

(1933) 03 PAT CK 0022

In the Patna High Court

Rajniti Prasad Singh and Others

APPELLANT

Vs

Nrisingha Charan

RESPONDENT

Date of Decision : 06-03-1933

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109(a)

Citation : AIR 1933 Patna 293

Hon'ble Judges : Kulwant Sahay, J

Bench : Division Bench

Judgement

Kulwant Sahay, J.—This is an application for leave to appeal to the Privy Council [Nrisingha Charan Nandy Chowdhry Vs. Rajniti Prasad Singh and Others, against the decision of a Division Bench of this Court in the matter of the appointment of a receiver during the pendency of a mortgage suit. The plaintiffs instituted the suit to enforce two simple mortgages of an impartible Raj which is now in the possession of defendant 19, Nrisingha Charan Nandy Chaudhury, under a usufructuary mortgage executed by the mortgagors. The Subordinate Judge made an order for appointment of a receiver, but on appeal": this Court has set aside the order, and the present application is for leave to appeal against that decision of this Court.

2. The only question for consideration is whether the decision of this Court can be construed to be a decree or final order within the meaning of Section 109(a), Civil P.C. The question has been considered in several cases. In Chundi Dutt v. Pudmanund Singh (1895) 22 Cal 928, it was held that there was no appeal to the Privy Council, against an order refusing the appointment of a receiver in a suit inasmuch as such an order does not finally decide any matter which is directly at issue in the case in respect to the right of the parties and is not final within the meaning of Clauses (a) and (b), Section 595 of the Code of 1882 and Clause 39, Letters Patent, of the Calcutta High Court. The learned Judges relied, amongst others, upon the decision of the Privy Council in Kishen Pershad v. Tiluckdhari Lal (1890) 18 Cal 182 and held that the order refusing to appoint a receiver was not

an order which finally decided any question at issue in the case or the rights of any of the parties.

3. They also referred to the Privy Council decision in *Rahimbhoy Habibhoy , v. Turner* (1890) 15 Bom 155, in support of the proposition that the order was not a final order. In *Muhamad Musaji Saleji v. Ahmad Musaji Saleji* (1911) 10 IC 439 the same view was taken and it was held that an order appointing a receiver was not a final order within the meaning of Clause (a), Section 109 of the Code, and that where the question in controversy was whether a receiver should or should not be appointed in respect of the subject-matter of the litigation, and the Courts took divergent views upon the matter, certificate as to the fitness of the case for appeal to His Majesty in Council should not be granted.

4. The . same view was taken by this Court in *Magni Ram v. Sridhar Choudhury* AIR 1925 Pat 173, where it was held that an order refusing or granting the appointment of a receiver does not fall within the provisions of Section 109, Civil P.C., as the appointment of a receiver is in no way a matter which finally determines the rights of the parties. There also a receiver had been ordered to be appointed by the Subordinate Judge and the High Court had on an appeal set aside that order, and reliance was placed upon the decision of the Calcutta High Court in *Chundi Dutt v. Pudmanand Singh Bahadur* (1895) 22 Cal 928 and *Muhamad "Musaji Saleji v. Ahmad Musaji Saleji* (1911) 10 IC 439, referred to. In *Binoy Krishna Mukerjee and Another Vs. Satish Chandra Giri and Another*, , the application for leave to appeal to the Privy Council against an order of a Division Bench of the High Court setting aside the order of the District Judge for the appointment of a receiver was entertained and leave was granted under Clause (c), Section 109 of the Code.

5. When this matter went before the Privy Council, their Lordships entertained the appeal but in disposing of it, Viscount Sumner made the following observations:

Their Lordships remark that it was with some doubt in the mind of at least one of the Judges of the High Court that leave to appeal to His Majesty in Council was given in this case, and they think it right to add that, as a general rule and in the absence of special circumstances or some unusual occasion for its exercise, the power of making interlocutory order is one which is not a suitable subject for review by the Judicial Committee. Not only are the practice of the Court and the manner in which experience has shown that it is wise to apply it, better known to the High Courts in India than they can be to their Lordships, but the delay occasioned by taking this additional appeal adds gravely to the procrastination, which is already the bane of Indian litigation: vide *Binoy Krishna v. Satish Chandra Giri* AIR 1928 PC 49.

It is clear from the decisions cited above that an order refusing the appointment of a receiver is not a final order within the meaning of Section 109(a), Civil P.C. The appointment of a receiver is in the discretion of the Court and the order is

art interlocutory order which is no way decides any cardinal point arising for decision between the parties in the suit.

6. In the present case it has been observed by the Division Bench that the suit was instituted in March 1931 and must be ripe for hearing. Mr. Manohar Lal for the petitioners states that some preliminary points have yet to be determined before the suit can be heard and that there will be delay in the actual hearing of the suit. Even so, the delay in the disposal of the suit cannot be so great that it cannot be disposed of before the disposal of appeal to the Privy Council against an order of this Court. Under the circumstances of the case it does not appear desirable that leave should be granted under Clause (c), Section 109 of the Code, and, in fact, Mr. Manohar Lal has not pressed for leave under this clause. We rejected the application and stated that the reasons will be given later on. We therefore record the above reasons for rejecting the application. The opposite party is entitled to his costs. Hearing fee five gold mohurs.