

(1956) 04 PAT CK 0008
In the Patna High Court
Case No : A.F.O.O. No. 91 of 1953

Rang Bahadur Singh

APPELLANT

Vs

Bisheshwar Prasad Singh @ Chootan Babu and Others

RESPONDENT

Date of Decision : 18-04-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 4, 115

Citation : AIR 1956 Patna 429

Hon'ble Judges : Misra, J;Ahmad, J

Bench : Division Bench

Advocate : Llnarain Sinha, K. Dayal and R. Dayal, for the Appellant; Lakshman Saran Sinha, for the Respondent

Judgement

Misra, J.—Rang Bahadur Singh, the appellant, was appointed a receiver on 21-12-1950, by the learned Subordinate Judge first Court, Gaya, in a suit for maintenance by one Ramdulari Kuer, the mother of the defendants Narbadeshwar Pd. Singh and Bisweshar Pd. Singh. The suit was decreed and maintenance was allowed to the plaintiff at the rate of Rs. 200 per month.

The sum of Rs. 2,400 which would be the total amount payable per year to the decree-holder by the judgment-debtors was to be realised to the extent of Rs. 1,800 out of their estate and the remaining amount of Rs. 600 was payable in cash in equal proportions by the two sons. This amount was, however, variable from year to year according to the needs of the decree-holder and the paying capacity of the judgment-debtors. Narbadeshwar Pd. Singh, the first son, was appointed a receiver to carry out the direction of the Court. The appointment was made in Execution Case No. 42 of 1944, which was levied by the decree-holder when her dues were not paid.

It appears that Narbadeshwar Pd. Singh was not able to discharge his duties as a receiver properly and was not able to pay the dues of the decree-holder. The latter, accordingly, brought the matter to the notice of the Court now and then and, ultimately, the learned Subordinate Judge decided to appoint a third party

receiver to facilitate the payment. The present receive", Rang Bahadur Singh was, accordingly, put in the place of Narbadeshwar Pd. Singh and a writ was issued to him to take charge of the estate of the judgment-debtors.

2. Eiseshwar Pd. Singh, judgment-debtor No. 2, filed a petition on 7-1-1951, in the Court of the learned Subordinate Judge, saying that the receiver had sold 150 mds. of paddy worth Rs. 3,000 and newari & straw worth Rs. 600. This was followed by a regular petition on 10-2-1951, making a reference to the previous petition to the effect that the receiver was keeping the above amount with himself in collusion with the decree-holder with the Ulterior motive of causing loss to the estate.

It was alleged further that the receiver not only did not deposit the amount in Court, but, instead, brought a false case against him in the Criminal Court on the ground that his agents had removed 45 mds. of paddy and they were also planning to remove 200 bundles of straw. The learned Subdivisional Magistrate of Jehanabad," in whose Court the complaint was filed, had the matter enquired into by the officer-in-charge, Ghosi Police station, who found the allegation to be altogether false, and the learned Subdivisional Magistrate accordingly passed an order for the prosecution of the receiver u/s 211, Penal Code.

3. It appears that on 9-1-1951, the decree-holder filed an application in the Court of the learned Subordinate Judge alleging that although the appellant was appointed a receiver he was prevented by respondent Biseshwar Pd. Singh from taking peaceful possession of the land, and the receiver was compelled to resort to a proceeding u/s 144, Criminal P. C. The agents of the judgment-debtor No. 2 had actually looted the paddy of the bakasht land of Shankerpur Shaista-bad on 7-1-1951, from the cutchery and threatened to assault the barahil of the receiver. A prayer was, accordingly, made to initiate a proceeding for contempt of Court against him.

4. The learned Subordinate Judge, accordingly, held an enquiry under Order 40 Rules 3 and 4, Civil P. C. He came to the conclusion that the receiver was in actual possession of the produce as alleged and his statement that he obtained merely a symbolical possession was not true. As regards removal of the produce, he held that the receiver was liable for the loss of 150 mds. of paddy besides 5,000 bundles of newari. "He assessed the value of the loss caused to the estate at Rs. 2,400 and held the receiver responsible for that amount. He held further that the receiver had spent a lot of money without the sanction of the Court in prosecuting his adversary Biseshwar Prasad Siagh and, accordingly, he could not claim any sum on that account out of the income of the estate in his hands. The receiver has preferred the present appeal against the order of the learned Subordinate Judge.

5. Mr. Lakshman Saran Singh raised a preliminary objection that no appeal lay against the order of the Court in the matter of an enquiry of the present "nature which amounted to its holding the receiver liable to pay any amount to the estate

in his charge. The examination of the accounts of the receiver by the Court and the passing of necessary orders was a matter entirely within the discretion of the Court appointing the receiver and it was not covered either by Rule 1 or Rule 4 of Order 40, Civil P. C.

Mr. Lalnarain Sinha, who appeared for the appellant, did not seriously contest the proposition and, accordingly, prayed that the present appeal might be treated as an application in revision, and he argued it on that footing.

6. The first point raised by Mr. Lalnarain Sinha was that the learned Subordinate Judge had no jurisdiction to enquire into the matter raised before him at the instance of the opposite party, inasmuch as the charge brought by him against the receiver was one relating to wrongful conversion of the property of the estate for which the learned Subordinate Judge made the receiver liable to pay the sum mentioned above.

None of the provisions of Order 40, Civil P. C., which deals with the point of the appointment of a receiver and the discharge of his duties by him, covers such a case. He drew our attention to the provisions of Order 40, Rule 1, which deals with the appointment of a receiver, removal of any person from the possession or custody of a property committing the same to the possession, custody or management of the receiver and conferring upon the receiver all such powers as to bringing suits and for the realisation, management, protection and improvement of the property, the collection of the rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

Rule 2 deals with the remuneration payable to the receiver and is not relevant for the present purpose. Rule 3 deals with the matter of security to be furnished by the receiver, submission of accounts by him, payment of the account due from him, as the Court directs, and his responsibility for any loss occasioned to the property by his wilful default or gross negligence.

Rule 4 deals with the rendition of accounts by him, payment of the amount due from him as the Court directs, and in Clause (c) deals with his responsibility for the loss occasioned to the property by his wilful default or gross negligence, in which event his property may be directed to be attached and sold. It was contended that in terms none of the provisions in these rules of Order 40 could be said to apply to the charge of wrongful conversion brought against the receiver by a party to the proceeding.

In that view of the matter, the order passed by the learned Subordinate Judge holding the receiver accountable for the sum found by him was beyond jurisdiction. The proper procedure to be followed in such a case would be to direct the party aggrieved to bring a suit against the receiver in the proper Court where every such matter can be properly investigated. The receiver can only be directed to pay the amount due from him which would not include the amount which he contests is not due from him, and which is sought to be fastened upon

him by a party to the receivership proceeding as having been misappropriated or otherwise converted to his own use. The first case relied upon by Mr. Lalnarain Sinha in support of his contention was that of *Coomar Sattya Sankar Ghosal v. Rane Golapmonee Debee*, 5 CWN 223 in which it was decided by Sale J. that

" if there is any liability attaching to the Receiver other than that which appears on the face of the accounts the proper course is to sue the Receiver for the purpose of establishing that "liability". "

In that case, too, the charge against the receiver was that he had not shown in his account the entire amount which he was bound to collect in terms of his appointment. One of such charge was his failure to include in the account the Mofassil collection by the servants of the estate. The learned Judge held that whatever might be said with regard to the system of management of the estate, but the applicant had failed to show that any prima, facie ground existed for supposing that the receiver was liable for anything except that which appeared in the account. If the party aggrieved by the account submitted by the receiver and passed by the Court instituted a regular suit for clarification of the position, that was not precluded in terms of the decision come to by the High Court.

The same view was expressed by Sanderson, C. J., and Rankin J. in the case of *Subal Chandra Kar and Another Vs. Jatindra Mohan Ghose and Another*, There, too, it was held by Rankin J., in agreement with the view of Sale J. in the case of *Coomar Sattya Sankar Ghosal*, that where the receiver had failed to exercise reasonable diligence for recovery of certain rents in respect of certain premises in his charge and that he had improperly dealt with certain portions of the premises under his management, or had failed to let them out, and had been guilty of breach of his duty, the proper course to be followed was to have these matters investigated by regular suit and could not be raised before the Court appointing the receiver while the latter submitted his accounts to be passed by the Court.

7. Mr. Lakshman Saran Sinha, however, cited the case of *Mullapali Taravathil, Manager, Ittunni Raman Nair Vs. Gopala Menon and Others*, in which it was held that p. 40, Rule 4, Civil P. C., was a residuary provision intended to deal with all cases of loss to the estate not specially provided for and, therefore, applies to a case of misappropriation also. It was contended that in the above case their "Lordships overruled the objection that Order 40, Rule 4, in so far as it dealt with the point of wilful default or negligence, did not cover a case of misappropriation. Misappropriation was treated as covered by loss to the estate occasioned" by his wilful default by a receiver.

Reliance was also placed on the case of *Ganesh Lal v. Satya Narayan Singh* AIR 1920 Pat. 220 (D). In that case also the receiver was held liable in respect of a certain sum. The point raised in that case was that no appeal lay against such an order of attachment passed by the Court of the properties belonging to the receiver which would bring the matter within the terms of Order 40, K. 4, Civil P.

C., which is made appealable under Order 43, Rule 1, Clause (s) of the Code.

It was contended that this Court accepted the view that the liability of a receiver was covered by Order 40, Rule 4, if there was an order of attachment passed, and, therefore, the order holding the receiver liable for a certain sum also could not be said to be beyond jurisdiction of the Court although the right of appeal could accrue to the receiver only in the event of the Court proceeding further to pass an order for attachment of his properties. It seems, however, that the point for consideration before us was not directly raised in that case and as such it cannot throw any light on the question as to whether the charge of misappropriation brought against a receiver can be investigated by the Court appointing the receiver in terms of any of the rules of Order 40, Civil P. C.

The decision in the case of *R.M.P. Palaniappa Chetti v. M. S. A. PI. Palaniappa Chetti* AIR 1923 Mad. 85 (E), is obviously not on the point as in that case the sum of Rs. 36,100, which was directed to be paid into the Court by the receiver, was not paid and order for attachment of the property was passed and appeal against the order was found to be competent. It is not denied that an order which is covered by Order 40, Rule 1 and Rule 4, will be appealable.

Reference was also made to the case of *Mt. Nag Kuer v. Sham Lal Sahu*, AIR 1925 P.C. 257 wherein it was held that where a receiver withdrew certain amounts from the partnership funds, which were in his hands as a receiver, and failed to pay over those moneys although asked to do so on several occasions, and the Court subsequently condoned the authorised retentions, the action of the plaintiff-receiver amounted to a breach of duty as serious in character as any that can be committed by an officer of the Court in his position and that his action ought not to have been overlooked to any degree by any Court jealous of its responsibility for the actions of its own officers.

It seems to me, in the result, difficult to agree with Mr. Lalnarain Sinha that the Court has no jurisdiction to look into the accounts of the receiver and to hold him liable for any moneys misappropriated by him, if such a charge is brought against him and is found on enquiry to be well established. I am accordingly inclined to agree with respect with the opinion of their Lordships of the Madras High Court in *Mullapali Tanivathil's* case (C) cited above and the observation of Lord Blanesburg in the above case that in passing the accounts of the receiver it is open to the Court, under whom the receiver acts, to look into all the charges relating to the administration of the estate in his hands brought by any party to the proceeding.

8. Mr. Lalnarain Sinha, however, contended, in the alternative, on the authority of *Somasunda-ram Chettiar v. Kannammai Achi* AIR 1944 Mad. 392 that Order 40, Civil P. C., contemplates an enquiry in cases of ordinary questions of accounts and also cases of wilful default or gross negligence. It is not designed to cover what in substance is a case of conversion. Where an application under Order 40 makes charges of wilful default and gross negligence against the receiver, the

Court should not refer the matter for an enquiry to commissioner but should itself enquire into the said charges.

Where the charge is one of fraudulent conduct and, misappropriation, the matter should be referred to a suit. I have already held that it will not, be correct procedure in every case to direct the party to a civil suit the moment he brings a charge of wrongful conversion. As a matter of fact, their Lordships also held that in cases of ordinary questions of account the Court can enquire into the matter.

It may well be that when there are complicated questions of fact and the Court in seisin of the case is satisfied that a summary enquiry like the one contemplated before it would not be fair, it should direct the party applying to bring a regular suit against the receiver on the charge of misappropriation or fraudulent conversion. This, in my opinion, would be a course which alone can be said to be consistent with the policy of the law that a receiver is subject to the control of the Court appointing him to that office in all matters relating to the management of the estate in his hands, and as such he must be held to be liable to render accounts which may include wrongful conversion as well.

Since, however, the Court appointing a receiver cannot be held to be proceeding as a regular Court in so far as it acts in supervision over the estate in the hands of the receiver, it is only fair that if serious questions of accounts are raised, which cannot be properly determined without elaborate evidence, it should direct the party aggrieved to institute a regular suit for the purpose. The view expressed in the case of Suresh Chandra Banerjee Vs. A.K.M. Enamel Huq was that it was open to the Court to enquire into the charge of loss to the estate brought against a receiver by his wilful neglect at the time of the passing of his account under Rule 4 of Order 40, Civil P. C., and a separate suit for the purpose was not necessary.

The case of Subal Chandra Kar and Another Vs. Jatindra Mohan Ghose and Another, Was considered by their Lordships and it was explained that it was only in cases of complication that a suit in a regular manner was necessary and not that in every case the procedure should be by a suit, and that summary procedure should never be adopted. Mr. Lakshman Saran Sinha for the opposite party brought to our notice also the case of Chaparaddi alias Saparaddi Gazi Vs. Kabil Molla, Receiver of estate of Chaparaddi alias Saparaddi Gazi and Others, where also a Division Bench of that Court held that where a petition of objection to the passing of accounts containing various allegations of misappropriation, negligence and wilful default on the part of a receiver and a prayer for an enquiry into those allegations is filed, a separate suit is not the only remedy but the matter can be investigated by the Court who appointed the receiver in a, summary proceeding.

I am in respectful agreement with this view and the contention of Mr. Lalnarain Sinha, therefore ,that the learned Subordinate Judge had no jurisdiction to enquire into the charge of misappropriation brought against the receiver by the

respondent must accordingly be overruled.

9. Mr. Lalnarain Sinha further urged that, in any case, the order recorded by the Court below would be revisable as the learned Judge proceeded on the footing that the petitioner had taken charge of the property, because a writ of delivery of possession was issued in his favour. It seems, however, that the learned Subordinate Judge considered the evidence and held that the receiver had taken physical possession of the harvested crops kept in the khalian and of the grains stored in the cutchery by putting his own lock and by the deputation of his own servant Gaya Singh.

10. Accordingly, his conclusion was that the receiver was in actual possession and not merely in symbolical possession as contended before him. However defective this finding of fact may be, it is difficult for me to interfere in revision with this finding.

11. The next point arising, however, in the case is with regard to the finding on the removal of produce as alleged by the applicant-respondent. The learned Subordinate Judge, no doubt held the receiver liable for a sum of Rs. 2,400 as mentioned above but his finding on the point stands thus;--

"I find that their value should be fixed at two-thirds of the amount as mentioned in the application of the judgment-debtor No. 2. In other words, I find that the total loss on account of negligence or misappropriation of the receiver and his servant was not exceeding Rs. 2,400./-".

It seems that the learned Subordinate Judge considered the effect of exhibit C which was an order of the Subdivisional Magistrate, Jehanabad, dated 24-1-1951, by which he held that the allegation of Gaya Singh, the barahil of the receiver, with regard to the removal of paddy by the respondent Biseshwar Pd. Singh was false, and he had accordingly dismissed the claim and also ordered the prosecution of the complainant u/s 211, Penal Code.

Learned Judge referred to the fact that there was nothing before him to show that the conclusion of the learned Subdivisional Magistrate was wrong. He referred in passing to the evidence of A.W.'s 1 to 5, who said that the receiver and his barahil Gaya Singh removed or misappropriated the produce in question, and not judgment-debtor No. 2. He then came to the conclusion that the receiver was liable in terms which I have quoted above.

In my opinion, the learned Subordinate Judge did not consider the evidence of actual removal properly, because he was considerably influenced by the dismissal of the complaint, after an enquiry by the police, by the learned Subdivisional Magistrate of Jehanabad. Mr. Lakshman Saran Sinha contended that this was, in any case, a finding of fact which could not be interfered with in civil revision. In my opinion, however, the learned Sub-ordinate Judge proceeded illegally in fixing the liability on the petitioner without coming to a definite finding that he had actually misappropriated the produce. His finding was that the loss complained of

to the tune of Rs. 2,400/- was caused on account of negligence or misappropriation.

The learned Subordinate Judge omitted to consider that loss due to negligence would not be the same thing as actual misappropriation. The applicant-judgment-debtor had made out a case of removal by the receiver and his men of paddy and straw. It appears that the learned Subordinate Judge, on the evidence on record, was not able to come to a definite conclusion with regard to this matter. He should not have, accordingly, held the receiver liable for negligence, which was not the case of either party, to the proceeding. In the circumstances, the order of the learned Subordinate Judge cannot be upheld on this ground as it is based on no evidence.

12. The application must accordingly be allowed and the order passed by the learned Subordinate Judge is set aside. In the circumstances of the case, however, parties will bear their own costs.

Ahmad, J.

13. I agree.