

(1920) 11 AHC CK 0006
In the Allahabad High Court

S. Mohammad Askari

APPELLANT

Vs

Qazi Syed Nisar Husain alias Munee and Others

RESPONDENT

Date of Decision : 18-11-1920

Acts Referred:

Citation : AIR 1920 All 149 : 60 Ind. Cas. 901

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Judgement

1. The suit out of which this appeal arises relates to property in the Basti District belonging to a lady, named Ashrafunnisa, who died on the 18th of May 1917, possessed of Immovable property of considerable value, not only in the Basti District but also in the Gonda District of Oudh. Admittedly, the said lady had been on had terms with her brother, Ata Husain, and there had been previous litigation between them in the Oudh Courts. On the 28th of April 1917, it is alleged that Musammat Ashrafunnisa had executed a deed of endowment, fettling the whole of her Immovable property on certain trustees for certain specific purposes. On her death a dispute broke out between the present respondents and the appellant, Mohammed Askari. A former general attorney of the deceased lady, who was named the principal trustee in the deed of endowment. The question of possession over the estate of the deceased lady was fought out in the first instance upon applications for mutation of names in the Revenue Courts both of the Gonda and Basti Districts. In the result Mohammed Askari obtained possession as the manager on behalf of the trust. The present suit was brought in the Court of the Subordinate Judge of Basti and the presentation of the plaint was accompanied by an application for the appointment of a Receiver. This application was supported by a very brief affidavit. The statements made in this affidavit are, that the income of the property in suit is very considerable that Mohammed Askari himself is a poor man, possessed of little or no Immovable property, and that, in the event of their succeeding in their suit, the plaintiffs, who claim as heirs at law of Musammat Ashrafunnisa, would find it difficult to realise from Mohammed Askari any decree

for mesne profits which might be passed in their favour. On the basis of this affidavit, the Trial Court passed an order on the 15th of March 1919, stating that it proposed to appoint a Receiver, and called on the parties to suggest the names of suitable persons to take charge of the property in suit in that capacity. Mohammed Askari appealed to this Court against that order, but his appeal failed upon a finding that it was premature, inasmuch as a right of appeal only accrued to him upon the actual appointment of a Receiver. The case then went back to the Trial Court and it is not denied that Mohammad Askari himself suggested to the Court that, if a Receiver were to be appointed, the Deputy Commissioner of Gonda, in his official capacity, would be the most suitable person for such appointment. The Court accordingly passed an order formally appointing the Deputy Commissioner of Gonda to take charge of the property in suit as Receiver and the appeal before us is against this order. It is not denied that an appeal lies. A suggestion has been thrown out that Mohammed Askari is precluded from maintaining this appeal, by reason of the fact that he himself suggested the Deputy Commissioner of Gonda as a suitable Receiver. Under the circumstances which have already been set forth in this order, we think it clear that Mohammed Askari is entitled to maintain this appeal. He has all along protested that no case was made out for the appointment of a Receiver; that it was neither just nor convenient to any one that the management of the trust property by the trustees should be interrupted, merely by the institution of a claim against the said property. He only suggested the Deputy Commissioner of Gonda as a suitable person to take charge of the property as Receiver, if the Court was bent on appointing one. It would be most unjust, more particularly in view of this Court's order dismissing his previous appeal, to hold that he is precluded from maintaining the present one merely because, when the appointment of a Receiver became inevitable, he exerted himself to secure the appointment of a suitable person. On the merits there is very little to be said. The case for the appellant simply is, that the Court below had before it no materials to justify the appointment of a Receiver. The allegation that the trustee in actual possession of the property in suit as manager is himself a poor man, from whom personally a decree for mesne profits in the event of such a decree being passed might prove difficult of realisation, is not an adequate reason for passing the order under appeal. The Trial Court, if it thought that steps were necessary to safeguard the interests of the parties pendente lite, might have taken upon itself to enquire into such matters as the income of the trust property and the expenses necessarily involved in the immediate carrying out of the objects prescribed for the trust. It is quite possible that, if this had been done, the Court might, with the consent of the defendants to the suit, who are the entire body of trustees, have made arrangements for the submission of accounts pendente lite and the deposit of surplus profits in such a manner as fully to safeguard the plaintiffs in the event of their success. The principles which should govern the action of the Courts in the matter of the appointment of a Receiver were laid down long ago in the case of *Srimati Prosonomoyi Devi v. Beni Madhab* 5 A. 556 : (1883) A.W.N. 136 : 3 Ind. Dec. 511. We are in full

agreement with what is there stated as to the need for careful enquiry and the exercise of due caution before a Trial Court passes an order appointing a Receiver, the effect of which is to disposses the parson or parsons for the time being in the enjoyment of Immovable property. It has not been alleged in this case against Mohmmmed Askari personally, or any of the trustees, that ha or they are wasting the corpus of the property, and the Court below had before it no allegation that the trustee, or any of them, were misappropriating the income of the property for purposes other than those laid down in the trust deed. On this state of facts, it seems to us that the order under appeal cannot be maintained. We are naturally reluctant to interfere with the exercise of decretion in such a matter on the part of a Trial Court, more especially after a Government official has been appointed trustee and has presumably taken charge of the property, but we do not find it possible to uphold the order of the Court below in this case. The result is, that this appeal succeeds, and was set aside the order appointing the Deputy Commissioner of Gonda to take charge of the property in suit as trustee. The Court below will replace the defendants, the trustees under the deed of April 25th, 1917 in such possession as they were previously enjoying. There is nothing, however, to prevent the Court from resaving accounts from the Deputy Commissioner of Gonda regarding his period of management and passing suitable orders as to the disposal of any balance which might have accumulated to the or ad it of the, estate during this period of management. We allow the appellant his costs of the proceeding, here and in the Court below.