

PRIVY COUNCIL.

GOPAL CHANDRA CHAUDHURI

v.

RAJANIKANTA GHOSH.

P. C.^o
1919June 2, 3 ;
July 24.

[ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]

Costs—Record containing superfluous and unnecessary matter thereby causing wasteful expense—Default of appellants whose duty it was to prepare and print it—Costs disallowed.

In this case their Lordships of the Judicial Committee after commenting on the undue size of the record owing to the inclusion of a large quantity of superfluous matter, and the wholly unnecessary expense that had been thereby incurred which they were of opinion was due to the default of the appellants in the exercise of a discriminating judgment in preparing it :—

Held, that the Registrar of the High Court of Bengal should disallow the actual costs of printing the record from pages 1,442 to 1,364, and pages 1,690 to 1,797 both inclusive, and such consequential costs as he may think right in proportion ; and that the costs to be taxed in England should be reduced by such amount as the Registrar of the Privy Council may consider is attributable to the insertion of such superfluous matter

APPEAL (160 of 1917) from a judgment and decree (21st April 1915) of the High Court at Calcutta which reversed a decree of the Subordinate Judge of Jessore.

The defendants were the appellants to His Majesty in Council.

The suit was brought to recover possession from the defendants of 5,760 bighas of land. "The case was a long and complicated one involving a consideration of some oral evidence of not much importance, and a great number of documents ranging over nearly

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a century. The matter is not made easier by the fact that there are charges and counter-charges of falsification, interpolation, and suppression in respect of several of the documents”.

The case is described as above by their Lordships of the Judicial Committee, and the questions in it were wholly of fact, and it is unnecessary to report them.

For the purpose of this report it is only necessary to give the last page of their Lordships’ judgment which comments on the unnecessary size of the record and the wasteful expense in printing it.

The Subordinate Judge dismissed the suit but the High Court (D. Chatterjee and Chapman JJ.) reversed that decision, and the defendants consequently appealed.

On this appeal,

Sir Erle Richards, K. C., and *Kenworthy Brown*,
for the appellants.

De Gruyther, K. C., and *Sir William Garth*, for the respondents.

The judgment of their Lordships was delivered by

LORD PHILLIMORE [after considering the evidence at some length and stating that their Lordships had no doubt that the decision of the Subordinate Judge was right continued :].

Their Lordships cannot leave this case without making an observation of a nature which unfortunately this Board has had to make before, but seldom with such insistence as in the present case. The printed record contains 2,187 pages, besides about 100 pages of supplementary appendix; 368 of these pages are taken up in setting out the items of a measurement “chitta” of the property in the possession of the defendants in 1852. Their Lordships

appreciate the importance of this document as supporting the possession by the defendants at that date of the property in dispute, but a few pages would have given all the materials necessary.

If the first nine pages giving a day's work with the details of the persons present, and showing various parcels of land in Kalinagar, and one or two pages showing parcels in the other disputed village of Ratinagar had been printed, and a few lines added stating that these were printed as specimen pages, every object would have been obtained. It is unfortunate that practitioners in India will not undertake the very slight responsibility which such action would lay upon them. But if they will not, it ought to be the duty of some official in the High Court to see that such wholly unnecessary expense, as has been incurred in the present case, should not be allowed.

It was the appellants' duty to print the records. It is due to their default in the exercise of a discriminating judgment that so much unnecessary matter was wastefully printed, and as a lesson to their advisers and all other practitioners, their Lordships propose that the Registrar of the High Court of Bengal should disallow the actual costs of printing the record from page 1,442—1,664, both inclusive, and from page 1,690—1,797, both inclusive, and such consequential costs as he may think right in proportion, and that the costs to be taxed in England should also be reduced by such amount as the Registrar of the Privy Council may consider is attributable to the insertion of this superfluous matter.

Their Lordships will, therefore, humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court should be reversed, and the decree of the Subordinate Judge dismissing the

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suit with costs to be paid to the second defendant should be restored, and that the defendants should have their costs in the High Court, and their costs less those disallowed as aforesaid of their appeal to His Majesty in Council.

J. V. W.

Appeal allowed.

Solicitors for appellants : *Pugh & Co.*

Solicitors for respondents : *T. L. Wilson & Co.*

APPELLATE CIVIL.

Before Mookerjee and Panton JJ.

RAMESHWAR SINGH

v.

CHUNI LAL SHAHA.*

1919
 ———
 Aug. 12.

*Receiver—Possession of receiver in mortgage-suit, for whose benefit—
 Receiver, if can be appointed at the instance of mortgagee not entitled to
 possession.*

Possession of a receiver in a mortgage-suit is *prima facie* for the benefit of the party who has obtained the appointment.

Penney v. Todd (1) followed.

A second mortgagee, in whose presence the order for appointment of a receiver in a mortgage-suit by the first mortgagee is made, is not entitled to avoid the consequences of the order of appointment, because he has obtained a decree on his mortgage and has purchased the equity of redemption in execution of that decree.

Whether a mortgagee is or is not entitled to possession, he may invite the Court to appoint a receiver, if the demands of justice require that the mortgagor should be deprived of possession.

* Appeal from Order, No. 84 of 1919, against the order of A. T. Pal, Subordinate Judge of Dacca, dated Feb. 25, 1919.