**(1926) 01 CAL CK 0003**

**Calcutta High Court**

**Case No:** None

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| Satis Chandra Giri | | APPELLANT |
| | Vs | |
| Benoy Krishna Mukhopadhya and Others | | RESPONDENT |

**Date of Decision:** Jan. 8, 1926

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 92

**Citation:** AIR 1926 Cal 1092 : 96 Ind. Cas. 30

**Hon'ble Judges:** Panton, J; Ewart Greaves, J

**Bench:** Division Bench

**Judgement**

Ewart Greaves, J.

This is an appeal by the defendant, Satis Chandra Giri against two orders dated respectively the 9th May 1925 and the 7th July, 1925. By his first order which was made on an application dated the 1st November, 1924, the learned District Judge of Hooghly against whose order this appeal is presented directed that a Receiver should be appointed for the custody and administration of the properties of the endowment to which the application related. By his order of the 7th July, 1925 the Receiver who is now in possession was actually appointed. The application arises out of a suit commenced under the provisions of Section 92 of the C.P.C. The suit was commenced on the 10th September, 1922 and the application for the appointment of a Receiver was made on the 1st November, 1924 more than a year and a half after the institution of the suit. That, we think, is a matter that has to be borne in mind in considering the appointment of a Receiver, for in a case of this kind such an application should always, be promptly made. The suit relates to the Math or shrine which in para. (2) of the plaint is described as one of the famous places of worship of Hindus of all classes in Bengal and the suit relates to a claim (inter alia) to ascertain the properties belonging to the Math for accounts and for a declaration, that the properties appertaining to the Math, which are claimed by the defendant as his nil

properties are properties of the Thakur. Turning to the plaint, the different charges and allegations which were preferred against the defendant''s management of the Math of which he has been the Mohunt since the year 1893 will be found. In para. (11) of the plaint there is an allegation that large sums of money belonging to the Thakur have been misappropriated by the defendant. There is a further allegation that the defendant is carrying on a money lending business in the names of his relatives and of his own and in Schedule (e) to the plaint are set out what purport to be the particulars of the misappropriations which are alleged in para. (11). The learned Counsel for the appellant has pointed out that the particulars which we find in Schedule (e) are extremly vague, for instance no particulars of the Railway shares which are alleged to have been misappropriated are given, and neither the denominations of the promissory notes nor any particulars by which they can be identified are given, and the gold and silver articles, which are said to have been misappropriated, are not described and speaking generally with regard to Schedule (e) it seems to me very difficult for the defendant to deal with each alleged case of misappropriation set out in para. (11) of the plaint. Then in para. (12) there are allegations that the defendant had acquired landed properties out of the income of the debutter properties. These are set forth in Schs. (F) and (G). Then comes a further allegation that the defendant has granted a mokarrari lease of a valuable piece of land to the detriment of the Thakur. Paragraph 14 alleges that the defendant has not paid proper attention to the comforts and health of the guests, the pilgrims and the ascetics and that the pilgrims are not allowed to worship the Thakur without the permission of the defendant and are prevented from worshipping the Thakur freely. So far as this charge is concerned, it is in evidence that it is customary to make small charges to pilgrims who desire to worship the Thakur and the defendant claims as part of his case that he is entitled to do this, as this has been done from time immemorial and he relies on this as evidence of his contention that the shrine of the Thakur is not a public trust but is a private Math: In para. (16) are set out general allegations about the application of the income for the benefit of the defendant himself. In para. (17) it is alleged that there are no regular accounts of the income and expenditure of the Math and para. (18) contains charges very general in form with regard to the character of the defendant himself. We have referred to these paragraphs to show that the real charges that are made against the defendant are in general terms. I do not wish to express any opinion for a moment as to whether the charges can be substantiated at the trial or not, but in an application for the appointment of a Receiver, one has got to see the nature of the charges made and if one finds, as here, that they are somewhat vague in character, it is a ground for declining to interfere on an interlocutory application of this nature for the appointment of a Receiver. So much then for the plaint and the allegations that are made by the plaintiffs against the defendant.

2. I next turn to the written statement of the defendant. In para. 10 the defendant sets out various suits that have been brought against him from the year 1893

onwards seeking to dispossess him from the endowment and in that paragraph it is pointed out how these prior suits have been dismissed. Paragraph (15) contains a denial of the allegations made in the plaint that the defendant by virtue of the sect to which he belongs is not entitled to possess or enjoy properties for himself. Then comes para. (17)(a) which is important from the defendant''s point of view. We have already referred to it and to the statement therein contained that the defendant challenges the public nature of the Tarakeswar Math. That, of course, is a question upon which we can express no opinion here but it is a question that has got to be taken into account in determining whether a Receiver should be appointed. Paragraph (18) again deals with the question of the nature of the endowment as to wbether.it is a public endowment or not and further deals with the allegation with regard to the entertainment of pilgrims and such like, Paragraph 19 alleges that it has been customary to exact from worshippers a charge of one pice at the door of the temple and one pice within the temple for worshipping the Thakur and this is relied on as I have stated as showing that it is not a public trust. Paragraphs 30 and 35 of the written, statement have been referred to in argument. In para. 30 the defendant states that he never claimed any of the properties of the Thakur as his nij properties and it contains a statement that on his attainment of the gaddi he found that certain properties were acquired and dealt with by his predecessor in the gaddi as his own properties and he states that he has since his appointment dealt with these properties as his own. But the paragraph contains a distinct and specific denial that he has ever dealt with any of the properties of the Thakur as his, own. Lastly we come to para. (35) in which the defendant states that so far as dealings with these properties are concerned he has merely followed in the foot steps of his predecessor and acted in accordance with the usage and custom of the math and of many similar institutions in India. The paragraph further deals with pronamis given, voluntarily to the defendant and that defendant states that he has dealt and is now entitled to deal with them as his own property.

3. For the purposes of this application the properties have been divided into 3 parts. The first part which we will call (A), relates to the temple and the Bazar of Tarakeswar and the offerings actually made to the deity himself. The second class which we will call (B), are properties acquired by the present defendant or his predecessor in the mohuntship which have all along been treated as debattur properties. The third class which we will call (C), are properties such as are referred to in para. (30) of the written statement which the defendant claims to deal with as his own properties free from any trust in favour of the Thakur. These properties include the palace in which the mohunt dwelt previous to his leaving Tarakeswar. So far as the (A) properties are concerned, it appeari that by an order of May, 1924 the mohunt having regard to the state of things notoriously existing at Tarakeswar at that time agreed in the interest of peace that a Receiver should be appointed and quite rightly I think the learned Counsel for the appellant does not desire to resile from that consent order of May, 1924. Consequently, the Receivership will continue

so far as the temple, the debsheba, the Bazar at Tarakeswar and the offerings actually made to the deity are concerned. So far as the (B) properties are concerned in the course of the argument, I suggested to the learned Counsel that as the Receiver was responsible for defraying the necessary expenses of temple it would be well if these properties were treated as debattar'' properties and remained in the possession of the Receiver and I understand that the learned Counsel without actually assenting to this, is not prepared to oppose it. We, therefore, think that the Receiver''s possession should continue as regards the properties (B), that is to say, the properties which have always been treated by the defendant and his predecessor as properties of the Thakur.

4. There remain the properties claimed by the mohunt as his private properties. Apparently in August 1924, three plaintiffs were added and it seems largely as are suit of their action that the present application for a more extended receivership than was effected by the consent order of May 1924 Was launched and as a result of their intervention the compromise arrived at on the 22nd September 1924, which was referred to in the argument and which we need not refer to here in detail, has been set aside. I need only notice with regard to this that the learned Judge has in his judgment relied upon it as showing that the mohunt, had in fact abandoned the mohuntship. Learned Counsel has rightly pointed out that this was agreed to by the mohunt upon certain terms and conditions which were not carried out with regard to the management and worship being carried on by the principal Chela Pravat Chandra Giri and we do not think that this can be brought up against the mohunt as showing a voluntary abandonment by him of his duty as mohunt of the Tarakeswar shrine.

5. I now come to the arguments that have been urged before us against the appointment of a Receiver of the private properties of the mohunt. First, it is said that since the year 1893, that is to say, for some 35 years the mohunt has been in possession of these properties or at any rate of such of them as he received under the Will of his predecessor and stress is laid on the fact that some of these properties were dealt with by the predecessor by the Will and that they have come to the defendant by virtue of this Will as a ground for showing that they are the private properties of the mohunt and not the properties of the Thakur himself. Then secondly, stress was laid on he cases to which we have already referred which were brought to dispossess the mohunt and which failed. Thirdly, it is said that no actual charge of waste has been established against the mohunt although vague allegations, such as we have already referred to have been made.

6. Fourthly, it is said that as regards some of the surplus income and pronamis which were, given not to the deity but to the mohunt in his personal capacity, the mohunt is entitled to retain them and reliance is placed on two cases, the first of which is in Vidya Varithi Thirtha Swamigal v. Balusami Ayyar 65 Ind. Cas. 161 : 48 I.A. 302 : (1921) M.W.N. 449 : 41 M.L.J. 346 : 44 M. 831 : 3 U.P.L.R. 62 : 15 L.W. 78 : 30

M.L.T. 66 : 3 P.L.T. 245 : 26 C.W.N. 537 : 24 B L.R. 629 : 20 A.L.J. 497 : AIR 1922 P.C.23 (, reliance being specially placed on the passages occurring at pages 316 Pages of 48 I.A.--[Ed.], 317 Pages of 48 I.A.--[Ed.] and 319 Pages of 48 I.A.--[Ed.] in the judgment as authorities for the proposition that as regards the surplus income the mohunt is not accountable to any one and that he is not necessarily bound to treat these properties as properties subject to a trust in favour of the Thakur himself. And the case in Kumud Ban Mohunt v. Tripura Charan Choudhury 60 Ind. Cas. 464 : 35 C.L.J. 188 is relied on as an authority for the proposition that the pronamis given to the mohunt himself are personal properties of the mohunt and were not impressed with any trust for the deity. The learned Counsel who appeared to oppose this appeal sought to show that this case was decided on a misapprehension of what was alleged to have been said by Sir Gurudas Banerjee in the case reported as Girijanund Datta Jha v. Sailajanund Datta Jha 23 C. 645 : 12 Ind. Dec. 429, and cited in the report. We do not think that this criticism is well-founded. As has been pointed out, Sir Gurudas Banerjee was dealing in that case with pronamis actually placed on the head of the deity himself and as has been pointed out in Kumud Ban Mohunt v. Tripura Charan Choudhury 60 Ind. Cas. 464 : 35 C.L.J. 188, these are entirely'' distinct from the pronamis which were given to the mohunt himself and which he was entitled to treat as his personal properties. Reliance is, as I have stated, placed on these two authorities and on a further case in Sri Setturamaswamy Iyer v. Sri Meruswami Iyer 4 Ind. Cas. 76 : 34 M. 470 : 6 M.L.T. 319 : 20 M.L.J. 108 authorities were also relied on as authorities for the proposition that in an interlocutory-application of this nature, one should assume that there were at the disposal of the mohunt from the offerings and possibly from the surplus income of the dedicated properties, funds from which the mohunt might acquire properties which he was entitled to treat as his own and which were not impressed with any trust for the Thakur himself. Fifthly, stress was laid on the delay to which we have already referred. The suit was commenced so long ago as the 15th September 1922 and yet no attempt was made to get a Receiver appointed of these personal properties until 1st November 1924 and no order was obtained until May last year. Lastly, reliance was placed en the well-known case of Foxwell v. Van Grutten (1897) 1 Ch. 64 : 66 L.J. Ch. 53 : 75 L.T. 368 as showing the circumstances under which the Court would appoint a Receiver of properties of this nature in interlocutory proceedings. Before I come to consider the arguments that were urged before us on behalf of the respondents, it will be well to turn for a moment to the judgment of the learned Judge in order to ascertain the reasons which weighed with him in appointing the Receiver. First of all, he says that the mohunt has abdicated. But as we have already stated it was pointed out in the course of the argument that the mohunt did not abdicate of his free will but that he did so in the interest of peace having regard to the state of affairs prevailing at Tarakeswar at the time. Then the learned Judge stated that the mohunt was utterly dispossessed of all properties at Tarakeswar. That may have been true so far as the temple, the Bazar and such like are concerned but it certainly does not apply with regard to the zemindari

properties outside and with regard to those properties which have been called the private properties of the mohunt. Then the learned Judge states as a reason for appointing a Receiver that the mohunt introduced strangers to the palace. This argument is based on a misapprehension. We do not think that there was any desire on the part of the mohunt that strangers should be introduced but that in the face of the circumstances existing at the time he was compelled to introduce them to the palace. Fifthly, the learned Judge relies on the fact that if the mohunt is left to his position he will be in a position to misappropriate the income of the personal properties if it subsequently turns out that they should be treated as debattur properties. We do not think that this is a ground for the appointment of a Receiver unless a clear and unequivocal case is made out against the defendant. Lastly, the learned Judge has based his order on the ground of convenience. We do not see that any case has been made out of convenience for the appointment of a Receiver of the personal properties. It does not seem to, me that the arguments upon which the learned Judge has relied and the reasoning upon which his judgment is based are really sufficient to support the order that he has made in these interlocutory proceedings which has the effect of depriving at any rate for the time being, the mohunt of the enjoyment of the personal properties which he has possessed, so long.

7. I now come to the arguments on behalf of the respondents in the appeal. First, it is said that we should not interfere as the order is a discretionary one. It is quite true that the appointment of a Receiver is discretionary matter but this discretion must be exercised on sound judicial lines and if we find that the discretion was not exercised on these lines, there is no reason why we should not interfere with the order.

8. The second argument was based on the pleadings of the defendant in para. 30 of the written statement. It was suggested by the learned Counsel that this puts him out of Court and that admittedly on his own showing the properties which he had inherited from his predecessor and which he has since acquired were not acquired from pronamis which it is admitted might be his own but from the savings from the debattur properties which it is said injust be impressed with a trust for the benefit of the deity. We were, referred to along series of cases, namely, Ram Prakash Das v. Anand Das 33 Ind. Cas. 583 : 43 C. 707 : 20 C.W.N. 802 : 14 A.L.J. 621 : (1916) 1 M.W.M. 406 : 31 M.L.J. 1 : 18 Bom. L.R. 490 : L.W. 556 : 24 C.L.J. 116 : 20 M.L.J. 267 : 43 I.A. 73 , Basudeo Roy v. Jugalkishwar Das 45 Ind. Cas. 818 : 28 C.L.J. 476 : 5 P.L.W. 57 : 16 Cri.L.J. 601 : 385 M.L.J. 5 : 22 C.W.N. 841 : (1918) M.W.N. 431 : 8 L.W. 130 : 24 M.L.T. 305 : 20 Bom. L.R. 1088 (P.C.), Arunachellam Chetty v. Venkatachalapatti Gurusuamigal 53 Ind. Cas. 288 : 43 m. 253 : 37 M.L.J. 460 : (1949) M.W.N. 850 : 17 A.L.J. 1097 : 10 L.W. 642 : 26 M.L.t. 479 : 24 C.W.N. 249 ; 46 I.A. 204 : 22 Bom. L.R. 457 (P.C.), Abdur Rahim v. Narayan Das Aurora 71 Ind. Cas. 646 : 50 C. 329 : AIR 1923 P.C. 44 : 17 L.W. 509 : 32 M.L.T. 153 : 44 M.L.J. 624 : 25 Bom. L.R. 670 : (1923) M.W.N. 121 ; 50 I.A. 84 and Kamla Lachhmi v. Basdeo Prasad 58 Ind. Cas. 900 : 25 C.W.N. 217 : 7

O.L.J. 434 : (1920) M.W.N. 553 : 23 O.C. 171 : 2 U.P.L.R.130 : 28 M.L.T. 404 ; 13 L.W. 153 (P.C.) in support of the proposition that all these so-called personal properties were not personal properties at all but were acquired out of the savings from the debattur properties and that no possible assumption could be made that they should be treated as private properties of the defendant. But it seems to me that the learned Counsel has really set out authorities which have not been disputed here. No one disputes that if these properties were acquired from the income of the admittedly debattur properties they are to be impressed with a trust for the idol. But it is exactly this point which is under contention, namely, as to the source from which they were acquired, for learned Counsel relying on the above passage in para. 30 of the written statement seems to have ignored the further statement in para. 35 of the same pleadings with regard to the pronamis given to the mohunt personally. It seems to me that so far as the legal position is concerned upon which of course we are not expressing any decided opinion at the present moment there was no such strong and prima facie case made out on the legal possibilities of the case as would justify the appointment of a Receiver of the private properties as they have been described of the mohunt.

9. Thirdly, the learned Counsel sought to show that having regard to the sect to which the defendant belongs and having regard to the fact that he is a sannyashi it is impossible for him to hold any property as his own and that the properties are impressed with trust for the benefic of the deity. It has been pointed out that this depends upon the custom of the Math itself and upon the nature of the life the defendant was bound to live as mohunt of Tarakeswar. So far as custom is concerned it certainly appears that his predecessors-in-ofrice had been accustomed to acquire properties which were treated as their own secular properties. Whether this is well-founded or not is a matter which must be finally decided when the suit is heard. But for the purposes of this interlocutory application we cannot ignore the custom prevalent for many years not only with regard to this mohunt himself but with regard to his predecessors in-office as well. Learned Counsel relies on the fact that the mohunt had abdicated and that this being so it is just and equitable that a Receiver should be appointed of all the properties. We find a little difficulty in following this line of argument, for even if the mohunt did abdicate that would not necessarily dispossess him from the ownership and enjoyment of what are claimed by the mohunt as his private properties. I think that these were the main arguments that were relied on by the learned Counsel for the respondents. It seems to me for the reasons I have indicated that no case has been made out which would justify the Court in an interlocutory application of this nature in depriving the defendant of all these properties which he claims now as secular properties belonging to himself. Whatever may be the result of the trial when the matter is fully gone into it does not seem to me that any case has been made out to justify the interlocutory order which the District Judge has made in this case.

10. The result is that although the order for a Receiver will for the reasons I have indicated stand as regards the properties A and B, that is to say, as regards the temple, the debsheba, the Bazar at Tarakeswar, the offerings to the deity and the properties, which have all along been treated as the debattur, properties of the idol, we set aside the appointment of the Receiver, as regards the other properties which are known as private properties of the mohunt except as regards the palace and as regards this there are reasons why a special order we think should be passed with regard to this. The palace will remain for the present in the hands of the Receiver but a scheme should be prepared by the District Judge whereby certain specific parts of the palace will be allotted for the use of the Receiver as an office and the remaining portion be set apart for the residence of the mohunt when he desires to reside at Tarakeswar. We direct that matter in this point to go back to the District Judge in order that a scheme may be prepared as expeditiously as possible on the lines I have indicated and after the scheme has been prepared, it will come before us for sanction and for such alterations as we may think fit. The portion of the palace which should be set apart for the occupation of the mohunt will include such portion as he is accustomed to use as his personal office, The Receiver will make over possession forthwith of the properties which I have referred to as properties 0 and which I have described as -the personal properties of the mohunt with liberty co either party to apply if any dispute arises as to what should be comprised in the private properties.

11. The appellant will be entitled to his costs in this Court. Hearing fee 15 gold mohurs.

12. The appellant undertakes not to deal with or charge or alienate any of the private properties pending the trial of the suit and to keep an account of the income thereof.

13. Appeal No. 388 is directed against an order of the District Judge of the 7th July 1925 and is directed against the remuneration and so on of the Receiver. As the Receiver still remains as of a portion of the properties, this appeal is not pressed before us but it will be open to the District Judge on any application that is made to him to consider whether under the changed circumstances he should make an alteration in the order with regard to the remuneration of the Receiver.

14. We make no order as to costs in this appeal.

Panton, J.

15. I agree.