

Suprasanna Roy and others Vs Upendra Narain Roy

Court: Calcutta High Court

Date of Decision: Aug. 27, 1913

Judgement

1. This Appeal is directed against an order by which the Court below has rejected an application by the Plaintiff in a partition suit for the

appointment of a Receiver of the subject matter of the litigation. The Plaintiff and the Defendant are brothers and are the owners of joint properties

of considerable value and extent. In 1902, after the death of their father, the Respondent, the eldest son, took out Letters of Administration of the

estate with a copy of the Will annexed. He was at the same time appointed guardian of the person and property of his infant brother, the present

Plaintiff, who went to England in 1906 and came back three years later. On his return, he demanded partition of the family estate, but not with

refusal from his brother. Accordingly, the Plaintiff sued for partition in 1910. On the 22nd February 1910, a consent decree was made in the suit,

under which the properties were to be divided and allotted to the two brothers. Arbitrators were appointed to make the division, but the partition

was not carried out for reasons which need not be recited for our present purpose. On the 31 January 1912, the Plaintiff commenced this fresh

action for partition either on the basis of the award of the arbitrators or irrespective of it. On the 22nd November he asked for the appointment of

a Receiver Pendente lite. This application has been refused by the Court below on four grounds; namely, first, that as the Plaintiff has from time to

time received from his brother, who is in possession of the estate, various sums of money, it cannot be said that the Plaintiff has been kept out of

possession of the joint estate; secondly, that under the circumstances of the case, the estate will be managed better by the Defendant than by a

stranger as Receiver; thirdly, that the appointment of a stranger Receiver would mean imposition of a heavy burden upon the estate which is

already encumbered to some extent; and, fourthly, that if the Plaintiff is not satisfied with the amount he has received from his brother, his obvious

remedy is to move the District Judge to make an order for an increase of his allowance. In our opinion, these reasons do not justify a refusal of the

application for the appointment of a Receiver. Upon the facts stated, it is plain that the title of the Plaintiff to one half share of the estate cannot be

disputed. The Plaintiff has a tainted majority and is entitled to the enjoyment of his share. When the partition is effected, he will be entitled to take his

share severally but so long as partition is not effected, he is clearly entitled to receive approximately one-half share of the net income of the estate.

This aspect of the matter was not appreciated by the Court below, and as the Subordinate Judge has made an order which is manifestly erroneous,

it is desirable to explain the principles applicable to a case of this description. At one time, it was held in England that as between legal co-owners

of land, the Court of Chancery would not appoint a Receiver unless by consent, *Ramsden v. Fairthorp* 1 N.R. 389 (1863), or unless the applicant

was prevented from exercising his legal rights of entering into possession and sharing in the management, *Millbank v. Revett* 2 Mer. 405 (1817)

and *Spratt v. Ahearne* 1 Jones 50 (1834). In the same way, as between equitable co-owners, exclusive occupation by one owner, in the sense that

he refuses to pay to his co-owners their proper share of the rents and profits, has always been deemed a good ground for the appointment of a

Receiver. *Tyson v. Fairclough* 2 Sim & St. 142 (1824). After the Judicature Act, however, it has been repeatedly held that the Court has

jurisdiction to appoint a Receiver until the hearing of a partition action or until further order, even though there is no exclusive occupation by any

party, and the Court will not hesitate to do so whenever it is just and convenient. The case for the appointment of a Receiver is much stronger, if a

party to the partition action is in sole occupation; in such a case, any other party may obtain a Receiver either of his share of the rents and profits

or of the whole estate. *Sandford v. Ballard* 30 Beav. 109 (1861), *Sandford v. Ballard* 33 Beav. 401 (1864), *Porter v. Lopes* 7 Ch. D. 358

(1877). The Court may also allow the party in exclusive occupation to elect to pay to the others an occupation rent [*Teasdale v. Sanderson* 33

Beav. 534 (1864)], or the Court may require security from the co-owner in exclusive occupation to account for their share of the rents to the other

co-owners. [*Street v. Anderson* 4 Brown C.C. 414 (1793)]. Consequently, in cases of this description there are four alternative courses open: (1)

the Court may require security from the person in sole occupation; (2) the Court may require him to pay occupation rent; (2) the Court may

appoint a Receiver of the share of the Plaintiff; or (4) the Court may appoint a Receiver of the entire estate.

2. In the case before us, there is no room for controversy that a Receiver should be appointed in respect of the whole estate. The Plaintiff is, as

already stated, the owner of one-half share of the estate. He has attained majority, is a married man and has a family to support. He is further

engaged in this litigation and has to bear heavy expenses. If the Defendant is directed to furnish security, the order would be of no avail to the

Plaintiff, and would not afford him immediate relief in the least degree. If the Defendant is directed to pay occupation rent, the Plaintiff would be

entitled to claim one-half share of the income of the estate. But it would be difficult, if not impracticable, to carry out the order, because, the parties

are hopelessly at variance as to the amount of the annual income which has been estimated at figures varying from Rs. 30,000 to Rs. 50,000. If a

Receiver is appointed in respect of the one half share of the Plaintiff, there will obviously be an immediate conflict between the Receiver and the

Defendant and the management of the estate will be completely paralysed. Under these circumstances, the only feasible and practicable course

which can be adopted without detriment to the parties is to appoint a Receiver of the whole estate.

3. The next question for consideration is who should be appointed Receiver. As pointed out by this Court in the case of Kali Kumari v. Bachhun

Singh 17 C.W.N. 974 (1913), one of the parties to a litigation should not ordinarily be appointed a Receiver and very exceptional circumstances

must be established to justify the appointment of a party as Receiver. In our opinion, in the present case, such grounds have been made out. The

appointment of a stranger would mean the imposition of a heavy burden upon the estate which is already encumbered; and it might also tend to

dislocate the management. The Defendant, on the other hand, has offered to accept the appointment as Receiver, if the Court decides that a

Receiver should be appointed. He has further agreed to bring into Court Rs. 10,000 within two weeks from this date, for payment to the Plaintiff;

he has also consented to bring into Court Rs. 10,000 a year in four equal instalments for payment to the Plaintiff. In view of the officers thus made,

we are of opinion that the Defendant may very well be appointed Receiver. We accordingly appoint him Receiver with effect from this date. His

share of the joint estate in controversy will remain as security for the true performance of his duties as Receiver. He will bring into Court Rs.

10,000 within fourteen days from this date. As soon as the money is deposited in this Court, it will be paid out on the joint receipt of the Plaintiff

and his trustees who are parties to the suit. No further order from the Court will be required in this behalf. As regards the sum of Rs. 10,000 which

the Defendant undertakes to bring into Court annually in four equal instalments, we direct that the first instalment of Rs. 2,500 be deposited in this

Court on or before the 31st October next. As soon as the money is deposited it will be paid out on the joint receipt of the Plaintiff and his trustees.

The subsequent instalments of Rs. 2,500 each will similarly be deposited in this Court upon the expiration of every period of three months and will

be similarly paid out to the Plaintiff and his trustees on their joint receipt. The Receiver will in all matters act under the direction of the Subordinate

Judge. As regards the submission of accounts, we direct the Receiver to submit his accounts every three months in the Court of the Subordinate

Judge. If the Receiver fails to deposit Rs. 10,000 as directed, or to deposit Rs. 2,500 every three months as ordered above, he will be discharged

and the Subordinate Judge will proceed forthwith to appoint another person as Receiver. At the end of twelve months from this date, the parties

will be at liberty to apply to this Court to vary this order as regards the annual payment of Rs. 10,000. The Appellant is entitled to his costs of this

Appeal. We assess the hearing-fee at five gold mohurs. Let the record be sent down at once so that the hearing of the suit may be expedited.