

(1899) 08 CAL CK 0009
In the Calcutta High Court

Mohabir Das through his guardian and next friend Sarju Das	APPELLANT
Vs	
Sia Ram Das	RESPONDENT

Date of Decision : 02-08-1899

Acts Referred:

Citation : (1900) ILR (Cal) 279

Hon'ble Judges : Rampini, J;Pratt, J

Bench : Division Bench

Judgement

Rampini and Pratt, JJ.—This is an appeal against an order of the Subordinate Judge of Monghyr, dated the 14th April 1899, directing the appointment of a Receiver for the custody and preservation of certain property the subject of a suit now pending in his Court.

2. The suit relates to the mohuntship of the Asthal of Suja alias Ramnugger, which became vacant by the death of the former mohunt, Jugarnath Das, who expired on the 8th of September last. Of the two claimants, one is Mohabir Das, the plaintiff, who alleges that he was appointed chela of the deceased mohunt on the 20th January 1898, and was installed as mohunt on the 2nd of September, about six days before the death of the old mohunt.

3. The defendant is Sia Ram Das; and on his behalf it is alleged that he was made chela on the 16th May 1897, and that he was appointed mohunt on the 12th day after the death of Jugarnath Dass by a punchayet consisting of certain neighbouring mohunts and zamindars. The defendant is now in possession of the property; and an application for the appointment of a Receiver has been made at the instance of the plaintiff.

4. In connection with this case several rulings have been cited by the learned Counsel on either side.

5. On behalf of the defendant our attention has been called to the case of Sidheswari Dabi v. Abhoyeswari Dabi I.L.R (1888) 15 Cal. 818, in which it was held that the Court is not justified in appointing a Receiver where a right is

asserted to property in the possession of the defendant claiming to hold it under a legal title, unless a strong case is made out. This case was decided by Macpherson and Gordon, JJ., on the 4th June 1888; and it has been followed in the case of Chandidat Jha v. Padmanand Singh I.L.R (1895) 22 Gal 459, in which it has been ruled that the Court will not interfere by appointing a Receiver unless a strong case is made out, and in which it is pointed out that, when an application is made for an injunction, it is sufficient to show that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged, while in the case of a Receiver a prima facie title has to be made out.

6. These cases have been cited on behalf of the appellant, while on behalf of the respondent the decision of Macpherson, J., sitting on the Original Side of this Court, in Sham Chand Giri v. Bhairam Pandey (suit No. 179 of 1893, dated 5th March 1894) has been relied on. This decision is printed at page 139 of this paper book; and it will be seen that in it the learned Judge seems to be of opinion that it is not necessary that a strong case should be made out to justify the appointment of a Receiver, but that it is sufficient if a fair prima facie case is established. Mr. Justice Macpherson further says: "The mere circumstance that such a large amount of property was removed, and under circumstances which might fairly give rise to suspicion, during the pendency of a suit in which the question of title to that property would be determined, is in itself a sufficient ground for the appointment of a Receiver." Mr. Justice Macpherson, therefore, seems in this decision to have taken a less strong view of what is necessary to justify the appointment of a Receiver than in his previous judgment in the case of Sidheswari Dabi v. Abhoyeswari Dabi. However that may be, we have heard Counsel on both sides, and we have had read to us a very large quantity of affidavits put in by the parties; and we think, after consideration of all these affidavits and of the circumstances of the case, that a sufficiently strong case--we may say a very strong case--has been made out by the plaintiff to justify the appointment of a Receiver in this case. Although we are far from wishing to prejudge the case in any way, we certainly think a fair prima facie case has been shown to exist on the side of the plaintiff. But, as we have said, we do not wish to prejudge the case; and we must here point out that no evidence on oath has been given. There are nothing but affidavits to go upon; and therefore the view we take on these affidavits may entirely be set aside when the witnesses are cross-examined,--as cross-examined they will be,--before the Subordinate Judge at the trial.

7. Now there is a considerable number of affidavits adduced by the plaintiff--affidavits of most respectable witnesses--to show that he was installed as mohunt upon the 2nd of September last. These are the affidavits of Dr. Rogers, Jotindra Nath Banerjee, Jogendra Nath Banerjee, and others; and if the affidavits of these gentlemen are entitled to implicit belief, there is little doubt that the plaintiff was so appointed on that day. There is also the fact in favour of the plaintiff, namely, that he was the nephew of the last mohunt, and that, all the three preceding mohunts,--Kesho Das, Nursingh Das and Jugarnath Das--

belonged to the same natural family. Jugarnath Das was the nephew of Nursingh Das and was appointed chela by his uncle when he was a child. In these circumstances, it appears to us certainly not ijara probable that Jugarnath Das on his death-bed did select the plaintiff to be his successor.

8. On the other hand, there are affidavits in support of the allegation that the defendant, Sia Ram Das, was made a chela by the deceased Jugarnath Das on cue 16th of May 1897, although this fact is denied by the plaintiff. But it is admitted that he was installed as mohunt by the punchayet on the 12th day after the death of Jugarnath Das. Notwithstanding these two facts, if the former be proved at the trial, it is clear that if the plaintiff succeeds in the course of the suit now pending before the Subordinate Judge in establishing that he was duly installed as mohunt by Jugarnath Das on the 2nd of September, still his claim must prevail over that of Sia Ram Das, that is to say, provided it be proved that the mohunt has power to nominate his successor, as it is contended in this case that he has.

9. Mr. Woodroffe, who appeared on behalf of the appellant, Sia Ram Das, urges that it would be very wrong to appoint a Receiver, seeing that this would have the effect of turning his client out of possession of the property which he now holds; and that it would be injurious to him, inasmuch as it would not only deprive him of the management of the property, but would render it difficult for him to procure funds for the prosecution of his defence in the case. We observe, however, that Sia Earn has not been long in possession of the property. He has only recently taken possession. He certainly was not in possession of the property appertaining to the mohuntship before the death of Jugarnath Das, which took place in September 1898; and he obtained possession with the assistance of the police. Therefore, it does not appear to us that he can be said to be in peaceful possession of the property. By the term peaceful possession, we mean possession with the acquiescence of the plaintiff.

10. Then there is very great reason to believe that since he has taken possession of the property he has committed gross waste with regard to it. It appears that this defendant appeared before the Sub-Divisional Officer of Beguserai on the 9th September 1898, and acknowledged receipt of the property of the mohunt, saying that it was "all safe." Nevertheless, when the Commissioner sent by the Subordinate Judge to make an inventory of the property arrived at the Asthal, in the first place, every obstruction that was possible was put in the way of his doing his duty by this very defendant and his employees; and in the second place, according to the Export of the Commissioner, printed at page 172 of the paper book, it appears that a very large quantity of valuable property has disappeared from the time that this appellant took possession of the property. This property consists of moneys, bonds, promissory notes and other securities, gold and silver ornaments and utensils. And the Commissioner distinctly found that the defendant appeared to have removed or secreted moneys, securities, bonds, promissory notes and a large quantity of silver and gold ornaments and utensils.

11. In these circumstances, it appears to us that this case comes exactly within the ruling of Mr. Justice Macpherson in the ease on the Original Side, in which he lays down that "the mere circumstance that such a large amount of property was removed, and under circumstances which might fairly give rise to suspicion during the pendency of the suit in which the question of title to that property would be determined, is in itself a sufficient ground for the appointment of a Receiver."

12. As for the contention of Mr. Woodroffe that the defendant will now be deprived of funds to carry on his defence in this case, we have only to say that the plaintiff is exactly in the same position. But there is too much reason to believe that, owing to the acts of waste which the defendant appears to have committed, he will not be entirely without funds to carry on his case.

13. Taking the whole of the circumstances of the case into our consideration, we think that this is a case in which a Receiver should be appointed. The property at stake in this ease is very large. The Immovable property is estimated to be worth 3 or 4 lakhs of rupees; and the moveable property is said to be worth more than a lakh. The income from the Immovable property is, moreover, said to amount to thirty or forty thousand rupees per annum.

14. The claimants of the property are mendicants, and apparently possessed, of no worldly property whatsoever, and we think that until the rights of the claimants of this property are decided, it is proper that a Receiver should be appointed.

15. We therefore affirm the order of the Subordinate Judge and dismiss this appeal with costs.