
(1895) 01 CAL CK 0006
In the Calcutta High Court

Padmanand Singh Bahadur and Others	APPELLANT
Vs	
Chandidat Jha	RESPONDENT

Date of Decision : 24-01-1895

Acts Referred:

Citation : (1895) ILR (Cal) 459

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

Bench : Division Bench

Judgement

Ghose and Rampini, JJ.—This is an appeal against an order for the appointment of a receiver pending the result of a suit.

2. The suit was instituted by Rajah Padmanand Singh and others, sons of the late Bajah Lilanand Singh Bahadur, for recovery of possession of various properties, moveable and immoveable, which the defendant is in possession of, and which he claims by right of heirship to his son, Anantanand Jha, deceased. The plaintiffs' claim is founded mainly upon an alleged custom, both in the family of the plaintiffs and among Maithil and Suti Brahmans generally, that custom being that, when a provision is made for the support and adornment of a female member of the family, by grant of properties, she holds such properties for her life; that they devolve upon her death upon her lineal descendants; but that, on failure of lineal descendants, the properties revert to the family of the grantor. And it is stated that this custom obtains also in the case of a girl belonging to a family of the Maithil class of Brahmans being married into the Suti class, which is higher in rank than the Maithil class; and that in case of such marriage, the husband becomes degraded to the Bikawa class, and does not inherit the properties given to the girl by the family of her father.

3. It would appear from the plaint that the late Rajah Lilanand Singh gave various properties to his wife Rani Chandeswari, the step-mother of the plaintiffs; that these properties devolved upon her death upon her daughter, Kamikhya Dai; that from the profit of those properties Kamikhya acquired other properties, and that she obtained certain other properties by grant from the plaintiffs' family;

and that all these properties, upon her death, went to her son Anantanand Jha; and upon his death, which occurred recently (April 1893), they came into the possession of the defendant.

4. The plaintiffs in their plaint base their claim mainly upon the custom which has already been referred to, and also upon an alleged adoption in the kritima form of Bajah Padmanand Singh by Rani Chandeswari; but this latter ground does not seem to have been much relied upon in the matter of the application for the appointment of a receiver.

5. The defendant denied the custom alleged by the plaintiff and the right asserted by him.

6. The application that was made by the plaintiffs in the Court below was for the appointment of a receiver u/s 503* of the Code of Civil Procedure, as also for an order of injunction u/s 492, and in support of such application certain affidavits were put in on behalf of the plaintiffs, and there were counter-affidavits on the part of the defendant denying most of the statements made in the affidavits produced by the plaintiffs.

7. The Subordinate Judge was of opinion that no sufficient case for the appointment of a receiver in respect of the Immovable properties was made out, but that such a case was established in regard to the moveable properties (with the exception of certain properties mentioned in his order), and he made an order accordingly.

8. In dealing with the question raised before him, the Subordinate Judge seems to have been of opinion that the plaintiffs were entitled to have a receiver appointed, if it appears that the plaintiffs had a fair question to raise, and if there was strong ground of apprehension that the property in dispute would be lost or wasted if not placed in the hands of a receiver. And in this view of the matter, he thought that the affidavits on behalf of the plaintiff justified the appointment of a receiver.

9. It seems to us that in thus dealing with the matter, the Subordinate Judge has fallen into an error. He would, no doubt, have been right if he had made an order for an injunction (see Kerr on Injunctions, pp. 11-12).

10. In the case of Sidhesivari Dabi v. Abhoyeswari Dabi ILR Cal. 818 the law on the subject of the appointment of a receiver was thus laid down by a Divisional Bench of this Court: "Both the Deputy Commissioner and the Judge seem to think that it is sufficient to justify the appointment of a receiver if the allegations of the plaintiff show a sufficient cause of action, and if the management of the estate has been and is such as to render the appointment expedient. Section 503 of the CPC certainly gives a wide discretion to the Court. It empowers the Court to appoint a receiver whenever it appears to be necessary for the realization, preservation, or better custody or management of any property the subject of a suit. This power is not, however, greater than that exercised by the Courts in

England; and it must, we think, be exercised on the same principle, that is to say, with a sound discretion, on a view of the whole circumstances of the case, not merely circumstances which might make the appointment expedient for the protection of the property, but all the circumstances connected with the right which is asserted and has to be established. If a right was asserted to property in the possession of the defendant claiming to hold under a legal title, the Courts did not interfere by appointing a receiver unless a very strong case was made out. The principles to which we refer are stated in *Kerr on Receivers*, 2nd Edn., p. 3, by Lord Cranworth in *Owenv. Homan* 4 H.L.C. 997 and in *Clayton v. The Attorney-General* (Cooper's cases in Chancery, Vol. I, P. 97). We see no ground for the contention that these principles were not applicable in this country. They are adopted to prevent a wrong to the defendant which might equally be done here if they were not followed. It was indeed conceded that the plaintiff must at least show that her claim is honest and well founded, and if she must show that much, it is a mere question of degree as to how far she must make out her case." This view seems to be fully borne out by the authorities quoted; and we may say that we entirely concur in it.

11. The Subordinate Judge does not appear to have kept in view the distinction which exists between the case of an injunction and that of a receiver. That distinction seems to be that, while in either case it must be shown that the property should be preserved from waste or alienation; in the former case, it would be sufficient if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged; while in the latter case, a good prime facie title has to be made out (see *Kerr on Receivers*, pp. 3-4; *Kerr on Injunctions*, pp. 10-11).

12. Addressing ourselves then to the merits of the application, we observe that the plaintiff, Rajah Padmanand Singh, who is best able to depose to the existence of the alleged custom and the adoption set up by him, has not given his own oath; and the affidavits that have been produced are not of a satisfactory character.

13. The defendant claims to hold the property on a legal title; and if the property did belong to his son, Anantanand Jha, he would be entitled to it, unless the custom alleged by the plaintiff is clearly established. We are not called upon, nor do we think we should be justified, to express any opinion upon this question; but confining ourselves to the materials now before us, we are not prepared to say that the plaintiff has made out a good prime facie case such as to justify the Court in ordering that the properties should be taken away from the possession of the defendant and placed in the hands of a receiver.

14. But, then arises the question whether, in the circumstances which have transpired at the trial of the question before the Subordinate Judge, the moveable properties, which are mostly jewels and gold and silver articles, should not be preserved and prevented from waste, as provided by Section 492 of the Code.

15. It appears from the affidavits and other documents which were placed before the Subordinate Judge that some portion of the valuable jewellery and gold mohurs were removed from the defendant's house at Sultanganj and found buried in an out-house, and that some of the gold ornaments were taken away by the defendant and placed in the custody of a banker, Kunj Behary, at Bhagalpore. The defendant alleges that the first-mentioned act was an act of one of his servants in conspiracy with the plaintiffs, and that the deposit of the jewels with Kunj Behary was in accordance with an old practice. This may or may not be so; but these circumstances are suspicious, and lend support to the allegation of the plaintiffs that there is danger of the moveable properties being wasted or alienated, and the Subordinate Judge has so found.

16. We think that, in the circumstances of this case, we ought to make an order u/s 492 for the purpose of preserving the moveable properties from being wasted and alienated.

17. We understand that the whole of these properties is now in the custody of the Collector. If so, there will be no difficulty in making a full and correct inventory of these properties. Such inventory should be made by a responsible officer of the Court in the presence of both the parties, or their authorized agent; and the respective prices of the properties should be ascertained and entered in the inventory. After such inventory has been made, the properties will be made over to the defendant, but he will be restrained by an injunction from wasting, alienating, or otherwise dealing with them until the result of the suit now pending in the lower Court. Among the moveable properties, there is a mortgage-bond, dated the 19th March 1885, executed by Rajah Lilanand Singh in favour of Kamikhya Dai, and certain Government Promissory notes. With regard to these properties, we direct that while the defendant will be prohibited from alienating or otherwise dealing with them, he may be permitted to sue upon the mortgage-bond and take steps to realize the amount covered thereby, but the money when realized will be kept in Court until the disposal of the suit. And as regards the Promissory notes, he may draw the interest as it falls due from time to time.

18. The order of the Court below, appointing a receiver to take charge of the moveable properties, will be set aside, and, in lieu thereof, there will be an order u/s 492 in the terms already expressed. Each party will bear his own costs in both the Courts.

* Power of Court to appoint Receivers.

[Section 503: Whenever it appears to the Court to be necessary for the realization, preservation or better custody or management of any property, moveable or immoveable, the subject of a suit, or under attachment, the Court may by order-

(a) appoint a Receiver of such property, and, if need be,

(b) remove the person in whose possession or custody the property may be from

the possession or custody thereof;

(c) commit the same to the custody or management of such Receiver; and

(d) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.

Receiver's liabilities.

Every Receiver so appointed shall:

(e) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property;

(f) pass his accounts at such periods and in such form as the Court directs;

(g) pay the balance due from him thereon as the Court directs; and

(h) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in this section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove.]