 Purna Chandra Ghose. The Munsif passed a decree against all the defendants with a variation only in the amount of cess claimed. The Munsif found that the documents Exhibits A and J on which the defendants relied were forgeries. All three defendants appealed to the District Judge, who agreed that the documents mentioned were forgeries. He held, however, that as the sanction of the District Judge of Alipur to sue the Receiver had not been obtained, the suit failed against Purna Chandra Ghose the insolvent. He confirmed the decree against defendants Nos. 2 and 3. Those defendants have appealed to this Court but have not made Purna Chandra Ghose or the Receiver parties respondent. I am of opinion that the Receiver was not a necessary party to this suit, and that this suit could not fail because the necessary formalities to be observed in making him a party were not observed. The learned District Judge has fallen into an error in applying the decision of this Court in Jatindra Nath v. Sarfaraz Meah 6 Ind. Cas. 214 : 14 C.W.N. 653 to the present case, where the facts are entirely different. Even in that case the suit was not dismissed, but the plaintiffs were given an opportunity

to bring the Receiver on the record. The learned District Judge might at least have accorded the present plaintiffs a like opportunity. It was there pointed out that the appointment of a Receiver would not debar a creditor from pursuing his legal remedy; by action against a debtor whose estate is in the hands of such Receiver. It would not interfere with the prosecution of the personal remedy. There is here the further distinction that a Receiver in a Moffasil insolvency stands on much the same footing as the Official Assignee in the Presidency Towns, and it has always been held that the Official Assignee is not a necessary or proper party to a suit for the recovery of a simple money debt. But it is clear that defendant No. 1 Purna Chandra Ghose must first be brought on the record as a party to this appeal before we can decide between him and his brothers on the one side and the plaintiffs on the other. There seems no reason why there should not be a decree against them all for the amount claimed, at any rate as a personal liability and perhaps as was argued for the appellants, a joint liability of all three.

2. We accordingly order that Purna Chandra Ghose be made a party respondent to this appeal and direct that notice be served on him to that effect. The hearing is adjourned to enable him to be properly brought upon the record.

3. A similar order is passed in S.A. Nos. 3307 of 1915 and 3308 of 1915.

Smither, J.

4. I agree that the Receiver is not a necessary party to these suits regarded as money suits, and I agree in the order passed.

S.A. No. 3309 OF 1915.

Charles Chitty, J.

5. In this case (as in S.A. Nos. 3026, 3307 and 3308 of 1915) both Courts have found that the documents on which the defendants relied are forgeries. The defendant in this case Nimtaran Naskar claims to have held under the defendants in the other suits. It was suggested that as a subsequent Criminal prosecution in respect of these documents had resulted in an acquittal of the accused these cases should be re-opened. That obviously cannot be allowed. On this finding of fact of both Courts the defence of the defendant fails. This appeal is accordingly dismissed with costs.

Smither, J.

6. I agree.