

**(1913) 01 CAL CK 0003**  
**In the Calcutta High Court**

Kumar Satya Narain Singh, Miner, by his next friend and  
uncle, Sasi Bhushan Singh

APPELLANT

Vs

Srimati Rani Keshabati Kumari, Gajadhar Prasad Singh,  
Chandra Dayal Barman and Devsi Hirji

RESPONDENT

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**Date of Decision :** 28-01-1913

**Acts Referred:**

**Citation :** 25 Ind. Cas. 406

**Hon'ble Judges :** Teunon, J; Chitty, J

**Bench :** Division Bench

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## Judgement

1. This is an appeal from an order of the Subordinate Judge of Dumka rejecting the plaintiff's application for the appointment of a Receiver. The plaintiff, who is still a minor, has by his next friend brought this suit for construction of a document purporting to be the Will of his father, Raja Udit Narain Singh, for a declaration that two documents, dated 8th March 1898 and 14th August 1905, respectively, are void and inoperative, so far as they purport to curtail the plaintiff's rights, and for possession of the properties left by his deceased father. The plaintiff also asks for administration of his father's estate, for the appointment of a Receiver and for an injunction restraining the defendants from dealing with the estate. The defendants are Rani Keshabati Kumari, widow of Raja Udit Narain Singh, Gajadhar Parshad Singh and Chandra Doyal Bamm, whom defendant No. 1 purported to appoint trustees by the deed of 14th August 1905, and Devsi Hirji who has taken a lease of the forests on the estate from defendant No. 1.

2. Raja Udit Narain Singh died on 10th April 1896. On 8th March 1898, his widow adopted the plaintiff. The plaintiff is now about 19 years of age. As the plaintiff is under guardianship, he will not attain majority until he is 21 years of age. The estate left by Raja Udit Narain is valued at about rupees 26 lakhs. The net annual income is admittedly well over rupees 1 lakh. The main grounds put forward by the plaintiff for the appointment of a Receiver are (1) that the defendant No. 1 is

a pardanashin lady of little education, entirely incapable of managing the estate herself; (2) that the estate is in fact being grossly mismanaged by defendant No. 1 in conjunction with the other defendants; (3) that in particular, defendant No. 1 has granted to defendant No. 4 a lease for cutting timber from the forest for railway sleepers, which is quite improvident and against the interest of the estate, and (4) that defendant No. 1 has been and still is borrowing recklessly and at exorbitant rates of interest to such an extent as to endanger the estate. The Subordinate Judge has found that the case of mismanagement, particularly in the matter of the dismissal and subsequent re-employment of Mr. Falkner, has been made out against defendant No. 1; that the charge of reckless borrowing at what he terms illegal" interest has been proved; and that the whole situation is one of confusion. He, however, considers himself helpless by reason of certain rules of law which, in his opinion, prevent the Court from appointing a Receiver in this case. The learned Subordinate Judge is, we think, in error in the view that he takes of the law. Order XL, Rule 1 (2), for instance, clearly refers to a case of removal of property from the possession or custody of a person other than the parties to the suit. Here one of the main questions in the case is whether the plaintiff is entitled to immediate possession against defendant No. 1, or whether she is entitled to retain possession for her life.

3. Nor is there any necessity to prejudge the case in any way by appointing a Receiver, the only object and effect of so doing should be to maintain the estate in its present condition pending the suit and for that period at any rate to avoid further waste.

4. We have carefully perused the evidence tendered on this application and heard the arguments of Counsel for defendant No. 1 against the appointment of a Receiver. We are of opinion that a clear case has been made out for such appointment. There has been and still is gross mismanagement of the estate, by defendant No. 1, and if the present state of things be allowed to continue the whole estate will be jeopardized. It was argued that defendant No. 1 " had borrowed only on personal security and had not so far charged the estate. If, however, she borrows in such reckless fashion as to absorb the whole legitimate income of the estate it is obvious that the estate itself will "immediately suffer. It cannot much longer be kept intact. We do not think that any useful purpose would be served by discussing in detail the facts disclosed in the several affidavits. No satisfactory reply has been vouchsafed by defendant No. 1 or rather by those who profess to be looking after her affairs to the specific charges put forward on behalf of the plaintiff. We accordingly allow this appeal and direct that a Receiver be appointed as prayed by the plaintiff.

5. An application was made to the Vacation Bench by defendant No. 1 for the transfer of this suit to the original side of this Court. That application was refused, mainly as it was obviously made to obstruct or delay the present application for a Receiver. Further, it was considered unnecessary and inexpedient to remove it to this Court. " Now however, both sides agree that it

would be well to transfer the case to another district that the trial may be held before a Subordinate Judge of more experience. We agree in this view and order accordingly that the suit be transferred to the Court of the first Subordinate Judge of Bhagalpur for disposal.

6. We think that it is advisable that this Court should nominate the Receiver at once and thus prevent further delay in this matter. Of the various names suggested that of Babu Murli Lal appears to us to be most suitable. He is a wealthy man, resides in Bhagalpur and appears to be a good man of business. He is also willing to give the requisite security which in this case will be large. We accordingly appoint Babu Murli Lal as the Receiver in this case subject to his furnishing security to the extent of a lakh of rupees to the satisfaction of the Subordinate Judge of Bhagalpur. We confer on the Receiver such powers as are contained in Order XL, Rule 1 (d), of the Code of Civil Procedure. We fix his remuneration at 10 per cent, on the gross collections, such percentage to cover all charges for collections, establishment and the Receiver's remuneration but not the costs of actual litigation.

7. Costs of this appeal must be costs in the case. We fix the hearing fee at 10 gold mohurs.

8. Let the record be sent down at once.