
(1919) 08 CAL CK 0020
In the Calcutta High Court

Beni Madhab Sukul Another	Vs	APPELLANT
Upendra Chandra Singha and Others		RESPONDENT

Date of Decision : 21-08-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 95
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : 53 Ind. Cas. 747

Hon'ble Judges : Panton, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiffs in a suit for settlement of accounts. They allege that on the 23rd December 1901 the 1st defendant was appointed by the District Judge of Tipperah to be common manager of their taluk under the provisions of the Bengal Tenancy Act and that he continued to act in that capacity till the 28th February 1914. The plaintiffs further allege that on the 14th December 1912 the District Judge released one third share of the taluk from the management of the defendant. The plaintiffs accordingly pray (a) for a direction upon the 1st defendant to submit regular accounts for the entire period of his management; (b) for an examination of the accounts that are submitted; (c) for recovery of the amount that may, upon an examination of the accounts, be found due in respect of their shares; (d) for recovery of Rs. 500 as costs of preparation of the papers, should the defendant fail to submit regular accounts within the time allowed by the Court; and (e) for recovery of the decretal amount by sale of the Immovable properties of the 1st and 2nd defendants mentioned in the security bond executed by them. The 2nd defendant is the surety and the remaining defendants are persons interested in the taluk who have not joined as plaintiffs in the suit. The first two defendants in their written statement denied all the material allegations in the plaint. Fourteen issues were thereupon framed, but only four of them were taken up for disposal as of a preliminary character: (2) Is the suit maintainable without the consent of the District Judge; (3) Is the suit maintainable without notice u/s 80, Civil Procedure Code; (4) Is the suit

barred by res judicata; (10) Is the 1st defendant liable to render any accounts other than the quarterly accounts he submitted to the District Judge. The Subordinate Judge has answered the issues (2), (3) and (10) against the plaintiffs and issue (4) in their favour; in this view he has dismissed the suit, Upon the present appeal, the decision of the Subordinate Judge upon issues (2), (3) and (10) has been assailed as erroneous. The answer to the questions raised depends upon the view we take of the position of a common manager appointed under the Bengal Tenancy Act.

2. The provisions for the appointment of common managers are contained in sections 93--109 of the Bengal Tenancy Act. Section 93 invests the District Judge with authority to call upon co owners to show cause why they should not appoint a common manager, when the District Judge is moved by the Collector or a person having an interest in the estate or tenure. Section 94 empowers the District Judge to make an order directing the co-owners of the estate or the tenure to appoint a common manager, Section 95 deals with oases where the order is not obeyed; the District Judge may, in such an event, direct that the estate or tenure be managed by the Court of Wards, if the Court of Wards consents to undertake the management, or to appoint a manager. Section 96 restricts the choice of the District Judge in the selection of a common manager in a local area where the Local Government has nominated a person to act as common manager, Section 97 makes the provisions of the Court of Wards Act for the management of Immovable property applicable to oases where the Court of Wards undertakes the management of an estate or tenure. Section 98 embodies the provisions applicable to common managers which are set out in the following terms. (1) A manager appointed u/s 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way, and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co owners jointly might, but for his appointment, have exercised and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts and allow the co owners or any of th to inspect and take copies of those accounts. (6) He shall pass his accounts at such period, and in such form, as the District Judge may direct.

(7) He may make any application which the proprietors could make u/s 103.

(8) He shall be removable by the order of the District Judge, and not otherwise.

3. Section 99 empowers the District Judge to restore the management of the estate or tenure to the co-owners at any time, when he may be satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights. Section 100 authorises the High Court to make rules defining the powers and duties of managers under the foregoing sections.

4. The first question which requires consideration is that raised in the second issue, namely, is a suit for accounts against a common manager appointed u/s 95, Bengal Tenancy Ac, maintainable without, the sanction of the D Judge. The defendants have contended that this question should be answered in the negative. A parallel has been drawn between a common manager appointed u/s 95, and a Receiver who is an Officer of the Court, acting under its direction and in all cases subject to its authority. In the case of a Receiver, it is contrary to the established doctrines of Courts of Equity to permit him to be made a party defendant to a litigation, unless by sanction of the Court appointing him; it is regarded in all cases as essential that a person desiring to bring a suit against him in his official capacity should first obtain leave of the Court by which he was appointed, since the Courts will not permit the possession of their Receivers to be disturbed by a suit or otherwise without their consent and permission. The rule is established for the protection of Receivers against unnecessary and expensive litigation; besides, in most instances, a party aggrieved may have ample relief by application to the Court which appointed the Receiver. Indeed, the rule is so stringent that when an action has been instituted against a Receiver in his official capacity without leave of the Court, the plaintiff is deemed guilty of contempt of Court and liable to be punished. The rule that a Receiver appointed by judicial authority cannot be subjected to suit without the leave of the Court whose officer he is, finds recognition in cases of high authority. In *Angel v. Smith* (1804) 9 Ves. 335 : 7 R.R. 214 : 32 E.R. 632. Lord Eldon, L.C, affirmed the rule on the ground that the possession of the Receiver is the possession of the Court and observed that though there might be inconvenience from the application of the rule, the inconvenience the other way if the rule did not exist would be enormous. He then added the very important statement that if it is necessary to ask leave, "the Court must have credit for never refusing it, where it ought to be granted; and, if so, very great purposes of convenience may be answered by putting the party to ask it." See also *Johnes v. Cloughton* (1822) Jac. 573., *Hawkins v Gathercole* (1852) 1 Drew. 12 : 21 L.J. Ch. 617; 16 Jur. 650; 61 E. R. 355. 94 R. R. 571., *Randfield v. Rand-field* (1860) 1 Drew. & Sm 310 : 62 E. R. 398; 127 K. R. 121., *Searle v. Choat* (1884) 25 Ch. D. 723 : 53 L.J. Ch. 506; 50 L.T. 470 : 32 W.R. 397. The same principle has been recognised and applied in our Courts: *Miller v. Ram Ranjan* 10 C. 1014 : 5 Ind. Dec. (N.S.) 677., *Dunne v. Kumar Chandra Kisore* 30 C. 593 : 7 C.W.N. 390., *Fink v. Calcutta Municipal Corporation* 30 C. 721; 7 C. W. S. 706. Accordingly, we have been invited to apply this principle to the case of a common manager. In our opinion, there is in many respects a close analogy between the position of a common manager and that of a Receiver. A Receiver is appointed, amongst other

purposes, for the realisation, management, protection, preservation and improvement of the subject matter of litigation, the collection of rents and profits thereof, the application and disposal of such rents and profits and the execution of documents such as the owner himself is competent to execute. A common manager is appointed where inconvenience to the public or injury to private rights is likely to ensue from a dispute between co-owners of an estate or tenure. When the manager is appointed, he is invested, for the purposes of management and subject to the control of the District Judge, with the same powers as the co-owners might, but for his appointment, have exercised, and so long as the common manager continues in office, such powers cannot be exercised by the co-owners themselves. A common manager is consequently appointed by the District Judge, performs his duties under the control of the District Judge and is removable by the order of the District Judge, but not otherwise. His salary or remuneration is fixed by the District Judge. He gives such security for the proper discharge of his duties as the District Judge directs. He deals with and distributes the profits in accordance with the orders of the District Judge. He keeps regular accounts and is required to pass his accounts at such period and in such form as the District Judge may direct. A common manager may consequently be regarded as an officer of the Court. If the rule which has been established for the protection of Receivers be extended to the ease of a common manager, no inconvenience is likely to result. Indeed, a rule that permission of the Court is necessary to warrant many classes of actions against a common manager in his official capacity, is essential for the protection of common managers from needless and oppressive litigation. The fund or property in the hands of the common manager is in a sense in the custody of the Court. The Court may administer justice to claimants against the common manager in many instances without the expense and delay inseparable from a regular suit, and relief in that mode is commended by considerations of economy. It has been argued, however, that there are instances where a person holding an office analogous to that of a Receiver is allowed to be sued without the leave of the Court, and amongst such cases have been mentioned those of a Receiver appointed u/s 18 of the Provincial Insolvency Act and an administrator pendente lite appointed u/s 34 of the Probate Act. There is, however, no real analogy between a common manager and persons in the position named. An examination of the provisions of Section 98 of the Bengal Tenancy Act makes it manifest that there is such an intimate relation between the common manager and the Court that he must be regarded as an officer of the Court who should not be permitted to be attacked without the leave of the Court. The adoption of the contrary view, might lead to great confusion. To take one illustration: a common manager who is bound to pass his account at such period and in such form as the District Judge may direct may, even while his accounts are under examination by the District Judge, be simultaneously harassed by one or more of the co-owners by the institution of suits for accounts against him. The common manager, though an officer of one Court, may, in this manner, be made subject, in the matter of his official duties, to the orders of another tribunal. The inconvenience likely to follow, if the

contention of the plaintiff j were to prevail, is well illustrated by what has happened in the case before us. The plaintiffs applied to the District Judge for leave to institute the present suit. He appointed an auditor, examined the accounts, and came to the conclusion that it would be undesirable to sanction the institution of a suit for account against the common manager without a more thorough enquiry. The District Judge is entitled to examine the accounts further u/s 98, Clause (b). The plaintiffs meanwhile insist upon an enquiry into the accounts in the present litigation. If we hold that the suit has been rightly instituted without the sanction of the District Judge, there is no escape from the position that there may be two independent enquiries into the accounts and possibly two conflicting conclusions---one by the District Judge, another by the Subordinate Judge. We are not prepared to take a view which may lead to consequences of this character. We hold accordingly that assuming a suit for account is maintainable against a common manager appointed u/s 95 of the Bengal Tenancy Act, such suit cannot be maintained without leave obtained from the Court which appointed the common manager. This conclusion is in conformity with the opinion expressed in *Nabi Kishore Mandal v Atul Chandra Chatterjee* 16 Ind. Cas. 193 : 40 C. 150 : 17 C.W.N. 846. But it has been argued that this principle has no application to the present litigation, because the suit is for recovery of specific sums alleged to have been misappropriated or improperly retained by the common manager, so that the suit cannot be deemed to have been brought against the common manager as an officer of the Court. There is no foundation for this contention. To afford relief to the plaintiffs", the accounts must first be examined, and such accounts are and can be demanded from the common manager, only because of the obligations inseparably associated with his official position. It has further been argued that even if this be conceded, the defendant had ceased to be common manager at the date of the institution of the suit and was consequently no longer entitled to the protection he would have enjoyed if he had still continued in. office. We are not prepared to accept this contention as well founded. A common manager, like a Receiver, is bound to account to the Court which placed him in a position of trust and responsibility. He must account to the Court, whether required to do so by the Court of its own motion or at the instance of parties interested in the estate. The fact that he has ceased to be common manager has not terminated his liability to render accounts. No doubt his liability is official, but though his official character has ceased in so far as management of the property is concerned, his official liability to render accounts, has not ended with his official existence. Indeed, the accounts can be claimed from him only in his capacity as common manager; he is consequently, for this purpose, entitled to the same protection as if he had still been a common manager: *Nabi Kishore Mandal v. Atul Chandra Chatterjee* (9). The true position is that, in the matter of accounts he has not been finally discharged; he is still subject to the orders of the Court, and it is only just and fair that his privilege should be commensurate with his liability. We must hold that the sanction of the District Judge was necessary, and as such sanction has been refused, this suit cannot be maintained.

5. The second question which requires examination is that covered by the third issue, namely, whether a suit for accounts against a common manager appointed u/s 95 of the Bengal Tenancy Act is maintainable without service of the notice contemplated by Section 80 of the Civil Procedure Code. That Section provides that no suit shall be instituted against the Secretary of State for India in Council or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after the prescribed notice in writing has been served in the manner indicated. We have already held that a common manager appointed u/s 95 of the Bengal Tenancy Act is an officer of the Court. He is plainly a public officer within the meaning of the very comprehensive definition contained in Section 2 (17) (d); he may rightly be regarded as an officer of a Court of Justice whose duty it is, as such officer, to take charge of property; he is, in any event, a person specially authorised by a Court of Justice to perform such duty. The only question is, whether the present suit for account is a suit in respect of any act purporting to be done by the common manager in his official capacity. The answer must be in the affirmative. The receipts and disbursements by the common manager purported unquestionably to be acts done in his official capacity; he is now called upon by the plaintiffs to account for the monies which passed through his hands, and after his accounts have been adjusted, to pay the effects in his hands into Court for the benefit of the parties entitled to them. To a suit of this description Section 80 is applicable. We hold accordingly that the suit cannot be maintained in contravention of Section 80 of the Civil Procedure Code: *Samanthala Koti Reddi v. Pothuri Subbiah* 46 Ind. Cas. 86 : 41 M. 792; 7 L. W. 586; 34 M. L. J. 494; 28 M. L. T. 357; (1918) M. W. N. 414 (F.B.).

6. The third question, covered by the tenth issue, refers to the liability of the common manager to render any accounts other than the quarterly accounts he submitted to the District Judge. The materials requisite for the decision of this question are not on the record. We have not adequate information as to what accounts were from time to time submitted by the common manager to the District Judge, what steps were taken to notify them to the persons interested, what directions were given to audit them and what orders were passed thereon on each occasion by the District Judge. In the absence of such information we cannot give a decision upon the question raised. But we may observe that if the same rule is applied to common managers as has been held applicable to Receivers, the District Judge would seem to possess the requisite authority (even though he may not have the necessary machinery at his disposal) to investigate the accounts and to enforce payment of any sums which may be found due from the common manager: *Mohini Mohan Patra v. Baroda Kanta* 12 Ind. Cas. 780 : 14 C.L.J. 445., *Baroda Kanta v. Rashmani Dasi* 28 Ind. Cas. 25; 20 C. L. J. 113., *Rashmani Dasi v. Baroda Kant* 28 Ind. Cas. 81 : 20 C.L.J. 123., *Thurl v. Thurlow* (1840.) 4 Jurist 982., *R. v. Bayly* (1841) 1 Dr. & War. 218 : 4 Ir. Eq. R. 142. An account may, even though previously passed, be reviewed by a Court at a later date for sufficient reasons: *Mohini Mohan Patra v. Baroda Kanta* 12 Ind. Cas. 780 : 14 C.L.J. 445., *Wildridge v. McKane* (1827) 2 Moll. 645., *McCan v. O'Ferrall* (1841) 8 Cl. & F.

30 : 8 E.R. 12., and the penalties for non payment of balance due may be enforced even after the manager has been discharged: *Harrison v. Boydell* (1833) 6 Sim. 211 : 51 E.R. 573. In the present case, as appears from the order of the District Judge refusing leave, he intends to enquire further into the accounts. We need not consequently consider the question raised in *Nobi Kishore Mandal v. Atul Chandra Chatterjee* (9), namely, whether an enquiry into accounts by the District Judge is, under all circumstances, the only remedy available to the co owners, or whether there is an alternative remedy by way of a regular suit instituted with the sanction of the District Judge and after notice given to the common manager u/s 83 of the Civil Procedure Code.

7. It has finally been argued that under the Bengal Tenancy Act, a common manager can be appointed only in respect of an entire estate, that the order of release of one-third share on the 28th February 1914 to take effect retrospectively from the 2nd February 1914 was illegal, and that consequently from that date the possession of the manager in respect of the remaining two-thirds share became wrongful, rendering him liable to be sued as a wrongdoer. We are of opinion that there is no substance in this contention. It may be conceded that the Bengal Tenancy Act contemplates a common manager for an entire estate and that the order for release should not have, been made in respect of an one. third share: *Mohini Lal Pakrasi v. Nogenda Nath Pakrasi* 53 Ind. Cas. 672 : 3 C.L.J. 281. *Indu Bhusan v. Annapurna* 6 C.L.J. 216., *Kanai Lal Ghose v. Basir Pramanik* 36 Ind. Cas. 498. But the fact remains that in this case the 1st defendant continued in possession of the two thirds share in his character as common manager. He was de facto common manager and is bound to render an account as such; the co-owners are bound by the order of partial release made in their presence and they cannot be permitted any more than the 1st defendant himself to deny that he is under an obligation to account. The principle applicable to cases of this character was fully explained in the case of *Pulin Behary Das v. Emperor* 16 Ind. Cas. 257; 15 C. L. J. 517 ; 16 C. W. N. 1106; 13 Cr. L. J. 609., where it was pointed out that there is weighty authority for the proposition that acts of officers de facto, performed by them within the scope of their assumed official authority, in the interests of the public or third persons and not for their own benefit, are generally as valid and binding as if they were the acts of officers de jure and cannot be collaterally impeached. The claim in the present suit, indeed, proceeds on this assumption the claim is for recovery of such sum as may be found due on adjustment of accounts to be rendered by the 1st defendant as common manager; and not for recovery of damages from him as a wrongdoer.

8. The result is that the decree of the Subordinate Judge is affirmed and this, appeal dismissed with costs.