

which should have appeared in the report of the Official Assignee was a strong objection against its being heard at all.

Attorney for the appellant : *S. C. Ghose.*

Attorneys for the respondents : *Morgan & Co.*

N. G.

1926  
RUSTOMJEE  
DORABJEE  
v.  
K. D.  
BROTHERS.

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### APPEAL FROM ORIGINAL CIVIL.

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*Before Sanderson C. J. and Rankin J.*

SUBAL CHANDRA KAR

*v.*

JATINDRA MOHAN GHOSE AND ANOTHER.\*

*Receiver—Breach of duty—Practice.*

1926  
*April 26.*

In an application against a Receiver for accounts to be taken on the basis of wilful default and neglect :

*Held*, that the proper procedure would be by a suit.

*Coomar Sattya Sanhar Ghosal v. Ramee Golapmonee Debos* (1) referred to.

APPEAL from an order of Buckland J.

This was a suit for declaration of shares and partition of the premises No. 36, Fariapukur Street. By an order made in August 1917, a Receiver was appointed, and he was also appointed the Commissioner of Partition. As such Receiver, he took possession of the said premises. The premises were not let out for some

\*Appeal from Original Order No. 20 of 1926, in suit No. 959 of 1911.

1926  
 SUBAL  
 CHANDRA  
 KAR  
 v.  
 JATINDRA  
 MOHAN  
 GHOSE.

time, but subsequently they were let out to Jatindra Mohan Ghose. Subal Chandra Kar and Purna Chandra Kar, two of the defendants, complained that the Receiver was in default in not letting out the said premises, and when he did let out the premises he did so at an unduly low rent. In December 1925 the said defendants made an application before the learned Judge, in Chambers, for an enquiry as to what was the fair and reasonable rent of the premises that should have been collected by the Receiver and for accounts to be rendered by him on the basis of wilful default and neglect. The application was dismissed by the learned Judge, without going into its merits, on the preliminary ground that the proper procedure was by a suit.

On that the defendants appealed.

*Mr. C. Bayram*, for the appellants. The question of wilful default and neglect might not arise when a Receiver has his accounts passed in the office of the Court in the ordinary way, but a party feeling aggrieved by the conduct of a Receiver has his right to seek redress in the proceedings in which he was appointed Receiver. *Kamatchi Ammal v. Sundaram Ayyar* (1). Case of *Coomar Sattya Sankar Ghosal v. Ranee Golapmonnee Debee* (2) distinguished.

The learned Judge ought not to have relegated the parties to a suit. The application might have been treated as a suit.

*Mr. S. N. Banerjee* (with him *Mr. H. C. Majumdar*), for the respondent. The case of *Coomar Sattya Sankar Ghosal v. Ranee Golapmonnee Debee* (2) has always been followed, and the rules of this Hon'ble Court have been framed accordingly—High Cour

(1) (1902) I. L. R. 26 Mad. 492.

(2) (1900) 5 C. W. N. 223.

(Original Side) Rules, Chapter XXI, rule 11 and Form (ii) mentioned therein. The case of *Osmond Beeby v. Kshitish Chandra Acharjya Chowdhury* (1) shows that a separate suit was filed. That has been the practice of this Court and has been followed for many years and should not be lightly rejected. *Haji Teller Rahman v. Golam Gone* (2), *Kamatchi Ammal v. Sundaram Ayyar* (3) has no application to the facts of this case.

1925  
 SUBAL  
 CHANDRA  
 KAB  
 c.  
 JATINDRA  
 MOHAN  
 GHOSE.

[Mr. Bagram objected to Mr. Banerjee going into the merits of the application as he did not open the case on the merits.]

*Mr. Bagram*, in reply.

RANKIN J. This is an appeal by two defendants in a suit against the Receiver, Mr. R. N. Mitter, and the ground of their controversy with the Receiver is that they say that he has improperly dealt with certain portions of the premises under his management; has failed to exercise reasonable diligence for the recovery of certain rents in respect of certain premises; has failed to let them out and has been guilty of breach of his duty.

The matter came before Mr. Justice Buckland upon a summons in Chambers and that summons was supported by a somewhat lengthy petition.

It appears that the application was not made in connection with any accounts which the Receiver had filed or which were in course of being passed in Chambers of the Court under Chapter XXI of the Original Side Rules. It came on, therefore, as an independent motion or summons, and the learned Judge took the view that the ruling of Mr. Justice Sale

(1) (1914) I. L. R. 41 Calc. 771. (2) (1923) 40 C. L. J. 28.

(3) (1902) I. L. R. 26 Mad. 492.

1926  
 SUBAL  
 CHANDRA  
 KAR  
 v.  
 JATINDRA  
 MOHAN  
 GHOSE.  
 RANKIN J.

in the case of *Coomar Sattya Sankar Ghosal v. Ranee Golapmonee Debee* (1) was to the effect that such an application, first of all, could not be entertained when the Receiver was passing his accounts and, secondly, should be made by a suit.

Learned counsel, Mr. Bagram, for the appellants, has contended before us that while it may be true that this question of wilful default does not arise when a Receiver is passing his accounts in the office of the Court on an ordinary occasion, nevertheless on principle the right of a party is to seek his remedy from the Court which appointed the Receiver and that the learned Judge ought not to have relegated him to a suit or ought to have treated this application as a suit.

With respect to the second part of that contention I confess I have no difficulty in disagreeing with him. If a suit has to be brought it is much better that it should be brought in the ordinary way. The question is whether in this particular case the learned Judge's order should be interfered with. In my judgment the rule that an application of this character should be made by a suit, whether it be right or wrong, has been recognized for a long time in this Court. In my judgment, it is at any rate, a good general rule in cases of any complication because there is manifest inconvenience, as this case shows, in dealing with complaints of this character without a properly framed plaint and without a suit being brought in a regular manner. In the present case the applicants seem to have rather mis-stated or misconceived what the order was which they wanted, and their application seems to be not without a good deal of complication and to have a good deal of material which requires a very

thorough sifting. I do not think that this is a case in which one would be on strong ground in ignoring what Mr. Justice Sale has said in the case of *Coomar Sattya Sankar Ghosal v. Ranee Golapmonee Debee* (1). It has been pointed out to us that in a suit in this Court the procedure was followed and that the Court of Appeal entertained it and considered that procedure to be correct.

For these reasons, it seems to me that the learned Judge has made an order which we ought not to interfere with.

The appeal is dismissed with costs.

SANDERSON C. J. I agree.

Attorneys for the appellants: *O. C. Gangoly & Co.*

Attorney for the respondents: *A. N. Bose.*

N. G.

(1) (1900) 5 C. W. N. 223.

1926  
 SUBAL  
 CHANDRA  
 KAR  
 v.  
 JATINDRA  
 MOHAN  
 GHOSE.  
 ———  
 BANKIN J.