
(1915) 08 CAL CK 0005

Calcutta High Court

Case No: None

Nawab Khajah Hobibullah

APPELLANT

Vs

Khajah Abtiakallah and Others

RESPONDENT

Date of Decision: Aug. 20, 1915

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 40 Rule 1(1)

Citation: 34 Ind. Cas. 693

Hon'ble Judges: N.R. Chatterjea, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

Asutosh Mookerjee, J.

We are invited in this appeal to consider the propriety of an order for the appointment of a Receiver in respect of the subject-matter of the litigation in the Court below. The suit relates to the title to the office of mutwali of an endowment created on the 10th March 1847 and the contesting parties are the rival claimants to that office, which was held by Nawab Sir Sulimulla up to the time of his death on the 16th January 1915. The Subordinate Judge has granted the application for the appointment of a Receiver, on the ground that it is just and convenient that a Receiver should be appointed under Clause (1), Rule 1, of Order XL of the Code of 1908. On behalf of the defendant it was contended before him that the grounds which justify the appointment of a Receiver had not been established. The Subordinate Judge was, however, of opinion that he had a wide discretion under Rule 1 of Order XL of the Code, and could appoint a Receiver if he thought it just and convenient to do so. The only ground established up to the present stage is that allowances payable to beneficiaries under the deed of the 10th March 1847 have not been paid since the defendant took possession of the properties as mutwalli; but there is no allegation of waste or mis-management. In fact, the plaintiffs intimated to the Court that they were prepared to accept the defendant or- his present manager, Mr. Hudding, as Receiver. The defendant, on the other hand, has intimated to this

Court, as he did in the Court below, that he was ready and willing to pay into Court regularly the sum payable as allowances under the wakfnama. We are clearly of opinion that no ground has been established for the appointment of a Receiver at the present stage.

2. In view of the observations made by the Subordinate Judge, it is desirable to point out that the words "just and convenient" in Order XL, Rule 1(1), do not mean that the Court can appoint a Receiver simply because the Court thinks it convenient to do so. They mean that the Court should make such appointment for the protection of property or the prevention of injury, according to legal principles; as was explained in *Jagat Tarini Dasi v. Naba Gopal Chaki* 5 C.L.J. 270 : 34 C. 305 the object and purpose of the appointment of a Receiver is generally the preservation of the subject-matter of the litigation,* pending a judicial determination of the rights of the parties thereto. They confer no arbitrary and non-regulated discretion on the Court. In support of this view, reference may be made to the cases of *Beddow v. Beddow* (1878) 9 Ch. D. 89 : 47 L.J. Ch. 588 26 : W.R. 570 and *Aslatt v. Corporation of Southampton* (1880) 16 Ch. D. 143: 50 L.J. Ch. 33 : 43 L.T. 464 : 29 W.R. 117 : 45 J.P. 111. It is conceivable that in the present case the appointment of a Receiver may hereafter prove necessary, if circumstances alter; for instame, if it is found that the estate is in danger, because no longer properly managed, or that difficulties have arisen in connection with litigation about the properties comprised in the estate, or that there is good ground to apprehend that the defendant may misapply trust funds, the Court may properly appoint a Receiver. But we are clearly of opinion that at the present stage no ground has been established to justify the order for appointment of a Receiver.

3. The appeal is allowed and the order of the Subordinate Judge discharged. This order is made on the basis of the under-taking given by the defendant to pay into Court regularly the sums payable as allowances under the wakfnama of 1847 and to bring into Court the arrears of allowances due, the amount payable in each case to be determined by the Subordinate Judge. The term "allowances" includes all sums payable to the beneficiaries under the wakfnama. When the deposits are made, the beneficiaries will be at liberty to withdraw the sums.