

**(1936) 03 BOM CK 0005**  
**In the Bombay High Court**  
**Case No : First Appeal No. 46 of 1934**

Harilal Chhotalal Shah

APPELLANT

Vs

Chaturbhai Punjabhai

RESPONDENT

---

**Date of Decision :** 26-03-1936

**Acts Referred:**

Bhagdari and Narwadari Act, 1862 — Section 1

**Citation :** AIR 1936 Bom 399 : (1936) 38 BOMLR 938 : 165 Ind. Cas. 604

**Hon'ble Judges :** John Beaumont, J; Divatia, J

**Bench :** Division Bench

**Final Decision :** Dismissed

---

## Judgement

John Beaumont, Kt., C.J.—This is an appeal against an order in darkhast proceedings made by the First Class Subordinate Judge of Nadiad. The plaintiffs obtained a judgment against the respondents or their predecessors-in-title for the sum of eleven thousand odd rupees. They obtained that judgment on September 23, 1930. In 1933 they filed the present darkhast asking for sale of certain Immovable property of the debtors, and an interim receiver until sale. At the hearing they asked for the appointment of a receiver by way of execution as an alternative to an order for sale. The learned Judge held that certain of the lands sought to be attached were unrecognised sub-divisions of a bhag, and therefore were not attachable under the Bhagdari and Narwadari Act (Bom. V of 1862), and he held that in respect of land which was not attachable under the Act, the Court could not appoint a receiver. I agree with the learned Judge's finding that the lands in question are unrecognised sub-divisions of a bhag, and that point has not been, and could not have been, seriously contested. That being so, the only real question is whether the lands can be attached in execution either by means of a sale or by the appointment of a receiver. Section 1 of the Bhagdari Act provides that no portion of a bhag or share in any bhagdari or narwadari village other than a recognised sub-division of such bhag or share, shall be liable to seizure, sequestration, attachment or sale by the process of any

civil Court, and no process of such Court shall be enforced so as to cause the dismemberment from any such bhag or share or recognised sub-division thereof, of any homestead, and so forth. Section 3 provides that it shall not be lawful to alienate, assign, mortgage or otherwise charge or incumber any portion of any bhag or share in any bhagdari or narwadari village other than a recognised sub-division of such bhag or share. In the face of Section 1 of the Act, it is, I think, perfectly clear that the property sought to be attached cannot be sold in execution, but it is argued that the Court can appoint a receiver of the rents and profits of such property, and there is a certain attractiveness about the argument, because I am disposed to agree with Mr. Pandya that the appointment of a receiver of the rents and profits would not come within the mischief at which the Act was aimed, namely, the subdivision or dismemberment of bhagdari lands. But we have to deal with the very precise language of Section 1. It seems to me that to appoint a receiver of the land would amount to seizure or attachment of the land, and that such appointment is therefore prohibited by the Act. Courts of equity have always been willing to assist a creditor who cannot get paid and who is unable to enforce legal execution because of some peculiarity in the property sought to be attached. Where a difficulty of that sort exists, a Court of equity would appoint a receiver. But Courts of equity have always refused to allow their jurisdiction to be invoked in order to render property attachable which is not attachable at law, see for example, *Holmes, v. Millage* [1893] 1 Q.B. 551, and as to the general principles on which Courts acted in appointing receivers by way of equitable execution, see *In re Shepkard: Atkins v. Shephard* (1889) 43 Ch. D. 131. But then it is argued that we might appoint a receiver of the rents and profits of the land as and when they come to the hands of the debtor, and that we might direct the debtor to hand over such rents and profits to the receiver. So far as the money sought to be attached consists of rent payable under a contract to the debtor, I apprehend that any such moneys could be reached in execution by the ordinary method of attachment by garnishee proceedings. So far as the profits of the land are concerned, if the receiver is himself to take those profits, it can only be by entering into possession of the land, and to empower him to do that, would be, as I have said, to disregard the words of Section 1. If we appoint a receiver of the profits to be made by the judgment-debtor out of the land, then we are" really appointing a receiver of unearned income which, at the moment, has no existence, and the Court never appoints a receiver of possible future earnings. In my opinion, therefore, although there is, no doubt, something to be said from the point of view of abstract justice on behalf of the order for which the appellant asks, the language of the Bhagdari Act is too strong for us, and prevents us making any such order. I think, therefore, the judgment of the learned Judge was right, and that we cannot make any order on these darkhast proceedings in respect of the lands which form unrecognised sub-divisions of a bhag. The appeal, therefore, must be dismissed with costs. Costs to be set off against the moneys due to the decree-holder.

Divatia, J.

2. I agree. This appeal raises a somewhat novel point under the Bhagdari and Narwadari Tenures Act. The judgment-creditor applies for execution of the decree by the appointment of a receiver for certain lands of the judgment-debtor which form part of an unrecognised sub-division of a narwa and as such are not liable to seizure, sequestration, attachment or sale by the process of any civil Court u/s 1 of the Act. As they are not liable to seizure or attachment by the process of any civil Court, it is clear that a receiver cannot be appointed to take them in his possession and management because that would amount to their seizure or attachment by the Court through its officer. But, it is contended, the judgment-debtor could be directed to hand over whatever income he receives from them to a receiver who would hand it over to the Court towards the satisfaction of the decretal amount. It is well-recognised that a receiver of possible future income of property cannot be appointed because such income is not by itself definite property of the judgment-debtor at the time of the receiver's appointment. Moreover, it would be infructuous or at any rate inconvenient to appoint such receiver as he cannot himself manage the judgment-debtor's interest in the lands, and will have to find out its real income for himself. The difficulty is aggravated in the present case by the fact that there are, along with the judgment-debtor, co-sharers in the joint holding who are not affected by the decree. I agree, therefore, that the appointment of a receiver in execution is neither legal nor convenient in the present case.