

(1909) 12 CAL CK 0035

Calcutta High Court

Case No: None

Ramji Ram and Another

APPELLANT

Vs

Salig Ram

RESPONDENT

Date of Decision: Dec. 6, 1909

Judgement

1. This is an appeal from the order of the District Judge of Patna appointing Receivers in a suit for partition and accounts. It appears that there were two uterine brothers named.

Babu Hari Ram...and...Babu Sriram.

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Baldeo Ram

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Rajaram

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Saligram, plaintiff

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Ramji Ram, defendant No. 1.

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Bhagwat Prosad.

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Babooa Ram, defendant No. 2.

2. And the above table shows the relationship of the plaintiffs and defendants. After the death of Babu Baldeo Ram, a dispute arose between the two branches of the family as to whether they were joint or separate. By an agreement, dated the 27th September, 1907, his dispute was referred to arbitrators, Babu Gobind Chandra Mitter and Babu Gangadhar Das, Vakils of the Patna Court, with a provision for consulting an umpire and abiding by the opinion of the arbitrators with whom the umpire should agree. For the purposes of this case Mr. Sinha, then Standing Counsel, was eventually referred to as umpire as regards some minor points of difference between the arbitrators and he upheld the findings of Babu Gobind Chandra Mitter on all points.

3. In the meantime Babu Rajaram died and his son Babu Ramjiram chose to impugn the position of the Hon^{ble} Mr. J. Sinha as umpire. But Babu Gangadhar Das appears to have held that there was no complete award while Babu Gobinda Chandra Mitter held that there was.

4. The upshot of the dispute was that further proceeding's in the arbitration which would have resulted in an amicable division of the property were dropped and the first party Babu Saligram Singh brought a suit to have the award specifically enforced and partition in equal shares made.

5. It appears that Babu Rajaram had always managed the family properties and it is alleged that since his death such properties are in the hands of his son Ramji Ram.

6. Various acts of neglect on his part are alleged but the main ground of the application for the appointment of a Receiver in this case, is the fact that Saligram can get no funds from the estate either for the maintenance of his family or for settling the affairs of the estate, to one-half of which the arbitrators have declared him entitled.

7. It appears that with certain reservations as to a partnership business which seems to be in abeyance owing to this unfortunate quarrel and other matters, the claim of Saligram is admitted, but the attitude of Ramji Ram has clearly had the result of cutting off all supplies from Saligram's branch of the family. Under these circumstances the learned Judge was of opinion that this is eminently a proper case for the appointment of a Receiver but he appears to have based his decision on the recalcitrant attitude of the objector in not admitting the validity of the award and this is one of the grounds of the appellants' contention before us that a Receiver should not be appointed. But we find that the real ground of the order is the fact that the appellant is keeping the plaintiff out of possession of property to which he is admittedly entitled, and this the Judge, finds is a sufficient ground for placing the property in the hands of a Receiver. The main contention of Mr. Garth is, that this is not a sufficient ground and he contends that the principles, which have governed these cases for many years under the CPC of 1882, must still continue and that it would be extremely dangerous to alter the settled practice of the Courts in Bengal by a too liberal interpretation of Rule 1, Order XL, of the present Code.

8. Under the old law it was laid down that in any case it must be shown that the property should be preserved from waste and alienation: *Chindi Dat Jha v. Padmanand Singh* 2 C. 459 and it is contended that the words "just and convenient" in the present Rule cannot be read as, removing the safeguards, under which such order had always been made heretofore. A second branch of the contention is that Sub-clause (2), Rule 1, Order XL, contains a similar proviso as the old Code, Section 508, that nothing in the rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove and on the authority of *Poreshnath Mookerjee v. Omerto*

Nauth Mitter 17 C. 614, in a partition suit, "property the subject of the suit" in Section 533 of the old Code means the whole joint estate and that, therefore, the plaintiff respondent has not present right to have half the properties in which he admittedly has a half share released from the management and control of Babu Ramji Ram, who is in possession of them in succession to his father Baba Rajaram who admittedly held them as manager for the whole family.

9. But the words, "property the subject of the suit," find no place in Order XL, Rule 1 and the only point we have really to consider Upon this part of the case is whether there has been a substantial change in the law so as to give the Courts in India the same wide discretion as the Courts of Equity in England have had since the passing of the Judicature Act.

10. We think that the fact that the Rule as amended has been brought into conformity with Order No. L, Rule 6, of the English Courts, which embodies Section 25 sub-Section 8 of the Judicature Act, with a slight change of "and" for "or", which does not affect this case in any way, must lead us to hold, that we have now precisely the same discretion in questions of the appointment of a Receiver that the Courts in England have. We do not for one moment desire to hold that the principles of case and caution in passing such orders, which in ordinary cases necessitate an enquiry into the question of waste or alienation, have ceased to govern the practice of the Courts in India, but the very form of the objection to our interference under Sub-clause (1) read with the decision in *Poreshnath's case* 17 C. 614, above referred to, illustrates the fact that there are cases, of which partition is notably one, where the limitations of the old Rule would lead to an impasse and preclude justice being done. To get rid of these disabilities and to give the Court powers to do justice and consult the convenience of parties in cases where there may not be any proof of actual waste but where one of the parties is being kept out of all the property on the ground that nothing can be delivered to him until a complete partition is made seems to us the clear and obvious meaning of the law as it now stands amended. We are strengthened in this conclusion by the finding of Jessel, M.R., in *Porter v. Lopes* 7 Ch. D. 358 : 37 L.T. 824, where it appears that the learned Master of the Rolls considered that, under the Judicature Act, 1873, Section 25 Sub-section 8, the Court had jurisdiction to appoint a receiver until the trial in actions for partition, although there was no exclusive occupation.

11. It is contended by Mr. Garth that this dictum is obiter, but we find on reading the report that it must have been a decision on a preliminary objection which arose when the motion first came before the Court that there was no exclusion by the plaintiff of the defendant, the co-owner and, therefore, the application for appointing a Receiver would not lie. It appears to have been conceded that if there were an exclusion, the Court had jurisdiction to appoint a Receiver.

12. As the provisions, of the Judicature Acts have been substantially incorporated in Order XL, Rule 1, we have no hesitation in following this very high authority.

13. We can, therefore, have no doubt that on the merits of the case this is, as the learned Judge in the Court below has held, eminently a proper case for the appointment of a Receiver.
14. But there are certain subsidiary objections taken by the learned Counsel for the appellants with which we must briefly deal.
15. One of these is that the appointment of two learned Vakils of the Court as Receivers where a large banking business has to be carried on is not an arrangement that can be supported either on the grounds of justice or convenience. But we find from the Record and pleadings of the parties that this business even if it has not been formally wound up is in complete abeyance and that the Receivers will have nothing to do with the management of it.
16. Another and more substantial objection is that the Receivers have had their remuneration fixed at 10 per cent, on account of the gross collections. This, in an estate which is not wholly zamindari and in which the Receivers are liable to have large sums like the Rs. 44,000 referred to in the pleadings paid in by former clients of the firm and to make and receive transfers of other large sums, is very excessive remuneration.
17. We are of opinion that the Receivers should get 10 per cent, on the gross collections from tenants and occupiers as regards the zamindari only and out of this they should defray the expenses of collection and as regards any sums received or transferred in cash not in payment of rents due to the estate, we fix their remuneration at 2 per cent.
18. The last point we have to deal with arises on the connected rule issued in this case which was heard with this appeal. The, order of the Judge directing that Rs. 21,000 should be paid to the plaintiffs-respondents as arrears of their maintenance for 14 months is impugned by the appellant on the ground that no order has been passed enabling him to receive any arrears of maintenance. Probably the Judge thought that he had paid himself out of the proceeds of the estate which had been all along in his hands but the fact remains that he did not ask the Judge to make any similar order in his behalf and it is perfectly open to him to ask for it now if he has not already received it. The order as regards the plaintiff-respondent appears to be fair and reasonable.
19. For all these reasons the appeal is dismissed with the modification we have directed in the Receiver's remuneration and the rule is discharged with costs. There will be a single hearing fee of 15 gold mohurs to be paid out of the estate to the respondents.
20. Let the records be sent down without delay.