

(1923) 07 PAT CK 0022

In the Patna High Court

Maharaj Kumar Gopal Saran Narayan Singh of Tikari

APPELLANT

Vs

Sita Debi

RESPONDENT

Date of Decision : 17-07-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1924 Patna 69 : 77 Ind. Cas. 718

Hon'ble Judges : Dawson Miller, C.J.;Kulwant Sahay, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—In this case there is both an appeal and an application, in revision from an order of the Subordinate Judge directing that the defendant should pay to the plaintiff an allowance of Rs. 1,250 per month until the disposal of the suit. The plaintiff brought the present suit against the defendant the Ktaharaj Kumar Gopal Saran Narayan Singh of Tikari to enforce a charge upon certain properties belonging to the defendant which were charged with the payment of an annuity of Rs. 36,000 per annum payable by monthly instalments of Rs. 3,000 under a deed granted by the defendant to the plaintiff in the year 1913 and under a further deed of the year 1917 whereby a portion of the annuity amounting to Rs. 15,000 per annum was made permanent and heritable. The plaintiff who is by birth an Australian British subject was married to the defendant in the Hindu form at Lucknow in 1909.

2. The plaint in the suit was filed on the 26th January this year and on the following day a petition out of which this application arises was presented to be Subordinate Judge of Gaya praying that a Receiver might be appointed of the property charged with the payment of the annuity end that he should be directed to pay to the plaintiff the sum of Rs. 3,000 per month, or such other sum as the Court should think fit pending the final determination of the suit and further, that he should be allowed to sell a sufficient portion of the property to pay the plaintiff that portion of the annuity which was in arrears. It appears that from the date when the first bond was executed in 1913 up to September 1921 the

annuity had been regularly paid although sometime before 1917 when the second deed was executed the plaintiff and defendant separated and were living apart. The written statement has not yet been filed but it appears from the defendant's petition in objection to the application that he challenges, the validity of the instruments sued on. He further denies that the plaintiff was his lawfully wedded wife. It is important to bear in mind, however, that the suit is not one for maintenance nor is there any claim for alimony pendente lite.

3. The learned Subordinate Judge before whom the application came considered that it was not a case for appointing a Receiver apart from any immediate right which the plaintiff might have to be paid the annuity or any portion thereof. The only ground upon which the Court was asked to appoint a Receiver was that it was feared that the defendant might either wilfully or through lack of funds refuse or neglect to pay the Government revenue upon the property charged, and that in consequence the plaintiff might lose her security. No instance was alleged in which the defendant had on previous occasions defaulted in payment of revenue nor was anything suggested whereby it might be presumed that the defendant would act in the manner which the plaintiff feared. In order to meet the plaintiff's apprehensions the defendant undertook during the course of the hearing of the application before the Subordinate Judge to deposit in Court one month before the due date of the payment of revenue the chalan shewing the payment, and, he having given this undertaking, the learned Subordinate Judge thought that was quite sufficient to meet any apprehension on the part of the plaintiff that the property might be put in jeopardy by the revenue not being paid, and in these circumstances he refused to appoint a Receiver.

4. With regard to the other point, namely, whether he should order the defendant to pay to the plaintiff a sum of Rs. 3,000 or a smaller sum pending the hearing of the suit, he considered that under the provisions of Section 151 of the CPC he was entitled to make the order prayed. He, therefore, passed an order that the plaintiff should until the disposal of the suit get an allowance from the defendant of Rs. 1,250 per month.

5. From that decision the present application has been brought. It has been pointed out to us that there is no right of appeal from an order made u/s 151. There is also, however, an application in revision asking us to set aside the Judge's order on the ground that it was made without jurisdiction. As I have already stated this is not an application for maintenance nor is it an application for alimony pendente lite. So much is admitted by the plaintiff. She relies entirely upon the instruments created in her favour in 1913 and 1917 and in the suit she is seeking solely to enforce the charge then created upon the property and for present purposes the question that she is, or claims to be, the lawfully wedded wife of the defendant is immaterial. The learned Government Advocate on behalf of the appellant has argued that the Subordinate Judge was acting without jurisdiction in passing the present order and he contends that the provisions of Section 151 of the Civil Procedure Code, although they preserve the inherent

powers of the Court to pass orders in the interests of justice, are confined to matters of procedure only and do not allow a Judge by passing an order in favour of one or other of the parties really to decide the suit or any part of the suit before it has come before him for trial. Before such an order as the present could be passed it would have to be decided that the plaintiff was actually entitled under the documents upon which she relies to the charge which she is claiming. It seems to me that the only ground which would justify an order compelling the defendant to pay the annuity or a portion thereof to the plaintiff is that the defendant's liability on the bonds has been established. That liability, however, cannot possibly be determined until the evidence is taken and the suit heard and decided. There appears to me to be no ground disclosed in this case, and certainly no authority has been cited before us to justify, the learned Subordinate Judge in passing an order granting the plaintiff a portion of the relief claimed before the suit has been tried, and in the absence of any authority supporting such a contention it seems to me that we ought not to allow the present order to stand. Section 151 of the Code saves the Court's inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court, but I am not aware of any rule of lower equity which requires, in the interests of justice, that a plaintiff suing to enforce a contract for the payment of money, where the claim is disputed, should be awarded a portion of the amount claimed before his right has been established by the suit brought for that purpose. In my opinion the Subordinate judge had no jurisdiction to make the order and it should be set aside.

6. The learned Counsel for the respondent contended, however, that in any case he was entitled to a Receiver and that the learned Subordinate Judge had in fact ordered that a Receiver should be appointed if the defendant failed to carry out the order which he had made. That is hardly stating correctly the effect of the Subordinate Judge's order. He refused to appoint a Receiver on any general grounds or upon the grounds disclosed in the petition because he thought it was sufficient if the defendant gave an undertaking, which he did to file in Court the chalan shewing the receipt of the Government Revenue one month before the due date, the fear of non-payment being the duly ground upon which a Receiver had been asked for. He, however, did order a Receiver to be appointed in the event of the defendant failing or refusing to pay to the plaintiff the Rs. 1,250 per month which he had ordered him to pay, but the appointment of the Receiver in that case was merely for the purpose of carrying out the learned Subordinate Judge's order directing the payment of the money. I have listened to the learned Counsel for the respondent on this question of the appointment of a Receiver and it does not seem to me that in the circumstances of the present case, and having regard to the undertaking given by the defendant, any good ground has been made out for appointing a Receiver at the present moment. If, however the defendant should fail to comply with his undertaking to deposit the revenue chalans within the time stipulated then it will be open to the plaintiff to make a further application to the Court asking the Court to re-consider the question and

to appoint a Receiver in order to preserve the property. In my opinion the application succeeds and the decision of the learned Subordinate Judge will be set aside. The application in revision is allowed with costs. Hearing fee one gold mohur. The appeal is dismissed.

Kulwant Sahay, J.

7. I agree.