
(1938) 01 BOM CK 0009
In the Bombay High Court
Case No : First Appeal No. 232 of 1936

Hanmant Narayan Kulkarni

APPELLANT

Vs

B.R. Jainapur

RESPONDENT

Date of Decision : 28-01-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48

Citation : AIR 1938 Bom 458 : (1938) 40 BOMLR 932

Hon'ble Judges : Wassoodew, J; John Beaumont, J

Bench : Division Bench

Judgement

John Beaumont, Kt., C.J.—This is an appeal against an order made by the First Class Subordinate Judge of Bijapur in darkhast proceedings. The decree sought to be enforced has attained the respectable age of sixteen years, having been passed on December 22, 1921. The original decree-holder died, and his son Shankargouda who claimed to be his heir was a minor, and was represented by the Nazir of the District Court. In 1933, Shankargouda, acting through the Nazir, filed a darkhast to execute the decree of 1921. In 1934, a third party filed a suit against Shankargouda claiming to be entitled to the estate of the decree-holder, including this particular decree. In that suit two receivers were appointed by the Court, one of the receivers being the Nazir of the District Court. The receivers then applied that they might be at liberty, on behalf of Shankargouda, to execute the decree, and that application seems to have led to some confusion of thought on the part of two learned First Class Subordinate Judges. The first Judge raised two issues :-

(1) Whether the Receivers appointed by the Court in Original Suit No. 348 of 1934 are the legal representatives or assignees of Shankargouda? and

(2) Are such Receivers competent to continue this darkhast?

Receivers appointed by the Court are officers of the Court, and are not the legal representatives or assignees of all or any of the parties to the suit. But the

present Judge on the hearing of the darkhast made an order that the receivers be brought on record, and that they be at liberty to continue the darkhast. That order is plainly wrong. Receivers are not, as I have said, assignees or representatives of the decree-holder ; nor is it the practice of the Court to bring receivers on the record in a suit, and subject them to liability as to costs. The proper form of procedure in a case of this sort where an estate of which a receiver has been appointed includes a decree to be executed is for the receiver (unless he already possesses the power) to apply in the suit in which he was appointed for liberty either to file a fresh darkhast in his own name, or to continue the existing darkhast in the name of the darkhastdar on giving him a proper indemnity as to costs. In the present case the first alternative is not really open because the decree is more than twelve years old, and a fresh darkhast would presumably be barred by limitation u/s 48 of the Civil Procedure Code. But the receivers could have asked in the suit in which they were appointed for liberty to carry on the darkhast in the name of the decree-holder. We have not seen the order appointing the receivers, but I think we must assume that it is in the ordinary form entitling the receivers to exercise the powers conferred by Order XL, Rule 1, of the Civil Procedure Code, and if that is so, the receivers are entitled without the leave of the Court to carry on the darkhast proceedings in the name of Shankargouda.

2. We think that the proper order to make on this appeal is to strike out from the order under appeal the direction that the receivers be brought on record, and to direct that they be at liberty to continue the darkhast in the name of Shankargouda on indemnifying him out of any assets in their hands against the costs of the darkhast proceedings. It will of course be open to the judgment-debtor to maintain that Shankargouda is not entitled to the decree. If he succeeds in that claim, presumably the darkhast will fail. But there is no method of avoiding that risk in view of the fact that any fresh darkhast is out of time.

3. As the appeal has failed in part and succeeded in part, we make no order as to costs.

Wassoodew, J.

4. I agree.