

(1916) 02 CAL CK 0030
In the Calcutta High Court

Asadali Chowdhury and Others

APPELLANT

Vs

Syed Mahammad Hossain Chowdhury and Others

RESPONDENT

Date of Decision : 02-02-1916

Acts Referred:

Citation : 36 Ind. Cas. 177

Hon'ble Judges : D. Chatterjee, J;Beachcroft, J

Bench : Division Bench

Judgement

1. Fending an application for the appointment of a common manager under the Bengal Tenancy Act, the learned District Judge appointed a Receiver. This Rule was issued upon an application by the petitioner that the order, made by the learned District Judge, was without jurisdiction in that it was made not in the course of a suit and secondly, it was irregular because it was made without notice to the petitioner. We have heard the learned Vakils on both sides and we think that the Rule must be discharged.

2. With regard to the first ground, it is contended that a Receiver can be appointed only in a suit and not in a proceeding of this kind. Order XL, Rule 1, however, does not provide that the appointment of a Receiver should be confined to a suit. The old Section 503 of the Civil Procedure Code, 1882, did certainly speak of the appointment of a Receiver in a suit, but Rule 1 of Order XL of the present Code has left out the words subject-matter of a suit" and is very general.

3. Then Section 141 is also very general and does seem to apply the procedure under Order XL, Rule 1, to proceedings of this kind. That section provides: "The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction." It has been held in the case of Thakur Prasad v. Fakirullah 17A. 106 : 22 I.A. 44 (P. C) : 5 M.L.J. 3 : Sar. P.C.J. 526 : 8 Ind. Doc. (N.S.) 393 by their Lordships of the Judicial Committee that the old Section 647, in place of which stands the present Section 141, was applicable to original proceedings in the nature of suits such as guardianship, probate, etc. The present proceeding is an original proceeding

which may be said to be in the nature of a suit because it is initiated by an application by one party, is opposed by another and is determined by a final order. The proceedings, therefore, being proceedings in a case which may be said to be in the nature of a suit, are such as evidently attract the application of Order XL, Rule 1. We think that under Order XL, Rule 1, the Court has jurisdiction to appoint a Receiver in a case of this kind if, upon the facts before it, it thinks that it is just and convenient that it should make an order under that Rule.

4. Then as regards the question of notice, although an order is generally made by a Civil Court upon notice to the parties concerned, there may be cases in which the issue of notice may so delay the proceedings as to defeat the object of the order made, and the Court has to pass an order without previous notice in cases of emergency, leaving the party aggrieved to object to it either in the Court making the order or by way of an appeal to a higher Court. These two grounds, therefore, fail. We find that the proceedings for the appointment of a common manager have been postponed pending the decision of this Rule. It was not meant that this should be. so.

5. The petitioner, it seems, upon the view we take of Order XL, Rule 1, misconceived his remedy, as he should have come to this Court by way of an appeal against the order appointing the Receiver.

7. We discharge this Rule with costs, hearing-fee two gold mohurs, and direct that the record be sent down at once so that the proceedings for the appointment of a common manager may be continued without further delay.