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Calcutta High Court

Case No: None

Naba Kishore Mandal		APPELLANT
	Vs	
Atul Chandra Chatterjee and Others		RESPONDENT

Date of Decision: July 18, 1912

Citation: 16 Ind. Cas. 193

Hon'ble Judges: Chapman, J; Brett, J

Bench: Division Bench

Judgement

1. The plaintiff is a co-sharer in the Bowali estate of which the pro forma defendants Nos. 2 to 20 are also co-owners. The defendant No. 1. was appointed common manager of this estate by the District Judge of the 24-Perganahs under the provisions of Section 95 of the Bengal Tenancy Act and he held that office from the 1st October 1905 to the 16th November 1903, when he resigned. The present suit was instituted by the plaintiff on the 15th June 1909. The plaintiff states that he asked his co-sharers, the defendants Nos. 2 to 20, to join with him in bringing the suit, but, as they refused, he made them pro forma, defendants. The allegations made in the plaint are of a very indefinite character. They suggest generally that, during the period of his management, the defendant No. 1 failed to include in his accounts all the items which ought to have been included and that he had been guilty of laches and carelessness in the management whereby the plaintiff had suffered damages, and the main prayers are that the defendant No. I may ha ordered to render proper accounts duping his time of management and that, if, after due audit and balancing of the accounts, it be found that any sum is due to the plaintiff, a decree may be passed in the plaintiff''s favour for that sum and further that the plaintiff may obtain a decree for damages for the loss he has sustained during the time that the defendant No. 1 was, the common manager of the estate. The plaint concludes by saying that there being no means to ascertain correctly the amount that would be due to the plaintiff on rendition of accounts, the plaintiff values for the present and claims Rs. 4,000, for accounts and Rs. 1,200 for damages.

2. The defendant No. 1 put in a written statement in which he alleged that he had been appointed as manager by the District Judge of the 24-Perganahs, that he had submitted accounts to the District Judge for the full period of his management, that hose accounts had been audited, and passed by the District Judge and that no suit for accounts lay against him at the instance of the plaintiff.

3. The learned Subordinate Judge, after hearing the parties, was of opinion that the suit, as framed, was not tenable and he accordingly dismissed it with costs.

4. The plaintiff has appealed and, in his petition of appeal, the main grounds which are set forth are that the lower Court was in error in holding that the suit disclosed no cause of action and was not maintainable, that the Court below erred in holding that the suit was merely one for accounts whereas it, should have understood that the suit was also one for damages for negligence, misconduct and mismanagement and that the Court below erred in the view which it took of the position of a common manager, appointed under the provisions of the Bengal Tenancy Act and in coming to the conclusion that the mere passing of the formal accounts by the District Judge would operate as a final discharge of the common manager from all further liability. As to these allegations, we may observe that the prayers in the plaint, in our opinion, disclose that the suit was, in fact, one for a general account against the defendant No. 1, as common manager and that it further sought to recover any sum that might be found due to the plaintiff on the passing of such account. The allegations, against the defendant No. 1, of negligence, misconduct and mismanagement appear to be of a very vague and indefinite character. In substance, the learned Subordinate Judge held that, as the defendant No. 1 had been appointed manager by the District Judge under the provisions of Section 95 of the Bengal Tenancy Act and as the duties and powers of that manager had been laid down by Section 88 of the same Act, the manager during his turn of office was, in fact, an officer of the Court of the District Judge and had to perform his duties subject to the orders and control of that officer alone, that he was in no respect the agent of the co-owners who, by the order of the Judge appointing the common manager, had been deprived of the management of the estate and that, therefore, the manager was not liable to the co-owners to render accounts for the period of his management. The learned Subordinate Judge pointed out that it was admitted and proved from the record of the suit in which the defendant No. 1 was appointed common manager, that the defendant No. 1 had duly submitted accounts as required by Section 98 of the Bengal Tenancy Act and that these accounts had been regularly audited and passed by the District Judge. The learned Judge accordingly found that the plaintiff was not competent in the present suit to succeed in his claim against the defendant No 1, for accounts during the period he held the office as manager.

5. It appears that, in the lower Court, the plaintiff relied on the decision of this Court in the case of Coomar Sattya Sankar Ghosal v. Ranee Golapmonee Debee 5 C.W.N.

223 in support of his contention that, in spite of the fact that the defendant No. 1 had rendered accounts to the District Judge, the plaintiff was not thereby debarred from bringing a suit against him for damages which had resulted from his mismanagement or misconduct. The learned Judge pointed out that in the suit as framed, there was no claim for damages for any specific act of or amounting to abuse or misuse of the manager''s authority or acts done in excess of or in contravention of the powers given to the defendant and that, therefore, the plaintiff was not entitled to recover any amount from the defendant.

6. In support of the case set up by the plaintiff-appellant in his memorandum of appeal, the learned Pleader, who appears on his behalf, has argued that the lower Court ought to have given the plaintiff an opportunity of supporting the allegations set out in the plaint and that, if the learned Judge was prepared to deal with the case on the plaint alone, he ought to have proceeded on the assumption that the allegations in the plaint were true. He has also argued that the defendant No. 1 was not relieved from his liability to account in the present suit by the fact that his accounts had been passed by the District Judge, but that it was open to the plaintiff in the present action to recover from the defendant No. 1, any sums which might be found due to him on a proper balancing of the accounts; and, in support of this view, he has relied on the dicisions of this Court in the cases of Coomar Sattya Sankar Ghosal v Ranee Golapmonee Debee 16 C.W.N. 516 : 14 Ind. Cas. 4 39 C. 587 and Khitish Chandra Acharya Chowdhury v. Osmond Beeby 16 C.W.N. 516 : 14 Ind. Cas. 4 : 39 C. 587. Neither of these two cases appears to us to be any authority to support the appellant in the present appeal. The first was the case of a Receiver and the suit was in respect of certain exceptions taken to the accounts filed by him whether they were well founded and could be determined when the accounts of the Receiver were referred to the Court to be passed. One of the questions raised was whether the Receiver would be accountable for Moffussil collections and it was held that the proper course was either to postpone passing the accounts until the question of the Receiver''s liability was established by a suit or to pass the accounts reserving the right of the parties to establish any claim they might make against the Receiver in a suit properly framed for the purpose. The present suit is of an entirely different character. The allegations, so far as they can be gathered from the vague and indefinite manner in which they are stated, amount to exceptions to the accounts of the manager and such exceptions should certainly have been made and dealt with at the time when the accounts were laid before the Court to be passed. The other case dealt with the liability of an administrator pendente lite in a suit brought after his discharge to recover from him five distinct sums of money mentioned in the plaint which, it was alleged, had been wrongfully retained by him. In that case, the accounts of the administrator had been duly submitted to the Court in the exercise of its testamentary jurisdiction and had been passed but it was held that the mere fact that the accounts had been passed in the testamentary jurisdiction would not operate as a bar to prevent any of the beneficiaries of the

estate afterwards from bringing an action before the Court in the exercise of its general jurisdiction to recover certain specific sums of money not included in the accounts which, it was alleged, the administrator had wrongfully misappropriated. This case also has, in our opinion, no bearing on the facts of the present case. We have already noticed that the allegations in. the plaint are vague and indefinite and do not allege, as against the defendant No. 1, any misappropriation or retention of any specific sums of money belonging to the plaintiff'' They merely suggest that there may have been acts of dishonesty but fail to specifically disclose them. This, therefore, is certainly not a suit in which the plaintiff seeks to recover from the defendant No. 1, certain specific sums of money which were not included in the accounts and, therefore, the present case has nothing in common with the case reported in Khitish Chandra Acharya Chowdhury v. Osmond Beeby 16 C.W.N. 516 : 14 Ind. Cas. 4: 39 C. 587.

7. The allegations against the defendant No. 1 of mismanagement and misconduct, on which the claim for damages is based, are equally vague and indefinite. No specific act is set forth and, on the plaint as framed, it is impossible for the Court to ascertain for what specific acts the plaintiff seeks relief. When the point was put to the learned Pleader for the appellant that the suit ought, in the first instance, to have been dismissed on the ground that the allegations in the plaint were vague and indefinite, he suggest-ed that the fact that, in the concluding passage of the plaint, the claim on account or accounts was set down at Rs. 4,000 and that for damages at Rs. 1,202 was sufficient to save the suit from failing on account of vagueness and indefiniteness. We do not think that that contention is sound for the claims for these sums are not based on any specific data and are, in fact, as vague and indefinite as the rest of the plaint. In our opinion, the suit should have been dismissed on that ground.

8. We have, however, to consider whether the learned Subordinate Judge was right in the view which he took that the present action would not be for general accounts against the defendant No. 1, as common manager for the period during which he was managing the estate under the orders of the District Judge. We agree with the Judge of the lower Court in holding that a common manager appointed u/s 95 of the Bengal Tenancy Act by the District Judge is an officer of the Court created by the statute and, for the purposes of his duties, strict rules are laid down in Section 98 of the same Act. The manager is, in our opinion, so far as he holds his office and performs his duties under the provisions of the Act, in a position analogous to that of a Receiver appointed by the Court under the provisions of Order XI, Rule 1, Civil Procedure Code, and is, in our opinion, entitled to the same protection, for the period during: which he exercises his duties within the powers given to him by the Act, as a Receiver appointed by a Civil Court. The question which then arises for our determination is, whether a common manager, who is an officer of the Court created by the statute and who has, in accordance with the provisions of the law which defines his duties, regularly submitted accounts for the period of his

management to the District Judge, which accounts have been duly audited and passed by the District Judge, can be sued by one of the co-owners to render a general account for the whole period of his management. We hold that no such suit by one of the co-owners would lie. It has been pointed out by this Court, in the case of A.B. Miller v. Ram Ranjan Chackravarti 10 C. 1014 that a Receiver appointed by the High Court does not represent the owner of the estate of which he is the Receiver, but is merely an officer of the Court and, as such, cannot sue or be sued except with the permission of the Court; and in the case of Pramatha Nath Gangooly v. Khetra Nath Banerjee 32 C. 270 : 9 C.W.N. 247 it was held that the sanction of the Court to an action against a Receiver appointed by the Court is a condition precedent to the right of the party to sue and cannot be rectified by a subsequent application for permission to continue the action brought without such permission. During the time that an estate is under the management of a common manager, it is, so far as that management is concerned, really in the hands of the Court which has appointed the manager and, in the management, the common manager acts as the agent of the Court and not as the agent of any of the co-owners. His position is, therefore, the same as that of a Receiver and, in those circumstances, no suit would be against him by a co-owner for acts which have been sanctioned or approved by the Court. The order sheets of the case, in which the defendant No. 1 was appointed common manager which were filed, prove beyond any possibility of doubt that the defendant No. 1 only submitted accounts to the District Judge for the whole period of his management and that full opportunity was given to all the co-owners, including the plaintiff, to examine the accounts and put in objections and it appears that, from time to time, objections were put in and were considered and disposed of by the Court. These proceedings were all in accordance with the provisions of the law and if is not open to the plaintiff in the present action to question the legality or the correctness of the action taken by the District Judge. We must hold, therefore, that so far as the defendant No. 1, in compliance with the provisions of the law, submitted accounts to the District Judge for the period of his management and so far as those accounts were passed by the District Judge, he is not liable to be sued by the plaintiff for a general account. The learned Pleader for the appellant has suggested that, though that protection might extend to the common manager during the period of his management, it is lost after his discharge and that it is open to any of the co-owners, after the discharge of the manager, to sue him in respect of his conduct or management as manager though that management was Controlled by the District Judge. We think that this argument cannot be supported and that the protection which is extended to the manager while he is in service is equally extended to him for the period of that service even after his discharge.

9. The question raised then is whether the plaintiff could sue the defendant No. 1 for misappropriation or retention of certain specific sums which had not been included in the account without first obtaining the sanction of the District Judge for the suit. We hold that, so far as those items are items which in the ordinary course of the

management ought to have appeared in the account and which, the co-owner was aware, at the time were not included in the account or with due inquiry might have discovered were not included in the account, no suit would be except with the sanction of the District Judge. The co-owner would, however, not be debarred from bringing a suit against the manager for acts of misconduct or misappropriation done outride the limits of his authority as common manager under the Act. In the present instance, there is no proof whatever that any such acts have been committed by the common manager and, in these circumstances, we think the lower Court was perfectly right in the view which it took that the suit, as framed, was untenable.

10. Our attention has been drawn, in the course of the argument, to an order recorded by the District Judge on the 15th June 1907. This dealt with certain objections raised and obstructions offered by the present plaintiff, Naba Kishore Mandal, to the management of the estate by the manager, and the learned Judge distinctly recorded that the defendant No. 1, as common manager, offered to let the plaintiff inspect the accounts but that he refused to do so, that, the plaintiff''s Pleader had frankly admitted that the plaintiff wanted to get rid of the common manager and that, for that purpose, he was willing to let the estate be sold for default of Government revenue. The learned Judge observed that it was quite evident that Naba Kishore was an obstructionist and was throwing every obstacle in the way of the common manager. That being the view which the learned Judge felt constrained to take at that time, and the fact being that, in the present plaint, the allegations made against the defendant No. 1 are as vague and indefinite as possible, it seems to us that the present suit was not instituted by the plaintiff bona fide in order to recover any sum due to him on account of the estate or for damages to which he was rightly entitled but with the Object of annoying and harassing the defendant No. 1 because the plaintiff was annoyed at the estate having been placed under the control and management of the common manager. It is, in our opinion, very essential that gentlemen accepting the office of common manager under the orders of the Court should be protected from actions brought after their discharge for the purpose of harassing them and we hold that the present suit was a suit of such a class and that it has been properly dismissed. We, therefore, affirm the judgment and decree of the lower Court and dismiss the appeal with costs.