

## CIVIL RULE.

*Before D. Chatterjee and Beachcroft JJ.*

ASADALI CHOWDHURY

v.

MAHOMED HOSSAIN CHOWDHURY.\*

1916

Feb. 2.

*Common Manager—Application for the appointment of a Common Manager—Appointment of a receiver pending disposal of the application—Bengal Tenancy Act (VIII of 1885) s. 93—Civil Procedure Code (Act V of 1908) s. 141 and O. XL, r. 1.*

The terms of O. XL, r. 1 of the Civil Procedure Code of 1908 are wider than the corresponding s. 502 of the Civil Procedure Code of 1882 and do not provide that the appointment of a receiver should be confined to a suit.

An application for the appointment of a Common Manager under s. 93 of the Bengal Tenancy Act is an original proceeding contemplated in s. 141 of the Civil Procedure Code to which the procedure under O. XL, r. 1, seems to be applicable.

*Thakur Prasad v. Fakirullah* (1) followed.

The relief of an aggrieved party to such an order is by way of an appeal and not by an application for revision.

CIVIL RULE obtained by Asadali Chowdhury and others, petitioners.

Disputes having arisen between the petitioners and the opposite party who were their co-sharers, owing to the alleged dismissal of two tahsildars engaged in the common estate, the opposite party made an application to the District Judge of Backergunge for the appointment of a Common Manager under section 93 of the Bengal Tenancy Act. The learned Judge ordered the appointment of a receiver pending the

\* Civil Rule No. 28 of 1916 against the order of P. E. Cammiado, District Judge of Backergunge, dated Jan. 4, 1916.

(1) (1894) I. L. R. 17 All. 106.

disposal of the application. Against this order, the petitioners obtained this Rule on the ground that it was passed without jurisdiction and without notice to them.

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*Maulvi Nuruddin Ahmed*, for the petitioners, contended that a receiver can only be appointed in a suit and not in a proceeding in the nature of an application under section 93 of the Bengal Tenancy Act. Besides, want of notice to the parties with regard to any order passed by a Civil Court makes that order irregular.

*Babu Jogendra Nath Mookerjee*, for the opposite party, in showing cause, submitted that proceedings under section 93 of the Bengal Tenancy Act were proceedings which came within the operation of section 141 of the Civil Procedure Code. They were proceedings in the nature of a suit. They were initiated by an application and their termination resembled the hearing and termination of an ordinary suit. Moreover, the wording of Order XL, r. 1, is wider than that of the corresponding section 503 of the old Code which contained the words "subject of a suit" which have been omitted in the present Code. Hence the Judge had jurisdiction to pass the order.

D. CHATTERJEE AND BEACHCROFT JJ. Pending an application for the appointment of a Common Manager under the Bengal Tenancy Act the learned District Judge appointed a receiver. This Rule was issued upon an application by the petitioner that the order made by the learned District Judge was without jurisdiction in that it was made not in the course of a suit, and, secondly, it was irregular because it was made without notice to the petitioner. We have heard the learned vakeels on both sides and we think that the Rule must be discharged.

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With regard to the first ground it is contended that a receiver can be appointed only in a suit and not in a proceeding of this kind. Order XL, rule 1, however, does not provide that the appointment of a receiver should be confined to a suit. The old section 503 of the Civil Procedure Code of 1882 did certainly speak of the appointment of a receiver in a suit, but rule 1 of Order XL of the present Code has left out the words "subject-matter of a suit" and is very general.

Then section 141 is also very general and does seem to apply the procedure under Order XL, rule 1, to proceedings of this kind. That section provides "The procedure provided in this Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any Court of Civil jurisdiction." It has been held in the case of *Thakur Prasad v. Fakirullah* (1), by their Lordships of the Judicial Committee, that the old section 647 in place of which stands the present section 141 was applicable to the original proceedings in the nature of suits such as guardianship, probate, etc. The present proceeding is an original proceeding which may be said to be in the nature of a suit because it is initiated by an application by one party, is opposed by another and is determined by a final order. The proceedings, therefore, being proceedings in a case which may be said to be in the nature of a suit are such as evidently attract the application of Order XL, rule 1. We think that under Order XL, rule 1, the Court has jurisdiction to appoint a receiver in a case of this kind if, upon the facts before it, it thinks that it is just and convenient that it should make an order under that rule.

Then as regards the question of notice, although an order is generally made by a Civil Court upon notice

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to the parties concerned, there may be cases in which the issue of notice may so delay the proceedings as to defeat the object of the order made, and the Court has to pass an order without previous notice in cases of emergency, leaving the party aggrieved to object to it either in the Court making the order or by way of an appeal to a higher Court. These two grounds, therefore, fail. We find that the proceedings for the appointment of a Common Manager have been postponed pending the decision of this Rule. It was not meant that this should be so.

The petitioner, it seems, upon the view we take of Order XL, rule 1, misconceived his remedy as he should have come to this Court by way of an appeal against the order appointing the receiver.

We discharge this Rule with costs and direct that the record be sent down at once so that the proceedings for the appointment of a Common Manager may be continued without further delay.

N. C. S.

*Rule discharged.*

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