

(1924) 07 CAL CK 0066
In the Calcutta High Court

Promotha Nath Mitter

APPELLANT

Vs

Manmatha Nath Mitter and Others

RESPONDENT

Date of Decision : 25-07-1924

Acts Referred:

Bengal Tenancy Act, 1885 — Section 93

Citation : 86 Ind. Cas. 610

Hon'ble Judges : Ewart Greaves, J;Chakravarti, J

Bench : Division Bench

Judgement

Chakravarti, J.—This Rule was obtained by the petitioner which runs as follows: Let the record be sent for and a Rule issue on the opposite parties to show cause why the order of the Second Additional District Judge of Howrah, dated the 29th May 1924 refusing to appoint a common manager should not be set aside and why an order should not be passed for the appointment of a common manager, Pending the hearing of the Rule the order directing the Receiver to give possession of the estate to the owners will be stayed.

2. Cause is shown by the opposite parties, and it is contended that the order of the District Judge is right and that this Court should not interfere with the order which was purely a discretionary one. The facts are as follows: The Andul Raj is the owner amongst other properties of touji popularly known as Bara Taraf of the Collectorate of Howrah. This is a separate account of the 8 annas of the main touji and the other separate account consists of the other 8 annas of the touji. The petitioner is the eldest son of the late Raja and claims shares in the estate of the touji called the Bara Taraf. There is some dispute as to his share. But it is unnecessary to discuss it.; His share is evidently not more than 1/5th in the estate: the remaining co-sharers, according to the petitioner, are his four brothers, but according to the opposite parties, the mother had also a share as the heiress of the deceased son of the late owner. The owners of the separate account of the tauji also appear, and oppose this Rule. The petitioner's case shortly stated was that there was a dispute between the brothers as to the

management of the estate and that on account of that dispute collections of rent of the estate are practically at a stand still, and that consequently there is an apprehension of serious loss to the income of the share-holders and also there is some danger of the property being lost on account of arrears of revenue. In the circumstances the petitioners applied for the appointment of a common manager of their joint estate u/s 93 of the Bengal Tenancy Act, the owner of the separate estate is also a party as a co-owner of the parent estate, as I have already stated, to the proceedings, because his share also would be involved, if an order u/s 93 is made. The opposite parties raised various objections to the maintainability of the application u/s 93 and they also contended that in the circumstances of the present case no order should, be made under that section. The owner of the separate estate also opposed on similar, grounds the appointment of a common manager. But he had additional objections on the ground that it would be a great hardship upon him if his estate is placed under the common manager as he is absolutely unconcerned in the dispute between the brothers. The learned District Judge dismissed the application on the ground that the proceedings were defective in certain material points and he also went very fully into the merits of the case and in his opinion the circumstances would not justify an order u/s 93. It appears that during the pendency of the proceedings before the learned District Judge a Receiver was appointed by consent of the parties. The petitioner when he obtained a Rule from this Court, applied that the Receiver appointed by the Court below might be continued during the pendency of the Rule here. I am informed that a suggestion fell from this Court to the effect that the necessity of the appointment of a common manager might be obviated if the petitioner brings a suit for partition of the estate and if a Receiver was appointed in the course of the partition suit. It appears that no suit has yet been brought. There was an application by the learned Vakil for the petitioner for the postponement of this Rule when it came up for hearing to-day for three or four weeks with a view to give his client an opportunity for bringing a suit for partition and also for applying for the appointment of a Receiver in that suit. There was a strong opposition to that course by the learned Vakil for the opposite parties. He expressed himself very strongly upon the matter. He stated that he would not tolerate the continuancy of the present Receiver even for a day. We were not inclined in the circumstances to adjourn the hearing. We have heard the parties at some length and we are clearly of opinion that this Rule should be discharged. There are various difficulties in the way of the petitioner apart from the obvious difficulty that this Court is reluctant in the exercise of its revisional jurisdiction to interfere with an order of the lower Court in the exercise of its discretion.

3. We have heard the facts fully discussed before us and we are of opinion that the order of the District Judge is quite correct. Section 93 of the Bengal Tenancy Act under which the application was made runs as follows: When a dispute exists between the co-owners of an estate or a tenure as to the management thereof, and in consequence there ensues or is likely to ensue inconvenience to the public

or injury to private rights, the Court can make an order for the appointment of a common manager. The present application was clearly contemplated as coming within Sub-section (6) of Section 93, that is on the ground of injury to private rights. These words are not free from ambiguity, if the loss of income to the co-sharer on account of a dispute between themselves was intended to be included within these words, there was no difficulty in expressing that intention in clearer terms. The words, as they stand are wide enough to include such an injury: and this section, has been so constructed by this Court in the case of *Soradindu Roy v. Girish Mohini Devi* 36 Ind. Cas. 448 : 21 C.W.N. 240, where it has been laid down, that the District Judge has power to appoint a common manager in case there is a dispute as to the management between the co-sharers, if such mismanagement is likely to cause injury to the co-sharers. That being so, it appears that when a co-sharer, however, small his interest may be, begins to quarrel with another co-sharer, holding an equally small share, then, according to the provisions of this section a common manager may be appointed, to take charge not only of the shares of the disputants but also to take charge of the other shares, however, large their interest may be. Not only that, as in the present case, if a co-sharer has opened a separate account and is in peaceful possession of his estate, he is also liable to lose possession of his separate estate, although, as in the present case, the owner of that separate account is totally unconnected with the quarrel between the other co-sharers. In cases where such a consequence is likely to follow the appointment of a common manager on the application of the small share-holders should not ordinarily be made and this is a strong ground why the District Judge should not exercise his discretion by appointing a common manager. It should be borne in mind that it is a serious matter to the owner of an estate like the owner of the separate account in the present case, to lose possession of his estate on account of a quarrel between the other co-sharers although such, a quarrel does not affect the management of his share of the property, and there is no likelihood of any loss or injury to him. By the appointment of a common manager, he loses his possession, his income and may be his prestige as a zemindar which possession gives. As to the income, of his estate, he cannot get more than the common manager may afford to give him. I think, therefore, the objection of the owner of the other 8 annas of the estate to the appointment of a common manager is reasonable and it should be taken into account in exercising the discretion given by Section 93 of the Act. On the whole I think that the order passed by the learned District Judge is quite correct.

4. I wish to refer to another matter and that is this: Whenever a dispute between the co-sharers is likely to cause injury only to themselves it may be well avoided by a partition suit and by the appointment of a "Receiver in the course of that suit. The Receiver appointed by a Civil Court in the course of a partition suit does not usually involve the consequences which the appointment of a common manager u/s 93 does, and if the co-sharer can easily avoid the necessity of an application u/s 93 by bringing a partition suit. I think the Court should not

ordinarily give relief on an application under R. 93. In the present case, there is no difficulty in the way of the petitioner bringing a partition suit at once and asking for the appointment of a Receiver.

5. The Rule is accordingly discharged with Costs. We assess the hearing fee at eight gold mohurs to be paid to the opposite party represented by Sir P.C. Mitter and three gold mohurs to those represented by Babu Rupendra Kumar Mitter. The Receiver is discharged and he should deliver possession of the property to the parties at once.

6. Let the record be sent down without delay.

Greaves, J.

7. I agree.