
(1928) 01 PAT CK 0015
In the Patna High Court

Sri Rani Chhatra Kumari Debi

APPELLANT

Vs

Prince Sri Mohan Bikram Shah and Others

RESPONDENT

Date of Decision : 03-01-1928

Acts Referred:

Citation : 109 Ind. Cas. 323

Hon'ble Judges : Kulwant Sahay, J; Das, J

Bench : Division Bench

Judgement

1. This is an application on behalf of the appellant Rani Chhatra Kumari Devi for the appointment of a Receiver. The suit out of which the appeal arises was instituted by the opposite party for recovery of what is known as the Ramnagar Raj. He has succeeded in the Court below.

2. The petitioner alleges that she is still in possession of the Ramnagar Raj, but that it is just and convenient in this case that a Receiver should be appointed as the opposite party is making attempts to take possession of the disputed properties without taking out execution of the decree Obtained by him. On the allegations made in the petition it, would be difficult to accede to the application; but it is conceded before us now that the opposite party has had his name recorded in the Land Registration Department as the owner of the disputed Raj and is, therefore, in possession of the same. Now the opposite party has succeeded in the action; and until the decree passed by the Court below is reversed on appeal, it is impossible to say that the petitioner has a prima facie title to put forward to the disputed Raj. Having regard to these circumstances, I am of opinion that no case has been made out for the appointment of a Receiver.

3. It is then contended. that we should direct the opposite party to give security for restitution, it is conceded that the case does not fall within the terms of Order XLI, Rule 6 of the Code; but it is contended that the powers of this Court are not circumscribed by the provisions of the Code and that we have inherent jurisdiction to make such order as may be essential in the interest of justice. The question has arisen in many cases whether there is any jurisdiction in the Court

to direct a successful party to give security for restitution after that party has actually obtained possession of the property without giving security in execution of the decree obtained by him. It was held in the Full Bench decision of the Calcutta High Court in Joynarain Pattur v. Russeek Mohun Bannerjee 8 W.R. 144 : B.L.R. Sup 144 (F.B.) that there is no such jurisdiction in the Court; and it was pointed out in that decision that if the Court makes an order directing a respondent who had previously executed the decree to give security and the respondent refuses to carry out the order, it would be difficult to enforce it. It appears, however, that that case was decided in ignorance of the decision of the Privy Council in Jariutool-Butool v. Hoseinee Begum 10 M.I.a. 196 : 10 W.R.P.C. 10 : 2 Sar. P.C.J. 116 : 19 E.R. 946 which appears to recognise the power of the Court to order security although possession of the property in dispute has already been obtained without the giving of security. It is not necessary for me to discuss all the authorities bearing on the point. They are all discussed in the elaborate judgment of Woodroffe and Mookerji, JJ., in Hukum Chand Boid v. Kamalanand Singh 33 C. 887 : 3 C.L.J. 67. It was pointed out in that case that the Civil Procedure Code, is not exhaustive and does not affect the previous existing powers unless it takes them away and that, in matters with which it does not deal, the Court will exercise an inherent jurisdiction to do that justice between the parties which is warranted under the circumstances and which the necessities of the case require. I entirely agree with the decision in the case just referred to and I hold that we have inherent jurisdiction in a proper case to direct the respondents to give security for restitution although the respondents may have obtained possession of the properties without giving any security.

4. But the question still remains, whether the case before us is one in which we should interfere; and, if so, what should be the form of our order, in the case of Nagalutchmee Ummal v. Gopoo Nadaraja Chetty 6 M.I.A. 309 at p. 327 : 1 Sar. P.C.J. 543 : 19 E.R. 116 the particular question which I am now investigating, was discussed by their Lordships of the Judicial Committee. In that case the successful respondents were put in possession of the property as to which they succeeded by the Collector and not by the Court. It was contended before their Lordships that the respondents should be directed to give security for restitution and the Counsel appearing on behalf of the appellants relied on Madras Regulation VIII of 1818, Section 4. That Regulation provided as follows:

The Court of Sudder Adawlut may either order the judgment passed by them to be carried into execution, taking sufficient security from the party in whose favour the same may be passed, for the due performance of such order or decree as His Majesty, his heirs or successors; shall think fit to make on the appeal, or suspend the execution of their judgment during the appeal, taking the like security in the latter case from the party left in possession of the property adjudged against him; but in all cases security is to be given by appellants to the satisfaction of the Sudder Adawlut, for the payment of all such costs as the Court may think likely to be incurred by the appeal, as well as for the performance of such order or judgment as His Majesty, his heirs or successors may think fit to

give thereupon; and after receiving such security, the Sudder Adawlut are to declare the appeal admitted, and to give notice thereof to the appellant and respondent respectively, that they may take measures, the one to prosecute, the other to defend, the cause, in appeal before His Majesty in his Privy Council, according to the established mode of proceeding in similar cases.

5. It will appear that that provision refers to appeals to the Privy Council; but the learned Judges in *Hukum Chand Boid v. Kamalanand Singh* 33 C. 887 : 3 C.L.J. 67 took the view that the principle of that Section would appear to be equally applicable to appeals to the High Court. Now during the argument Lord Justice Knight Bruce put this question to Counsel arguing the case on behalf of the appellant:

Does that Regulation apply in this case? The respondents were put in possession by the Collector, not by the Court.

6. The answer to the question was as follows:

We submit that the Judicial Committee, under this Regulation, in its ministerial, if not in its judicial character, has the power to make the order sought for.

7. In delivering the judgment of the Privy Council the Lord Justice Knight Bruce said as follows:

The Regulation under which this application is founded does not, in their Lordships' opinion, apply to the present case, and, therefore, it will not be necessary to decide whether they have such a discretion as the appellant concludes we possess, of directing securities to be furnished by the respondents. There is, in fact, no allegation in the petition that the respondents have committed or are committing waste, only a rumour of a mortgage or part of the estate.

8. In my opinion this case, although not denying the inherent jurisdiction of the Court to order security to be given by the Successful respondent, where the respondent obtains possession otherwise than in due course of execution, lays down the limit within which such jurisdiction will be exercised. In order to attract the jurisdiction of the Court in a case where possession has already been taken by the successful respondent, there must be allegation in the petition that the respondents have committed or are committing waste. This is the view which was taken by Markby, J., in *Juggo Lal Oopadhya v. Jankee Bebee* 17 W.R. 521. In delivering the judgment of the Court the learned Judge said as follows:

With regard to the second part of the application, it seems to me that, even assuming that the Court has under the circumstances the power to order security although possession of the property in dispute has been obtained by the decree-holder without security for which there is apparent authority in the case cited in *Jariut-ool-Butool v. Hoseinee Begum* 10 M.I.A. 196 : 10 W.R.P.C. 10 : 2 Sar. P.C.J. 116 : 19 E.R. 946 yet I think there are not sufficient materials in this petition to make such an order. I think when a party seeks to obtain security

after the decree has been executed, he has to show special circumstances, such, for example, as waste or improper dealing with the property before the Court can grant such an order.

9. On a careful consideration of the case to which I have already made reference, the case of *Hukum Chanel Boid v. Kamalanand Singh* 33 C. 887 : 3 C.L.J. 67 it will be found that this was precisely the view of the learned Judges in that case. The subject-matter of dispute in that case was a patni taluk which was purchased by the appellant Hukum Chand who took possession of all the villages comprised in the patni. The respondents Kamalanand and his brother who held some of these villages in darpatni right instituted a suit for a declaration that the sale was in contravention of the provisions of the Regulation and, therefore, invalid and for recovery of possession. The suit was decided by the District Judge in favour of the plaintiffs who proceeded to enforce the decree by process of execution immediately and obtained delivery of possession before any step could be taken in the matter of Hukum Chand in the High Court. After filing his appeal Hukum Chand made an application calling upon the decree-holders to show cause why security should not be taken from them for the due performance of any decree which may be made on the appeal. The judgment of Mookerji, J., shows that there was imminent danger of the property being wasted or sold away at the instance of the zemindar during the pendency of the appeal; and it appears from the actual order passed in the case that the property had actually been notified for sale at the instance of the zemindar. Now it is noteworthy that in passing the order which the High Court did, the learned Judges did not call upon the respondents to give security for mesne profits; but they did direct the respondents to pay into the Collectorate before the date fixed for the sale, the whole amount in respect of which the sale was advertised to take place and also to deposit in the Collectorate within one month Government securities of the nominal value of Rs. 8,000 to meet any sums which may become due for patni rent up to the end of Chait following. In other words, there being imminent danger of the property being wasted or sold away at the instance of the zemindar, security was taken from the person in possession for the protection and preservation of the property, but not for the rents, issues and profits which might come into the hands of the respondents. In this case there is no allegation of waste, and indeed there can be no such allegation, since it is claimed by the petitioner that she is still in possession of the disputed properties. All that is suggested in the petition is that the opposite party "is heavily in debts" which is sufficiently met by the opposite party by his assertion that those debts are secured on properties belonging to him in Nepal. For myself I can see no injustice in refusing to direct the respondent in this case to give security for the rents, issues and profits that may come into his hands since the respondent, who after all has succeeded in the action has no security whatever for twelve years' rents, issues and profits which have been appropriated by the unsuccessful appellant. But at the same time we must protect the estate from being sold for non-payment of the arrears of Government revenue and we must issue an

injunction restraining the respondent from in any way dealing with the properties except in the ordinary course of management during the pendency of the appeal. It will be open to the respondent to give forest leases; but we direct that before giving such leases he must place the draft leases before the learned Sub-ordinate Judge and obtain his approval to the terms thereof. We also direct him to pay the Government revenue in respect of the disputed properties one calendar month before the last date for the payment of the same and to file the evidence of such payment in the Court of the Subordinate Judge. We give the appellant liberty to apply to this Court if there should be any default on the part of the respondent from carrying out the orders of this Court. We also give her liberty to apply if there should be at any time an imminent danger of the property being wasted or dissipated.

10. We think that, in the circumstances the hearing of the appeal should be expedited; and, we direct that this appeal should be placed on the list for final disposal on the 30th April the parties by their respective Counsel undertaking to carry out every order that may be passed by the Registrar of this Court in regard to the preparation of the paper book.

11. The costs of this application, hearing fee five gold mahurs, will be costs in the appeal.