
(1945) 04 PAT CK 0012
In the Patna High Court

Bhimnath Misra and Others

APPELLANT

Vs

Shyamanand Singh and Others

RESPONDENT

Date of Decision : 27-04-1945

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 54

Citation : AIR 1945 Patna 467

Hon'ble Judges : Sinha, J;Chatterji, J

Bench : Full Bench

Judgement

Chatterji, J.—This appeal is directed against an order dated 16th March 1945 passed by the learned Subordinate Judge of Bhagalpur in partition Suit No. 13 of 1935 appointing Eai Bahadur Kamleshwari Sahay as Receiver of the Banaili estate which is the subject-matter of the litigation. The shares of the parties are as follows:

Plaintiffs 1 to 5 3 as. 6 p. Defendants 1 to 7 8 as. Defendants 8 and 8a 1 anna 6 p.

2. Defendants 9 and 9b 3 as. Preliminary decree was passed in the suit on 13th July 1937. As the properties consisted mostly of revenue paying estates, the partition had to be effected by the Collector u/s 54, Civil P.C. These revenue paying estates lie in different districts and, therefore, the Government appointed one Babu Matukdhari Singh, retired Deputy Collector, as Special Batwara Officer to effect partition of the same. He appears to have actually taken charge on 1st September 1939. The estate was then in the hands of two Receivers who were appointed in January 1938. There was an arrangement between the parties, as embodied in the petition which was filed by them in Court on 27th November 1939, with the result that one Rai Bahadur Gourishankar Sahai was appointed Receiver and Rai Bahadur Kamaleshwari Sahai was appointed Manager. Babu Matukdhari Singh, being apparently unable to carry on the partition work as the Receiver and the Manager did not co-operate with him, resigned his post. He was succeeded by Rai Bahadur Singheshwar Prasad Sinha, a Deputy Collector, who

actually took charge on 23rd December 1940. As agreed to by most of the parties, the Subordinate Judge appointed him also as Receiver of the estate in the place of Rai Bahadur Gourishankar Sahai who tendered resignation. The estate thus continued in the charge of Rai Bahadur Singheshwar Prasad Sinha from December 1940 to December 1943. He was succeeded by Rai Bahadur Jaidev Misra, another Deputy Collector, who took charge on 23rd December 1943. He was also the Receiver of the estate. On account of ill-health he resigned his post on 10th February 1945. In the meantime there was some correspondence with the Government as to who should be appointed Batwara Officer in his place. On 16th January 1945, the plaintiffs and defendants 1 to 8a filed a petition stating that as Rai Bahadur Jaidev Misra was going to resign his office, some other person should be appointed Receiver and Commissioner

for completing the partition of the remaining Banaili Eaj properties and for carrying on the administration of the Raj till such time as necessary.

3. They suggested the names of three persons in order of preference and prayed that one of them should be appointed Receiver and Commissioner. Defendants 9 and 9a asked the Subordinate Judge to stay his hands until the Government had nominated a successor of Rai Bahadur Jaidev Misra. The Subordinate Judge, however, proceeded to consider the application filed by the plaintiffs and defendants 1 to 8a on 16th March 1945. He held that the Batwara Officer and the Receiver should be different persons, and, therefore, he appointed Rai Bahadur Kamleshwari Sahai, one of the persons mentioned in the petition of 16th January 1945, as Receiver. It is against this order that the present appeal has been filed by defendants 9 and 9a.

4. On behalf of the respondents a preliminary objection has been taken that the appeal is not maintainable. It is conceded that if the order under appeal falls under Order 40, Rule 1(1), Clause (a), it is appealable. It is, however, contended by the learned Advocate-General appearing on behalf of the plaintiffs-respondents that the order does not come under Order 40, Rule 1 (1), Clause (a). Under that clause the Court may by order appoint a Receiver of any property, whether before or after decree. The contention of the learned Advocate-General is that an order does not come under this clause, unless it has the effect of dispossessing a certain person. Reliance is placed on the decision in *Ramaswami Naidu v. Ayyalu Naidu* AIR 1924 Mad. 614 in which it was held that an order refusing to remove a Receiver already appointed does not come under Order 40, Rule 1 and, is therefore, not appealable. But, on the other hand, it has been held by the Calcutta High Court in *Sripati Dutta and Others Vs. Bibhuti Bhusan Dutta and Others*, that an appeal lies against an Order removing a Receiver. In *Eastern Mortgage and Agency Co. Ltd. v. Premananda Sana* AIR 1916 Cal. 824 the Calcutta High Court, however, held that an order refusing an application for removing a Receiver is not appealable. Woodroffe J., sitting with Coxe J., held:

This is not a case of an application for appointment of a Receiver or of a refusal to appoint a Receiver. In substance it is one for the removal of a Receiver who

has already been appointed. Therefore, I think that no appeal lies.

5. In his Lordship's words, therefore, if a Receiver be appointed, the order is appealable. Now, looking to the wording of Order 40, Rule 1 (1), Clause (a), it seems to me that it is wide enough to cover the case of appointment of a Receiver in the place of one who had already gone out. I am inclined to follow the decision of the Calcutta High Court "in 53 Cal. 319 and I hold that the appeal is competent.

6. As regards the merits of the case, the important question for consideration is whether the learned Subordinate Judge was justified in separating the functions of the Batwara Officer and the Receiver. To effect partition of revenue paying estates, there must be a Batwara Officer discharging the functions of Collector u/s 54, Civil P. C. This officer must, therefore, be appointed by Government. Babu Mutukdhari Singh, who was the first Batwara Officer appointed, was in office for about one year. But it appears from the letters addressed by him to the Subordinate Judge that he could not carry on the work because the receiver did not co-operate with him. In December 1940 the Subordinate Judge appointed Rai Bahadur Singheshwar Prasad Sinha, who was Batwara Officer, also as Receiver. He remained in office for three years, and on the materials on the record it is manifest that his work was very satisfactory. His successor Rai Bahadur Jaidev Misra was in office for only one year, but he had to retire for ill-health, as appears from his application addressed to the Subordinate Judge. It is true that in that application he stated that the work was too heavy for him, but that may be because of his ill-health. During the period of about four years from December 1940 till February 1945, there was never any complaint by any of the cosharers that the work was suffering because the functions of the Batwara Officer and the Receiver were being discharged by one and the same individual. On the contrary, it appears from the complaint made by the first Batwara Officer Babu Matukdhari Singh to the Subordinate Judge that his work was suffering on account of non-co-operation on the part of the Receiver and his staff. The learned advocates on both sides have stated before us that a large portion of the revenue paying estates has already been partitioned. The preliminary decree for partition was passed so far back as July 1937, and it is the primary duty of the Court to see that partition is completed as early as possible. From the past history it does not appear likely that the result will be satisfactory if the functions of the Batwara Officer and the Receiver be assigned to two different individuals. On the other hand, if these two functions be combined in the same individual, it is likely to facilitate the work of partition. In the circumstances, it seems to me that the learned Subordinate Judge was not justified in appointing a different person as Receiver.

7. It appears that the Government, being short of officers having revenue experience, suggested the name of Rai Bahadur Kshetra Mohan Kunar, a retired District and Sessions Judge, for the post of Batwara Officer. It also appears that this gentleman is agreeable to accept the offer which was made to him on behalf

of the Government. Defendants 9 and 9a asked the Subordinate Judge to wait until the Government had nominated the successor of Rai Bahadur Jaidev Mistra as the Batwara Officer. The Subordinate Judge would have been better advised to accede to this prayer. If the Government appoint Rai Bahadur Kshetra Mohan Kunar as Batwara Officer, the learned Subordinate Judge should appoint him as Receiver. It is said that it will be difficult for one individual to manage the work of the Batwara Officer as well as of the Receiver. But Rai Bahadur Singheshwar Prasad Sinha, who acted in such dual capacity, carried on his work very satisfactorily for three years. Now that the partition of a major portion of the revenue paying estates has already been completed, there is no reason why one individual cannot manage the work both of Batwara Officer and of Receiver. In fact, Rai Bahadur Kshetra Mohan Kunar has expressed his willingness to act in both capacities. If, however, the learned Subordinate Judge ultimately finds that the work cannot be efficiently done by Rai Bahadur Kshetra Mohan Kunar both as Batwara Officer and as Receiver, it will be open to him to appoint a manager or an assistant under the Rai Bahadur. The learned Subordinate Judge will proceed to appoint Rai Bahadur Kshetra Mohan Kunar as Receiver as soon as the Government appoints him as Batwara Officer. In the meantime Rai Bahadur Kamaleshwari Sahai will remain in charge of the estate. It must be made clear that he should make over charge to Rai Bahadur Kshetra Mohan Kunar as soon as he is appointed Batwara Officer. The appeal is accordingly allowed, and the order of the learned Subordinate Judge is set aside subject to the observations made above.

8. The appellants are entitled to their costs: hearing fee ten gold mohurs.

Sinha, J.

9. I agree.