

Mohunt Anand Das and Others Vs Ram Perakash Das

Court: Calcutta High Court

Date of Decision: Aug. 26, 1909

Judgement

1. This appeal arises out of a suit in which the plaintiff has obtained a decree in his favour declaring that he is entitled to be and that he is to be the

Mohunt of an Asthal in succession to defendant No. 1 who is the only defendant we need consider in this matter, and that defendant No. 1 is to

get an allowance of Rs. 12,000 a year for, his life. An appeal has been preferred against this decree, and on an application for execution being

made it has been ordered that a receiver should be appointed and certain directions have been given as to how the receiver is to deal with the

property in question.

2. Against this order the present appeal is lodged, and the first point that is made before us is that no appeal lies. The order, however, is made

under Order XL, Rule 1. The appointment of the receiver has been agreed to but certain ancillary orders as regards the disposal of the rents and

profits of the property have been made under Rule 1, paragraph (d), and it is argued on behalf of the respondents that as no appeal is made against

the appointment of the receiver no appeal will be against the order made under paragraph (d). A right of appeal is given by Order XLIII,

paragraph (s) which says only that there is appeal against an order under Rule 1 of Order XL. But if there is appeal against an order made under

Rule 1, there is, appeal against an order made under any part of it Consequently we hold that an appeal lies in this case. As regards the merits of

the case the first point we have to consider is, who is to perform the pujahs of the Asthal. The order of the lower Courts that the receiver shall

appoint what is necessary for the daily worship of the idols and make this over to the plaintiff, who will be placed in charge of the management of

the religious and charitable duties. It is suggested that he is not a fit person to perform this and that a better right to perform it lies with the defendant

No. 1, who at all events has been invested with the office of Mohunt which the plaintiff has not. On the other hand the defendant No. 1 long ago

abdicated his office and seems to be unfit for the office. A suggestion is made that the receiver will perform the office. It, however, under the

circumstances, seems impracticable and we accordingly consider that effect should be given to this part of the decree and we direct that the order

of the Court below in this matter shall, stand.

3. In the second place it is ordered that the plaintiff and defendant No. 1 should each be allowed Rs. 200 a month for meeting their private

expenses and maintaining their dignity. The position of the plaintiff is not quite that of ordinary Mohunt, and there are difficulties in it which we think

make this order not inappropriate as far as he is concerned. As far as the defendant No. 1 is concerned the decree allows him one thousand

rupees, whereas this order gives him only Rs. 200 a month. We consider that the order should be amended by the provision of Rs. 200 a month

being raised to Rs. 500 a month in the case of defendant No. 1.

4. In the third place Rs. 5,000 have been allowed to the plaintiff out of the Asthal funds in order to meet the expenses of the appeal in which he is

the respondent. It is objected that this is an improper order, or at all events if this order is made for his benefit a corresponding order should be

made for the benefit of the defendant No. 1. We cannot take this view. The plaintiff is called upon to defend what from a legal point of view is his

own property and we consider that, therefore, he should be allowed to use the 1 funds in the receiver's hands for that purpose to a reasonable

extent. The order, however, is that the plaintiff is entitled to get Rs. 5,000 out of the Asthal funds. This implies that he is to receive Rs. 5,000

without any check on the way in which he expends it. We vary this by ordering that he shall Receive from time to time such sums up to Rs. 5,000

as may seem to the receiver necessary for the proper conduct of his case in the pending appeal.

5. The result is that the appeal succeeds to the extent we have mentioned. Each party will pay his town costs in this appeal.

6. There has also been a rule granted to shew cause why the relief claimed in the appeal should not be given. It is not now necessary to consider

his matter. The rule is discharged. We make no order as to costs.