

(1893) 09 CAL CK 0004
In the Calcutta High Court

Mahommed Zohuruddeen

APPELLANT

Vs

Mahommed Noorooddeen and Others

RESPONDENT

Date of Decision : 08-09-1893

Acts Referred:

Citation : (1893) ILR (Cal) 85

Hon'ble Judges : Sale, J

Bench : Single Bench

Judgement

Sale, J.—This was an application made on behalf of the attorneys of the plaintiff in this suit for payment out to them of a sum of money belonging to the plaintiff, now in the hands of the Receiver.

2. The suit was for partition of various properties including the family dwelling-house at Tallygunge. There was in this suit originally a reference to arbitration, which proved infructuous. Both in the suit and in connection with the arbitration proceedings Mr. Farr, an attorney of this Court and a member of the firm of Watkins and Company, appears to have supplied out-of-pocket costs, and also to have become entitled to costs for work done by himself. To secure the costs due to Mr. Farr, the plaintiff on the 6th of July 1891 deposited with him the title-deeds of the family dwelling-house. Previously by an order, dated 21st August 1890, the Receiver was directed to sell all the Immovable properties. Under that order he sold the family dwelling-house to the plaintiff. By another order, dated the 4th June 1891, it was directed that the purchase-money for the dwelling-house be debited to the plaintiff's share of the sale proceeds of all the Immovable properties after payment thereof of certain prior charges, and that if the balance should not be sufficient for the payment in full of the purchase-money, the plaintiff should pay the amount of the deficiency. Then there was a consent decree, dated the 16th July 1891, by which, amongst other things, the Receiver was directed to pay the costs of the present suit and divide the residue of the fund in his hands into 70 equal parts or shares, and to pay to the plaintiff the balance out of 26 of such parts or shares after payment thereof of what was

due on two mortgages,

3. The result of the account made up under the order of the 4th of June 1891, was that there was a large balance due by the plaintiff which he was unable to pay. The Receiver then resold the family dwelling-house on account of the plaintiff, and after debiting him with the amount due by him for purchase money, there remained in the hands of the Receiver a sum of Rs. 8,700 to credit of the plaintiff. It is in respect of this sum that Messrs. Watkins and Company claim a lien under the original deposit of title deeds. It also appears that as regards the costs due to them, both in respect of the arbitration proceedings and this suit, a part has been taxed and the rest is subject to taxation. The main question in the case is whether, in an application of the present character, it is open to me to make any order for payment. The matter is further complicated by the circumstance that a creditor who obtained a decree in the Court of the 1st Subordinate Judge of Alipore has through the Calcutta Court of Small Causes, issued execution and attached this fund in the hands of the Receiver by a prohibitory order. Notice was given to this creditor, and he appeared on this application and objected to payment out of this money. The purchaser of the property on resale on account of the plaintiff also received notice of the application, and he appeared, but his presence, it appears to me, is unnecessary, inasmuch as he cannot be affected by the order which is sought in this application by Messrs. Watkins and Company. The applicants contend that, so far as the attachment by the mofussil creditor is concerned, it is irregular and improper, inasmuch as it was an attachment of money in the hands of the Receiver of this Court made without the leave or sanction of this Court, and upon that ground, it is said, it being a contempt to attach money in the hands of the Receiver without the permission of this Court, that the attachment is not one that this Court will recognize.

4. Mr. Mitter referred to the terms of Section 272 of the Code, and contended that the attachment of money in the hands of the Receiver was authorized in execution of decrees, and that, though the present attachment is an attachment before judgment, there is no distinction in point of principle between an attachment in execution and one before decree. He contended under the terms of Section 272 that the attachment is authorized to be made by a notice to the Court in whose custody the property attached was, or to the public officer having the custody of the property proposed to be attached, and that the Receiver can be in no better position than the Court itself of which he is an officer. I think this argument overlooks an important distinction between the case of property which is in the custody of the Court and that of property in the custody of a Receiver appointed by the Court. The appointment of a Receiver operates as an injunction against the parties, their agents and persons claiming under them, restraining them from interfering with the possession of the Receiver, except by permission of the Court. I think that the words of Section 272 were not intended to alter, and do not in fact alter, what has been the practice of this Court, which is to require that persons attaching property in the hands of the Receiver of this Court

should previously obtain the permission and sanction of this Court, and to regard an attachment not so authorized as a breach of the injunction and therefore a contempt of Court.

5. It is not suggested when a matter of this character has been brought to the notice of the Court, that the Court has ever recognized an attachment made without the permission of the Court. On the other hand, there are cases where it is pointed out that property in the hands of the Receiver is not liable to attachment without the sanction of the Court appointing the Receiver. The case of Kahn v. Ali Mahomed Haji Umer ILR 16 Bom. 577 lays down that this is the practice also in the High Court at Bombay. To that practice I propose to adhere. I must therefore decline to recognize the attachment which has been issued by the Mofussil Court on this fund in the hands of the Receiver of this Court, inasmuch as it appears that no permission or sanction for such attachment was obtained from this Court.

6. But the question still remains as to whether, on this present application, I ought to make the order asked for. I do not think it is possible for me to give effect to the lien claimed by Watkins and Co. That can only be done by suit. Nor is it open to me to make an order in a summary proceeding of this kind against a client in favour of his attorneys. That has been decided, as far as this Court is concerned, in the case of Domun v. Emaum Ally I.L.R.7 Cal. 401, where it was laid down that it was not the practice to make an order for payment of costs between an attorney and his client except in a regular suit against the client. But it is to be remembered that the plaintiff, who appeared in person, while objecting to the payment of this fund to the attorneys, did not dispute the deposit of title-deeds, or that the money was due to the attorneys. I think the better course will be to give the applicants the opportunity of establishing their claim by suit, and then of renewing this application if so advised. For that purpose the present application may stand over.

7. The plaintiff appeared in person, and no question of costs arises as far as he is concerned.

8. As regards the attaching creditor, I make no order as regards his costs either, nor do I make any order as regards Mr. Apcar's client the subsequent purchaser, who, as far as I can judge, need not have appeared.