

APPELLATE CIVIL.

Before Mookerjee and Beachcroft JJ.

BHAIRAB CHANDRA DUTT

v.

NANDIRAM AGRANI*

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Aug. 15.

Receiver—Suit by Receiver—Security not furnished by Receiver—Dismissal of suit—Jurisdiction of Court.

In pursuance of an order of the High Court directing him to appoint a Receiver who was required to furnish security, the Subordinate Judge appointed the plaintiff as Receiver and authorised him to bring and defend suits in his own name. In consequence thereof the plaintiff instituted a suit, which was dismissed by the Subordinate Judge on the ground that the Receiver was not competent to maintain the action, because as he had not furnished security his appointment was inoperative in law :

Held, that the propriety of an order or decree made in a cause in which the Court had jurisdiction could not be challenged collaterally. This general principle applied to an order for the appointment of a Receiver by a Court of competent jurisdiction.

Held, also, that in the present case the order of the Subordinate Judge was not conditional but absolute in its terms and took immediate effect. It could not be maintained that an order which was erroneous in law was necessarily an order made without jurisdiction.

Greenawalt v Wilson (1) referred to.

Edwards v. Edwards (2) distinguished.

APPEAL by Bhairab Chandra Dutt, the plaintiff.

One Jogendra Chandra Dutt instituted a suit against one Rajendra Chandra Banerjee for a declaration that certain properties in dispute had been purchased by him in the name of Rajendra Chandra

* Appeal from Original Decree. No. 29 of 1917, against the decree of Debendra Nath Pal, Subordinate Judge of Howrah, dated Dec. 8, 1916.

(1) (1893) 52 Kan. 109 ; (2) (1876) 2 Ch. D. 291.

34 Pac. 403.

Banerjee. Jogendra, on the 6th January 1914, applied to the Subordinate Judge for the appointment of a Receiver. Thereupon, on the 19th February 1914, the said Judge rejected the application on the ground that in his opinion sufficient reasons had not been assigned for the appointment of a Receiver. From this decision Jogendra appealed to the High Court, whereupon on the 27th April 1914, the order of the Court below was set aside and the case was remanded with instructions for the appointment of a Receiver who was required to furnish security. Thereupon, on the 20th July 1914, the Subordinate Judge appointed Bhairab Chandra Dutt, a local pleader the Receiver, with the consent of all parties, and made the necessary order for his taking over possession of the properties and empowered him to bring and defend suits in his own name. He was further authorised to institute a suit against one Nandiram Agrani, the present respondent, for recovery of possession of certain lands. In pursuance of the aforesaid order the Receiver instituted the present suit on the 6th December 1915. On the 8th December 1916, the Court below dismissed the said suit on the ground that the Receiver was not competent to maintain the action, because as he had not furnished security his appointment was inoperative in law.

From that decision the plaintiff preferred this appeal to the High Court.

Babu Mahendra Nath Roy and Babu Jogendra Nath Mookerjee, for the appellant.

Babu Provas Chandra Mitter, Babu Biraj Mohan Majumdar, Babu Panchanan Ghose and Babu Bankim Chandra Ghose, for the respondent.

MOOKERJEE AND BEACHCROFT JJ. This is an appeal by the plaintiff in a suit for recovery of possession of land on declaration of title. The plaintiff

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is a Receiver appointed by the Subordinate Judge of Howrah in a suit instituted by Jogen Chunder Dutt against Rajendra Chandra Banerjee. In that suit Jogen Chunder Dutt asked for a declaration that the property then in dispute had been purchased by him in the name of Rajendra Chandra Banerjee. On the 6th January 1914, Jogen Chunder Dutt applied for the appointment of a Receiver. On the 19th February 1914, the Subordinate Judge rejected the application on the ground that in his opinion sufficient reasons had not been assigned for the appointment of a Receiver. Jogen Chunder Dutt then appealed to this Court, with the result that, on the 27th April 1914, the order of the Subordinate Judge was set aside and the case was remitted to him with instructions to appoint a Receiver. This Court also directed that security should be taken from the person so appointed. When the matter went back to the Subordinate Judge, he proceeded to appoint a Receiver on the 20th July 1914. The receiver was accepted as a fit and proper person by both the parties and the order of the Subordinate Judge was in these terms: "Babu Bhairab Chandra Dutt, a pleader of this Court, is appointed as a Receiver of the said property by common consent and the Court commits the said property to his possession and management by removing the defendants from the possession or custody thereof. The Receiver is hereby empowered to bring and defend suits in respect of the property aforesaid and realise rents and profits. The receiver is further authorised to bring a suit against one Nandiram Agrani (that is, the respondent before us), for recovery of possession of the land; the latter is said to be in wrongful occupation of the land; and the costs thereof will be met by the plaintiff until further order of this Court." The Receiver thereupon instituted the present suit on the 6th December 1915.

On the 8th December 1916, the Subordinate Judge dismissed the suit on the ground that the Receiver was not competent to maintain the action, because as he had not furnished security, his appointment was inoperative in law. In our opinion this view cannot possibly be supported.

We shall assume for the present purpose, that this Court, when it remitted the case to the Subordinate Judge with directions to appoint a Receiver, also held that security should be taken from the person selected. We shall assume further that either through oversight or misinterpretation of the order of the High Court the Subordinate Judge omitted to call upon the Receiver to furnish security. The fact is unquestionable that the Subordinate Judge did appoint a Receiver and did not take security as directed by this Court. The real point in controversy is, was the order of the Subordinate Judge an order made without jurisdiction and consequently liable to be challenged in a collateral proceeding, or was it merely an erroneous order which might be rectified by himself, of his own motion, or on an application for review by the parties concerned, or by way of an appeal preferred by them to a superior tribunal. It is indisputable that the propriety of an order or decree made in a cause in which the Court has jurisdiction, cannot be challenged collaterally. This general principle applies to an order for appointment of a Receiver by a Court of competent jurisdiction, and was applied in *Greenawalt v. Wilson* (1) where it was ruled, that in an action brought by a Receiver for the recovery of the property claimed by him by virtue of his receivership, the defendant will not be permitted to question the propriety, regularity or necessity of his appointment. The respondent has consequently been driven to

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contend that the order was made without jurisdiction, and, in support of this view, has placed reliance upon the decision in *Edwards v. Edwards* (1). That case however, is clearly distinguishable. There, the order whereby the Receiver was appointed, called upon him to give security, and the Court held that he could not be Receiver until he gave security; when he had done so, he could take possession, because the order for appointment was really conditional (Sêe also *Defries v. Crad* (2), *Ex parte Evans* (3)). Here the order of the Subordinate Judge was not conditional but absolute in its terms, and took immediate effect. It is impossible to maintain the view that an order which is erroneous in law is necessarily an order made without jurisdiction. It is not necessary for our present purpose to define the exact meaning of the term 'jurisdiction'; but jurisdiction may be taken to be the power of the Court to hear and determine cases, to adjudicate or exercise any judicial power with reference to them. In the exercise of its jurisdiction, the Court may commit an error of law; but the fact that such error of law has been committed does not divest the Court of its jurisdiction. In the case before us, the Subordinate Judge had undoubted jurisdiction to appoint a Receiver under the provisions of the Code of Civil Procedure. He held originally that the circumstances of the case did not justify the exercise of the jurisdiction vested in him. This Court took a contrary view and directed him to appoint a Receiver. The Court also prescribed the mode wherein that power should be exercised, namely, that security was to be taken from the person selected for appointment. The Subordinate Judge, for some unexplained reason, did not comply with the directions of the Court in this

(1) (1876) 2 Ch. D. 291.

(2) (1865) 34 L. J. Ch. N. S. 607.

(3) (1879) 13 Ch. D. 252.

respect, but that did not oust his jurisdiction. We are clearly of opinion that the order for the appointment of the Receiver was operative in law, and that the ground which has been assigned by the Subordinate Judge for the dismissal of the suit, cannot be supported.

The result is that this appeal is allowed, the decree of the Subordinate Judge set aside, and the case remanded for trial in accordance with law. The appellant is entitled to his costs in this Court, as also Rs. 16 as costs of the hearing before the Subordinate Judge. We further direct that a certificate be granted to the appellant under section 13 of the Court Fees Act, to enable him to obtain a refund of the court-fees paid on the memorandum of appeal to this Court.

L. R.

Appeal allowed ; case remanded.

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