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Calcutta High Court

Case No: None

Shaik Madhu		APPELLANT
	Vs	
Shaik Sahar Ali		RESPONDENT

Date of Decision: March 30, 1910

Citation: 6 Ind. Cas. 177

Hon'ble Judges: Teunon, J; Mookerjee, J

Bench: Division Bench

Judgement

1. The question of law, which has been argued in this appeal, is one of some novelty, and relates to the right of a Receiver, appointed u/s 146 of the Criminal Procedure Code; to take possession of lands which have accreted to the original subject-matter of dispute. It appears that on the 11th November 1904, proceedings were commenced u/s 145 of the Criminal Procedure Code, in respect of a chur in the river Padma, by the Sub-divisional Officer of Munshigunj, Subsequently the case was transferred to the Sub-divisional Officer of Naraingunj for disposal. On the 10th June 1905, the Criminal Court made an order u/s 146 of the Criminal Procedure Code, with the result that the chur was attached, and a Receiver was appointed in respect thereof. On the 1st July, 1905, one Araf Ali offered the highest bid for the property, and was accepted by the Receiver as the lessee. On the 3rd July, Araf Ali executed a qabtiliat in favour of the Sub-divisional Officer of Naraingunj. Meanwhile the river had begun to recede, and the size of the chur had increased by accretion. On the 9th March 1906, Araf Ali obtained a lease in respect of the accretion from the Magistrate of Dacca. The result of this transaction was that Araf Ali became the lessee under the Receiver, in respect of the original chur as well as of the accretion. On the 28th July 1905, the plaintiff-appellant obtained a lease from Araf Ali, in respect of a portion of the accreted lands. On the 24th January It 06, he commenced the present action against the defendant upon the allegation that he had been dispossessed by the latter who had interfered with his possession without any title. The defendant resisted the claim on the ground that the plaintiff had acquired no title as a lessee from Araf Ali, who himself had acquired no valid title from the

Receiver as the disputed land did not form part of the property which formed the subject-matter of the proceedings u/s 145. The defendant further alleged that he was a lessee from the original owners, and had been in possession as such, from before the institution of the proceedings u/s 145. The Court of first instance held that the plaintiff had a valid title and decreed the suit. Upon appeal, the Subordinate Judge reversed this decision, on the ground that as the disputed property was not the subject-matter of the-proceedings u/s 145, neither the Receiver nor the lessee under him had acquired any valid title to the property. In this view, the Subordinate Judge did not examine fully into the truth or otherwise of the allegation of the defendant that he held the disputed land under a tenancy created by one of the proprietors before the dispute which culminated in the criminal proceedings. The plaintiff has now appealed to this Court and on his behalf the decision of the Subordinate Judge has been assailed substantially on two grounds, namely, first, that the accretion vested in the Receiver by operation of law, and the plaintiff derived a good title from him; and, secondly, that the plaintiff as a bona fide ryot was entitled to possession even though it was made out that neither his lessor nor the Receiver had acquired any valid title to the disputed property. Both these positions have been strenuously controverted on behalf of the defendant, and it has further been argued by the learned Vakil for the respondent that as the defendant had a subsisting tenancy, when the criminal proceedings were commenced, he was not liable to be evicted by the plaintiff.

2. The first of the two contentions advanced by the appellant raises a question of some nicety arid apparently of first impression. u/s 146, Sub-section 2 of the Criminal Procedure Code, when the Magistrate attaches the subject of dispute, he may, if he thinks fit, appoint a Receiver thereof; and subject to the control of the Magistrate, such Receiver has all the powers of a Receiver appointed under the Code of Civil Procedure. The question, therefore, arises, whether when a Receiver has been appointed by a Court of competent jurisdiction in respect of the subject-matter of litigation, he is entitled to take possession of and deal with lands which by accretion may become part of the original tract. Now it may be conceded as a general rule that a Receiver takes no title to property, acquired by the person formerly in possession, subsequent to his appointment. In support of this proposition reference may be made to "Aldeison on Receivers," Section 513, where it is pointed out that property acquired by a party to the suit, subsequent to the institution of the proceedings in which the Receiver is appointed, does not pass to the Receiver, and the case is stronger in respect of property acquired subsequently to the appointment. This is well illustrated by the case of Harviman v. Woburn (1895) 163 Mass. 85 : 39 N.E. 1004. In that case a mortgage wan granted to coyer after-acquired property, but it was provided that the mortgage lien would not attach unless possession was taken by the mortgagee. In a suit to enforce the security a Receiver was appointed, who took possession of the original property; before the Receiver could take possession of the after-acquired property, the mortgagor

became insolvent, with the result that such property vested in the assignee in insolvency. It was ruled that the Receiver in the mortgage suit had not acquired any title, as he had failed to take possession, and consequently, the after-acquired property did not vest in him. A similar principle was applied in Gabert v. Olott (1893) 22 S.W. 286 and Goff v. Bonnett (1865) 31 N.Y. 9 : 88 Am. D. 236. Butalthough the general rule is as we have stated it, the case of accretion to property vested in the Receiver, forms an exception thereto and this view may be justified on readily intelligible grounds. It is an elementary principle that to the owner of the original property belong those imperceptible and insensible additions to his lands which when once acquired become in all respects part of the original tract, and the title thereto is held subject to the same encumbrances, and with the benefit of the same rights as his lands to which accretion is made; and this is so, where the accretions are due to natural causes alone or to a combination of both natural and artificial influences. It is not necessary for us to investigate the rationale of the rules as to property in accretion, whether it is based on considerations of public policy or as a compensation for risk of loss. One position is quite clear. The whole doctrine of accretion is based upon the theory that from day to day, week to week, and month to month, a man cannot see where his old line of boundary was by reason of the gradual and imperceptible accretion of alluvium to his land. Consequently, although after a certain period we may see that a body of land, however considerable, has accreted to the original land, yet if the steps by which that land is formed are steps gradual and in the ordinary course of nature and happening from time to time, we cannot perceive the change from step to step. The only rational rule which we can adopt under such circumstances is that the land so gradually and imperceptibly accreted do as belong to the owner of the original and he is entitled to possession of it as his property. If it is once admitted, so far as the original owner is concerned, that gradual accretion of land from water should belong to him, the inference in the case of the Receiver who holds the property as the custodian till the title of the true owner is established, becomes obvious. If the maxim, Accessorium non ducit sed sequitur mum principale, (Co. Litt. 152 A. Broom on Legal Maxiums 365), upon which the doctrine of accession is based, is applicable to the original owner, there is no intelligible reason why it should not apply equally to the Receiver who holds possession for his ultimate benefit. In fact if the contrary view were taken, considerable embarrassment might result. Two extensive classes of cases, as is well known, fall within the operation of the doctrine of accession first, that in which the owner of a thing acquires a right of property in its organic products as in the young of animals, fruit of trees, and the alluvium or deposit on lauds and, secondly, that in which one thing becomes so closely connected with and attached to another, that their separation cannot be effected at all, or at least not without injury to one or other of them. In both these classes of cases, jurists have held that the owner of the principal thing acquires also the accessory connected therewith (Mackeldey on Roman Law 155). Now take as an illustration the case in which a Receiver has been appointed of mortgaged property subject to alluvion or of a garden in which there

are fruit trees, or of a partnership business relating to a dairy farm; if it is held in each of these cases that the Receiver is entitled to the property precisely in the condition in which it stands at the moment of his appointment, the very object of the appointment of a Receiver may be completely defeated. In the case of the mortgage (property, the mortgagee is entitled to enforce his security against the original lands as well as the accession. In the case of the garden, the claimant is entitled not merely to the trees as they stand, just also to their fruits; and in the case of the farm, the plaintiff may similarly be titled to the benefit of an increase of the live stock. To take again as an illustration the case of a Receiver appointed in respect of a joint family property in a suit for partition, if part of the property consists of money due from debtors, the Receiver ought to be held entitled to realise not merely the sum due for principal and interest at the time when his appointment was made, but also interest which may have accrued due subsequent for interest on money is accessory to the principal and must, in the language of Roman jurists, "follow its nature." In our opinion, it is fairly clear that when a Receiver has been appointed in respect of the principal subject-matter of the dispute, the accessory follows the principal unless some special circumstance is established. In the case before us, we must consequently hold that the Receiver became entitled not only to the subject-matter of the proceeding u/s 145 of the Criminal Procedure Code, but also to the accreted land. In this view, Araf Ali, as also the plaintiff, must be held to have acquired a valid title.

3. The second ground urged on behalf of the appellant, is to the effect that even if it be held that neither his lessor nor the Receiver had acquired any valid title to the disputed property, he himself as a bona 4de cultivator has acquired the status of a non-occupancy ryot, and is entitled to recover possession as against a trespasser. This aspect of the case has not been considered by the Courts below, and in view of our decision upon the first question, it is not necessary to investigate it in any detail. We may point out, however, that although as a general principle of law, no one can confer upon another person any right in property which is not his own, the decision of the Full Bench in Binode Lal Pakrashi v. Kalu Pramanik 20 C. 708, shows that a ryoti interest may be acquired by a tenant who has entered upon the land and held under a de facto proprietor in good faith, though such de facto possessor ultimately turns to be not the real owner. The rule thus laid down, is, however, subject to the important qualification that the possession of the tenant should be in good faith; and when this element is wanting, the rule is not applicable. Peary Mohun Mondal v. Radhika Mohan Hazra 8 C.W.N. 315 : 5 C.L.J. 9. In the case before us as this aspect of the rights of the parties was not pressed in the Court below, there has been no investigation upon the question of good faith; and if our decision upon the first point has been adverse to the appellant, further enquiry into this matter might have been needed. It may be added that once it is established that the plaintiff has acquired the status of a non-occupancy ryot in respect of any portion of the original land, he is entitled to possession of the land which has accreted to his holding.

Gaurhari Kaiburto v. Bhola Kaiburti 21 C. 233, Beni Pershad v. Chaturi 4 C.L.J. 63 : 33 C. 444, Amjad Ali v. Kader Jan Bibi 8 C.L.J. 537 : 13 C.W.N. 269 : 4 Ind. Cas 518, Ahmed Bepari v. Tohi Mahomed 8 C.L.J. 538 : 13 C.W.N. 267 : 4 Ind. Cas 611 and Mia Jan v. Akramali Bhuiya 8 C.L.J. 641. We must, therefore, hold that the plaintiff has acquired a title to the property under the lease obtained by him from Araf Ali.

4. The question remains, however, whether such title is enforceable as against the defendant. If the defendant is a trespasser, there is no room for controversy that the plaintiff is entitled to succeed, but the case for the defendant is that he was a tenant in respect of the land now in dispute, under Kali Prasanna Bose and his brothers, and that he had a subsisting tenancy at the time of commencement of the criminal proceedings. This aspect of the case has not been considered by the Subordinate Judge. If the defendant establishes that he holds a tenancy from Kali Prasanna Bose and others, who claimed to be owner of this property and professed to deal with it as de facto proprietors and possessors, the defendant has acquired a prior title which cannot be successfully challenged by the plaintiff on the basis of the subsequent lease in favour of Araf Ali under the Receiver. Atal Chandra Rishi v. Laksmi Narain Ghosh 10 C.L.J. 55 : 2 Ind. Cas. 417. This point must consequent be determined, and it will be open, to the Subordinate Judge to allow the parties to adduce evidence to elucidate it. If it is found that the defendant had no subsisting interest at the time of the commencement of the criminal proceedings, the plaintiff is entitled to a decree. If on the other hand, it is found that the defendant is not a trespasser but has a valid right of tenancy, the plaintiff must fail.

5. The result, therefore, is that this appeal must be allowed, the decree of the Subordinate Judge set aside, and the case remanded to him, S3 that he may deal with it in accordance with the directions given in this judgment. The costs of this appeal will abide the result.