
(1909) 12 CAL CK 0030

Calcutta High Court

Case No: None

Srimati Mathuria Debya

APPELLANT

Vs

Shibdoyal Singh Hazari
and Others

RESPONDENT

Date of Decision: Dec. 6, 1909

Judgement

1. The Subordinate, Judge of Chittagong has appointed a Receiver for the preservation of the properties in a suit brought by the plaintiff against the defendant No. 1 in possession and other defendants. For the purposes of this case the contest may be taken to be limited to be one between the plaintiff No. 1, Sivdyal Singh, the second son of the late Bhagirath Singh and the defendant No. 1, Mathuria Debi the widow of Ram Din Singh who was the eldest son of the said Bhagirath Singh and who, she alleges, was adopted by Bhagirath's elder brother, Kanta Prosad Hazari, whose estate is the subject of the litigation between the parties.

2. The short point for determination is whether, to use the language of Order XL, Rule 1, Section (1) of the Code of Civil Procedure, it is "just and convenient" to appoint a Receiver in the circumstances of the present case.

3. We do not propose to compare the provisions of Section 503 of the old CPC with the corresponding provisions of Order XL, Rule 1 of the present Code. We may, however, observe that the words "just and convenient" are derived from the English Judicature Act, which greatly enlarged the powers which the Court of Chancery formerly exercised, and that the Courts in India have the fullest jurisdiction to appoint, as well as to remove, a Receiver in the exercise Of a sound judicial discretion.

4. The order of the Subordinate Judge has been assailed on five grounds, first, that the defendant No. 1 Mathuria Debi, is in peaceful possession of the estate of her husband's adoptive father, Kanta, Prosad, on title, and after lawful entry; secondly,, that she is not committing waste, much less, malicious waste; thirdly, that there is no danger of mismanagement by the defendant Mathuria Debi because she is being assisted by a

committee of legal gentlemen; fourthly, that the plaintiff Sivdyal Singh has not made out a strong case more specially with regard to the adverse possession of Kanta Prosad since 1878, and lastly, that the plaintiffs have delayed to sue and have acquiesced in the long possession of Kanta Prosad, his adopted son Ram Din, and the defendant Mathuria Debi.

5. Now the facts appear to be as follows: Bhagwan Singh Hazari, the ancestor of the parties, went from the district of Banda (Unao) in the North-West (now United) Provinces to the district of Chittagong as the Commander of 1,000 soldiers. Hence his appellation of Hazari, His great grandson, Kanta Prosad Hazari represented the family in their new home up to, the time of his death which took place on the 25th September 1904. Seven days before that event, namely, on the 18th September 1904, Kanta Prosad executed a Will in favour of Ram Din, his eldest nephew, whom he described as his adopted son. On the 2nd March 1905, Ram Din took out probate of the Will and in due course had his name registered in the Collectorate, in the stead of Kanta Prosad, in respect of the properties in suit. Then, on the 5th November 1906, Ram Din died, and his widow the defendant Mathuria Debi, was registered in the Collector's books. We now come to a very important matter. On the 12th November 1907, the defendant Mathuria Debi gave a power-of-attorney to the plaintiff, Sivdyal, but it has not been produced. Her position as "heiress and legal representative" of Ram Din Hazari was recognised in certain Land Acquisition proceedings which came before the High Court on appeal on the 31st January 1908, The suit of the plaintiff was filed on the 10th February 1909.

6. It is neither necessary nor desirable, at this stage, to decide any of the complicated questions of Hindu Law which arise in this controversy. The Subordinate Judge has found, though, no doubt for the purposes of the case under Order XL only, and for no other purpose, that the Hazari family is governed by the Mitakshara Law and that the plaintiffs have made out a good prima facie title. We express no opinion on these points. It has also been found that there is a very reasonable apprehension of waste and alienation of the properties in suit by the defendant No. 1; but the Subordinate Judge does not appear to have considered the case on the broad ground of "justice and convenience," as he was bound to do under Order XL. In some respects, the judgment of the Subordinate Judge is too full: it travels into the domain of a regular suit: in other respects, it is not full enough: it does not deal with the admitted facts, or, rather, it does not give sufficient weight to them.

7. In disposing of this appeal, we have considered the well-known English cases cited to us on the subject of Receivers, namely *Foxwett v. Van Grutten* (1897) 1 Ch. 61: 66 L.J. Ch. 53 : 75 L.T. 368; *John v. John* (1897) 4 Ch. 573 : 67 L.J. Ch. 616 : 79 L.T. 362 : 14 T.L.R. 583 : 47 W.R. 52; *Berry v. Keen* (1882) 51 L.J. Ch. 912; *Owen v. Homan* (1853) 4 H.L.C. 997 : 27 Jur. 861. But the only reported decision which we need discuss is the leading case of this Court *Sidheswari Debi v. Abhoyeswari Debi* 15 C. 818. The safe rule in those cases is that a Receiver; should not be appointed in supersession of a Bona fide possessor of the property in controversy unless there is some substantial ground for interference.

8. Now in Sidheswari's case 15 C. 818, the elder widow was the defendant against whom an order for the appointment of a Receiver was sought by the plaintiff, the junior widow of the Raja of Bijni. The order appointing the Receiver was discharged by this Court on the facts among which were the following: The defendant was in exclusive possession of the property claimed; she was the sole registered proprietor; and, she had put forward her title four years prior to the institution of the suit, ever since the Raja's death, and she was allowed to assume the entire management.

9. On a comparison of these facts with the facts of the case before us, the correspondence is seen to be very remarkable. We may say that, in all essential details, the position of Kanta Prosad Hazari's estate is a precise counter-part of that of the estate of the Raja Bijni dealt with in Sidheswari Debi v. Abhoyeswari Debi 15 C. 818.

10. The learned Counsel, Mr. Chuckerbutty, relied on Sham Chand Giri v. Bhaya Ram Paindey 5 C.W.N. 365, referred to in Mohunt Siaram Das v. Mdhunt Mohabir Das 5 C.W.N. 362 : 27 C. 279. Mr. Justice Macpherson, in his judgment in the former case, did not allude to any authorities, and it is apparent that he made his order appointing a Receiver in the very special circumstances of that dispute. It was a dispute concerning property in the nature of Trust Property--that is to say, the property of the shrine of Tarakeswar--and the Receivership order was imminently desirable on public, no less than private, grounds. We believe that, in such circumstances, the Courts are not slow to appoint a Receiver and they would do so more readily than in the case of an ordinary succession.

11. With regard to the question of waste, it is a little difficult to appreciate the reasoning of the Subordinate Judge because on the one hand, it is conceded, that a committee of respectable gentlemen are assisting the defendant No. 1 in the management of the properties and, if that be so, it is not easy to understand how the lady could have entered into pecuniary arrangements which might be made by a spend-thrift and not by a prudent manager. We do not think there is anything serious in the allegations against Mathuria Debi and it has to be borne in mind that as in the case of Sidheswari Debi v. Abhoyeswari Debi 15 C. 818, though her expenditure might appear to be large this apparent improvidence on the part of the lady may be largely due to the adverse claim set up against her, (page 828 of the Report).

12. We are satisfied that the committee of legal gentlemen who are assisting Mathuria Debi will be a useful advisory body and will check the tendency, if any, to hasty action which, she may be tempted to take. In fact, the principal member of the committee, Babu Digamber Bhattacharjee, has been selected by the Subordinate Judge as Receiver of the estate.

13. With regard to the questions of title and adverse possession we deem it unnecessary to say more than what we have said for the purposes of this application.

14. There only remains the matter of delay and, acquiescence. The facts and the dates, already recited, show that the plaintiffs have delayed for over 4 years to bring this suit, and by such conduct, have acquiesced in the continued possession of Ram Din, the alleged adopted son of Kanta Prosad and the possession of his widow. That is sufficient to negative the success of the application now made which, we may add might be made in almost any suit for the possession of landed property. As observed in one of the English cases, the plaintiffs are the masters of the litigation. If in addition to that advantage, we were to anticipate their success in the present action, we should be placing the defendant in a position which the circumstances of this case do not justify us in placing her.

15. We, therefore, direct that the order of the Subordinate Judge appointing a Receiver be discharged. The appeal is allowed with costs, 15 (fifteen) gold mohurs.