

Prokash Chandra Sarkar Vs E.E. Adlam

Court: Calcutta High Court

Date of Decision: June 1, 1903

Judgement

Pratt and Mitra, JJ.

This is a Rule to show cause why the decree of the Court of Small Causes, Gya, dated the 12th September 1902,

should not be set aside. It appears that the Plaintiff was appointed Receiver of certain properties on an application of all the Defendants. The order

of the District Judge appointing the Plaintiff a Receiver was made on the 14th February 1901. The Receiver apparently could not collect sufficient

money. On the 22nd February 1902, one of the Defendants, namely, Defendant No. 1, made a conditional promise to pay him two-thirds of his

salary provided the third Defendant, who was interested in a one-third share, also paid his share of the same. No money was, however, paid by

the Defendants and the Plaintiff applied to the District Judge for an order directing the Defendants to pay his salary. The District Judge made the

following order: "It does not seem that this Court has any power to order the remuneration of the Receiver to be met otherwise than from the rents

and receipts of the property in his hand; no order can, therefore, be passed as prayed for by the Receiver.

2. Thereafter the Plaintiff instituted the present suit without any leave from the District Judge and obtained a decree against Defendants Nos. 1 and

2 for two-thirds of his salary calculated up to the date of the institution of the suit. Now, the Defendant No. 2 is a minor; and even if the Plaintiff

could recover under the promise made on the 22nd February 1902, there could be no decree passed against the minor. The Court below,

however, gave a decree for two-thirds of the salary, mainly relying upon this promise made on the 22nd February.

3. It seems to us that even if Defendant No. 1 had made a promise to pay and even if it was not conditional, yet it was not binding, as it was made

in contravention of the law. u/s 503 of the Code of Civil Procedure, the Court is to determine what fee or commission a Receiver is entitled to by

way of remuneration. The Receiver is an officer of the Court and the parties cannot by any act of theirs add to or derogate from, the functions of

the Court without authority from the Court itself. In the case of *Manick Loll Seal v. Surrut Coomaree Dassee* ILR (1895) Cal. 648, this Court held

that an agreement between a Receiver and a party without the knowledge of the Court was a gross contempt of Court.

4. We are of opinion that the parties in the present case entered into a contract which was not valid and therefore, the suit was not maintainable.

We, therefore, set aside the decree complained of and make the Rule absolute with costs.