

PRIVY COUNCIL.

BENOY KRISHNA MUKHERJEE AND OTHERS
(PLAINTIFFS)

P. C.
1927

v.

Dec. 15.

SATISH CHANDRA GIRI (DEFENDANT) AND
OTHERS.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Receiver—Interim appointment—Property in suit—Appeal from discretionary orders—Appeal to Privy Council—Interlocutory orders.

An interim appointment of a receiver of property in the possession of, and claimed by, the defendant in the suit should be made only if there is a well-founded fear that in the absence of protection the property will be dissipated or irreparably injured. Where an order appointing a receiver has been set aside or altered on appeal, the Judicial Committee has to consider whether the Court of first instance had before it evidence to support the order made, and considered the matter on principles upon which judicial discretion must be exercised. If the Appellate Court has rightly held that the proper discretion was not used, it can exercise its own discretion in the matter.

Applying the above considerations, the Board affirmed an order of the High Court which had discharged an order appointing a receiver so far as it related to properties which the defendant Mohunt, claimed as being his personal property and not debottar.

As a general rule an interlocutory order is not a suitable subject for review by the Judicial Committee.

Consolidated appeal (No. 49 of 1927) from three interlocutory orders of the High Court (January 8,

Present : VISCOUNT SUMNER, LORD ATKINSON, LORD SINHA, SIR JOHN WALLIS AND SIR LANCELOT SANDERSON.

March 26 and 31, 1926) varying orders of the District Judge of Hooghly.

The *pro formá* respondents Nos. 2-7 instituted a suit under sections 92 and 93 of the Code of Civil Procedure, 1908, in the District Court against the respondent No. 1, the Mohunt or trustee of a temple, alleging breaches of trust, misappropriation of the temple properties, and neglect of duty. The plaintiffs prayed that the property belonging to the temple might be ascertained, a declaration that certain property claimed by the defendant was temple property, for the removal of the defendant from being Mohunt and other relief, including the appointment of a receiver of the trust estate. The defendant by his defence admitted that certain properties specified in schedules attached to the plaint were temple properties, but contended that other properties so specified belonged to him.

The present appellants were subsequently added as plaintiffs, and upon their application under Order XL, rule 1, the District Judge appointed a receiver of all the properties in suit. Upon an appeal to the High Court (Greaves and Panton JJ.) the order was discharged so far as it related to the properties which the defendant claimed as belonging to him personally.

DeGruyther, K. C., and *Hyam*, for the appellants,

Upjohn, K. C., and *Dube*, for the first respondent.

With reference to the principles applicable upon an interim application for a receiver reference was made to *Foxwell v. Van Grutten* (1), *Sidheswari Dabi v. Abhoyeswari Dabi* (2) and *Chandiat Jha v. Parmanand Singh* (3).

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(1) [1897] 1 Ch. 64.

(2) (1888) I. L. R. 15 Calc. 818.

(3) (1895) I. L. R. 22 Calc. 459.

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The judgment of their Lordships was delivered by

VISCOUNT SUMNER. This is an appeal from three consolidated orders of the High Court, Calcutta, which varied orders of the District Judge of Hooghly by discharging so much of them as ordered a receiver to be appointed *pendente lite* of certain properties in dispute included in "Class C".

The suit had been brought against the Mohunt of the Temple of Tarakeswar, alleging his unfitness for his office, and praying for his removal, and for a declaration that certain lands, claimed to be his as *nij* lands, were truly debottar lands belonging to the Temple, with other relief. The District Judge made interlocutory orders for a receiver of three classes of property. Those as to which his receivership order was discharged had been in the Mohunt's possession and enjoyment for a considerable number of years, and were alleged by him in some cases to have passed to him under the will of his predecessor, who had acquired them as his *nij* property, and in others to have been purchased by himself out of personal offerings made to him by pilgrims and others in recognition of acts of service to them. The suit, so far as their Lordships have been informed, though its prosecution has been unaccountably delayed, is still awaiting trial.

On an interim application for a receivership such as this, the Court has to consider whether special interference with the possession of a defendant is required, there being a well-founded fear that the property in question will be dissipated, or that other irreparable mischief may be done unless the Court gives its protection. Such an order is discretionary, and the discretion is, in the first instance, that of the Court in which the suit itself is pending. When, as

in this case, the order of that Court is altered on appeal it becomes necessary to consider whether the Court below had before it the evidence required to support such an order and considered it in accordance with the principles on which judicial discretion must be exercised. If the Court of review rightly concludes that proper discretion was not used below, it is free to exercise its own discretion in the matter.

There were undoubtedly in this case allegations, supported to some extent by the evidence which was given before the Trial Judge, that in various ways there was danger of loss or injury to the properties in question, if they remained in the unrestricted control of the Mohunt. He was alleged to have abandoned his office, leaving the Temple and the properties in question without proper direction and management; to have exposed the lands to sale by neglecting to pay the rents when due, and to have entered into an improper bargain, by which the claims made against him in the action were to be compromised. On all these subjects a denial of the charges was given on his side and was supported by evidence.

It is obviously undesirable that their Lordships should say anything at this stage, which could be quoted hereafter so as to prejudice either side at the trial in any way, and as it is impossible to discuss in detail the evidence which was given on these interlocutory applications, or to criticise closely the inferences and the observations of the Trial Judge, without running some risk of a misapplication hereafter of what may be said now, which would be contrary to their Lordships' meaning and desire, they think it best merely to say that, after fully considering the materials to be found in the record, they agree with the High Court's conclusions. They think that

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in some respects the learned Trial Judge failed to observe points in the evidence which assisted the Mohunt, and that generally he was disposed to take a more severe view of the Mohunt's past and present conduct and of the prospect that in the future he might dissipate the property than was warranted by the materials before him. There had been a good deal of popular excitement and some disturbance of order in connection with state of the Temple worship, and this led to absences of the Mohunt from active performance of his functions and to the attempted compromise, which came to nothing because, being conditional on the approval of the Court, it failed to secure that approval.

In the result the learned Trial Judge made the order appointing a receiver over all the properties, which in the case of the "Class C" properties was not altogether within the principles of a judicial exercise of discretion. The High Court, in their Lordships' opinion, rightly exercised their functions in refusing to affirm the order made as to this class, and in discharging the receivership accordingly. This appeal must therefore fail.

Their Lordships remark that it was with some doubt in the mind of at least one of the Judges of the High Court that leave to appeal to His Majesty in Council was given in this case, and they think it right to add that, as a general rule and in the absence of special circumstances or some unusual occasion for its exercise, the power of making interlocutory orders is one which is not a suitable subject for review by the Judicial Committee. Not only are the practice of the Court and the manner in which experience has shown that it is wise to apply it, better known to the High Courts in India than they can be to their Lordships, but the delay occasioned by taking this additional

appeal adds gravely to the procrastination, which is already the bane of Indian litigation.

Their Lordships will therefore humbly advise His Majesty that this appeal ought to be dismissed with costs

Solicitor for the appellants: *Barrow, Rogers & Nevill.*

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

A. M. T.

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PRIVY COUNCIL.

BHAGWAN SINGH (PLAINTIFF)

v.

DARBAR SINGH (DEFENDANT).

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Feb. 6.

[ON APPEAL FROM THE COURT OF THE JUDICIAL COMMISSIONER,
CENTRAL PROVINCES.]

Joint Family—Thekadar—Central Provinces Land Revenue Act (II of 1917, C. P.) ss. 109, 112—Protected thekadar—Right to possession of theka—Hindu joint family.

A member of a joint Hindu family who is a protected thekadar under s. 109 of the Central Provinces Land Revenue Act, 1917, has a right against the other members of the family to sole possession of every part of the theka, in the absence (at any rate) of an arrangement under s. 109 sub-s. (1) for the joint or divided management and enjoyment of the village or a part thereof. Remedies are given to the other members of the family by s. 112 in lieu of the right of partition of which they are deprived by the theka being made impartible.

Decree of the Court of the Judicial Commissioner reversed.

APPEAL (No. 54 of 1927) by special leave from a decree of the Court of the Judicial Commissioner of

* Present: VISCOUNT SUMNER, LORD ATKINSON, LORD SINHA, SIR JOHN WALLIS AND SIR LANCELOT SANDERSON.