
(1913) 01 CAL CK 0045
In the Calcutta High Court

Jibanessa Khatun and Others

APPELLANT

Vs

Majidunnessa Khatun

RESPONDENT

Date of Decision : 30-01-1913

Acts Referred:

Bengal Tenancy Act, 1885 — Section 93, 94, 98

Citation : 18 Ind. Cas. 398

Hon'ble Judges : Herbert Carnduff, J;Beachcroft, J

Bench : Division Bench

Judgement

1. These two appeals have been preferred against an order of the Subordinate Judge of Backergunge, deciding, on the application of the plaintiff, Majidunnessa Khatun, in a suit for the partition of the Haturia estate, that a Receiver should be appointed pendente lite, and a subsequent and ancillary order of the same Judge appointing a certain Mr. Tweedie to the receivership.

2. The earlier order is assailed on two grounds, namely:

3. First, that there is still pending before the District Judge of Backergunge a proceeding under Sections 93 to 100 of the Bengal Tenancy Act, 1885, for the appointment of a common manager of the Haturia estate, which ousts the jurisdiction of the Civil Court in respect of the appointment of a Receiver and secondly, that on the merits, no case for the appointment of a Receiver under Order XL of the Code of Civil Procedure, 1908, has been established.

4. In support of the legal objection raised by the first of these grounds, the learned Counsel for the appellants has been unable to cite any authority. But he contends that, as the question of the appointment of a common manager is before the District Judge, who may, therefore, at any moment make such an appointment, and as a common manager appointed by the District Judge is, u/s 98, Sub-section (8), of the Tenancy Act, removeable only by the District Judge, the appointment by the Subordinate Judge now of a Receiver under the general provisions of the Procedure Code would be liable to come into conflict with the

action of the District Judge under the special provisions of the Tenancy Act, and in these circumstances, the former must give way and be held to have been placed in abeyance. And, taking another view of the position, he has argued that, until the District Judge either appoints a common manager in the pending proceeding under the Tenancy Act or decides that none need be appointed, he has seizin of the case, and possession of the estate, and it is not open to any Civil Court, see Rule 1(2) of Order XL of the Procedure Code, to remove him by appointing a Receiver.

5. In our opinion, this contention cannot be allowed to prevail. It has been held, by this Court in *Madheshwar Singh v. Mohamaya Prasad Singh* 13 C.L.J. 487 : 15 C.W.N. 672 : 9 Ind. Cas. 1027 that Order XL of the Procedure Code is not controlled by the provisions of the Tenancy Act as to the appointment of a common manager, and also that it is open to a Civil Court to appoint a Receiver in respect of property already in the hands of a common manager. If, then, the appointment of a common manager had been actually made by the District Judge in this instance, there would be nothing to prevent the appointment of a Receiver by the Subordinate Judge, and a fortiori there can be no objection in law to the appointment of a Receiver, where the appointment of a common manager is, as here, not an accomplished fact, but a bare contingency. The legal objection, therefore, fails.

6. As to the other objection based upon the merits, the position is this. For the last twelve years, the plaintiff and her co-sharers have been unable to manage the estate themselves. In 1901 a common manager was on this account appointed under the Tenancy Act. This common manager was afterwards, likewise under the provisions of the Tenancy Act, re-placed by the Court of Wards. In May 1912, however, the Court of Wards relinquished the management and on the 7th of that month, the District Judge appointed another common manager in the person of Babu Debendra Nath Dutta, a Pleader of his Court. Against this appointment, the High Court was moved, and on the 5th August, the appointment was, after the issue of a rule, cancelled. The High Court at the same time, as will appear from the report of the *Eastern Mortgage and Agency Co. Ltd. v. Rakea Ehatun* 16 C.W.N. 967 : 17 Ind. Cas. 202 disposed of an appeal preferred against an order of the Subordinate Judge refusing to appoint a Receiver in two mortgage suits in which the company had obtained decrees against the present plaintiff and her co-sharers in respect of some 12 annas of the estate, and directed that Mr. Tweedie should be appointed Receiver of the undivided shares of the mortgaged property concerned in those suits. The latter direction has not yet been given effect to, and on the 3rd of this month, the High Court noticed the delay with disapproval and recorded an order that the Subordinate Judge should lose no further time in proceeding to install Mr. Tweedie. The issue of this order has, however, by arrangement between the Court and the parties been held back pending the hearing of the appeals with which we are now dealing. The result is that, while it may be said to be common ground that some provision for the management of the Haturia estate is urgently

called for either by the appointment by the District Judge of a common manager, as desired by the defendants who have appealed, or by the appointment by the Subordinate Judge of a Receiver in the partition suit which is favoured by the plaintiff and the defendant company, there is at the present moment no one in effective possession of the property and in a position to collect the rents and pay the Government revenue. In these circumstances, there is, we think, no necessity for the plaintiff to make out a strong case for the appointment of a Receiver: on the contrary, the circumstances are such as those described in Woodroffe and Ameer Ali's CPC at page 1192; that is to say, circumstances in which the Court could hardly go wrong in making such an appointment. Indeed, as we have just indicated, every one concerned admits the necessity for intervention, and *prima facie* there is little to choose between the methods suggested. But if the Subordinate Judge is supported now and a Receiver is appointed, the object aimed at by all alike is at once secured; whereas, if the Subordinate Judge be overruled, finality will be as far away as ever. The District Judge, who has but lately indicated that, in the altered condition of affairs, the appointment of a common manager is unnecessary, will have to be induced to change his mind once more and nominate a common manager, and the chances are that there will then ensue a fresh wrangle, both before him and before this Court, regarding the propriety of his action and the fitness of his nominee. We think that there can be no manner of doubt as to the expediency of appointing a Receiver and that Appeal No. 514 of 1912 must be dismissed with costs.

7. The remaining Appeal No. 513 is directed against the selection of Mr. Tweedie, as Receiver. Now we take it that, as held in the leading case on the point of *Cookes v. Cookes* (1865) 2 DeG.J. & S. 526 a Court of Appeal will not, except in an extreme case, disturb such a selection unless there be some overwhelming objection in point of propriety or choice or some fatal objection in principle. So far as Mr. Tweedie personally is concerned, it is not denied that he is eminently fitted to be a Receiver in respect of landed property in the District of Backergunge; and this Court has already satisfied itself that he is so fitted. There remains, then, only the question of principle, and here the objection said to be fatal is that he is manager of some landed property in the district belonging to the defendant company. But the learned Subordinate Judge has not overlooked this circumstance, nor has he lost sight of the principle that should be borne in mind. He has observed in limine that it is a well known rule of law that a Receiver should be an impartial person and wholly disinterested in the subject-matter of the suit, and he has after a careful consideration of the facts, come to the conclusion that Mr. Tweedie does not stand in such a relation to the parties, and is not so mixed up in the subject-matter of the partition suit, as to be disqualified for the appointment.

8. From this conclusion, we see no reason to differ. Even if Mr. Tweedie were himself a party to the partition suit, exceptional circumstances might justify his selection. As it is, he is not a party but merely the local servant of a company which has purchased a small share of the property, and is the mortgagee of a

large share in it. He has already been appointed Receiver in the mortgage suits in respect of so much of the estate as has been mortgaged to the company and the appointment of another Receiver in the partition suit would, we think, tend to complication, difficulty and needless expense. The suggestion that the interest of the company is adverse to that of the appellant we failed to understand; for, so far as we can see, it is not to the interest of the company to increase the share of the plaintiff at the expense of the share of that branch of the family which is bound by the larger of the two mortgages held by it. And the only alternative appointment put forward by the appellants is that of the local Pleader, Babu Debendra Nath Dutta, which would, in view of the decision of this Court in the case reported as *Eastern Mortgage and Agency Co. Ltd. v. Rakea Khatun*¹⁶ C.W.N. 967 : 17 Ind. Cas. 202 clearly be impossible. The objections taken in the Court below to the appointment of Mr. Tweedie are, moreover, extraordinarily vague. All that can apparently be urged is that he will hamper the defence by withholding money and documents: but the class of documents referred to is not specified any where; he will in any case be bound to furnish copies of such documents as the defendants may want; he will have to allow them reasonable inspection of the papers in his custody; and he will always be an officer of the Court who can be reached at any time through the Court. Our conclusion, then, is that there is really no substance in the second appeal, and it also must be dismissed with costs.

9. The hearing fee for each appeal we assess at five gold mohurs, to be divided between the plaintiff and the defendant company. The Deputy Registrar will assess reasonable costs for the preparation of the respondent's paper book.

10. No farther orders on the application for a stay of proceedings are now necessary. The record will be returned to the Court below without delay.