

PRIVY COUNCIL.

Ex parte, RANI MATHUSRI JIJAI AMBA AND OTHERS,
PETITIONERS.*

P.C.
1890.
April 24.

[On appeal from the High Court at Madras.]

*Discretionary refusal to remove a Receiver and Manager of the
Estate of Hindu widows.*

Rights and proceedings rendering a Court's order, refusing to remove an appointed Receiver and Manager of the estate, of which the widowed Rani of the late Maharaja of Tanjore had become possessed by grant from the Government, entirely a matter for the discretion of the Court, which had exercised its discretion soundly.

APPEAL from an order (17th February 1888) of the High Court, affirming an order (13th September 1887) of the District Judge of Tanjore.

A Divisional Bench of the High Court (Collins, C.J., and Parker, J.) made the above order on the petition filed in the Original Court on 24th August 1887, by the surviving widows of the last Maharaja of Tanjore, they having been parties to a decree in *Jijoyimba Bayi Saiba v. Kamakshi Bayi Saiba*(1). That decree (8th May 1868) declared "that the permanent appointment of a Receiver and Manager of the property was necessary;" and directed "that the Collector, if possible, should be continued as Receiver and Manager;" that, if such was not practicable, the Civil Court of Tanjore should appoint a Receiver and Manager after taking proper security, and "from time to time make fresh appointments during the lives of the widows and the survivors or survivor of them, or until it shall be considered by the Civil Court that a Receiver and Manager is no longer necessary."

The reason given in the order from which this appeal was preferred was thus given:—"The decree clearly contemplates that the Receiver shall be permanent during the lives of the widows, and the survivors, or survivor, of them; and having regard to the history of the litigation, the nature of the property, and the

* Present: Lord MAGNACHTEN, Sir BARNES PEACOCK, and Sir RICHARD COUCH.

(1) 3 Mad. H. C. Rep., 424. The estate of the last Maharaja of Tanjore came into the possession of the E. I. Company by an act of State in 1856. *Secretary of State in Council of India v. Kamachee Boye Sahaba*, 7 M.L.A., 476.

“ circumstances of the family, we are clearly of opinion that the District Judge exercised a right discretion in refusing this application.”

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All the parties having joined in applying for a certificate under section 602, Civil Procedure, the same Judges recorded their reasons, more fully, as follows :—

“ As the surviving Ranis are the only persons at present entitled to participative enjoyment of the estate, and as all have united in this application, we think that there is a substantial question of law which will admit of an appeal to the Privy Council within the meaning of section 596 of the Civil Procedure Code, but we think it right to place on record our reasons for holding that the District Judge exercised a sound discretion in refusing to grant the prayer for the removal of the Receiver.

“ The circumstances of the litigation which led to the appointment of a Receiver are fully reported in the third volume of the Madras High Court Reports, pp. 424-455. The property in question was seized by Government at the annexation of the Tanjore State, not under color of any legal title, but by the forcible exercise of Sovereign power. It was afterwards transferred to the senior widow by order of Government, dated 21st August 1862, as a matter of grace and favor. The order after making over the management and control to Her Highness went on to state :—‘ It will be her duty to provide in a suitable manner for the participative enjoyment of the estate in question by the other widows, her co-heirs. On the death of the last surviving widow, the daughter of the late Raja or, failing her, the next heirs of the late Raja, if any, will inherit the property.’

“ Within four years of the transfer of this estate to the senior widow this suit was brought by two of the junior Ranis. They complained of various acts done by the senior widow in detriment of their rights, and more especially that she had, without their consent, adopted a boy as the son of the late Raja, to whose possession she had transferred or was about to transfer the whole property. That son was included as the fourteenth defendant, and the first defendant alleged that she herself and all the other Ranis were entitled only to receive maintenance from him.

“ The Court held that the evidence as to the senior widow’s management of the estate since it had been under her charge showed ‘ reckless dealing with the property and the lavish

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'expenditure of large sums for purposes of which the accounts afford no satisfactory explanation. Not only has the large sum of ready money received from the Government and the whole proceeds of the immoveable property been dissipated, but a considerable portion of the moveable property itself has been got rid of and debts to a considerable amount been left unpaid. We are at the same time of opinion that it would be most imprudent to entrust the management of the property to the second defendant or to either of the other junior widows. Little, if anything, we are sure, would be gained as respects the care and preservation of the property, and there would very soon be violent disputes and further litigation. It appears to us to be absolutely necessary that the estate should remain in the custody and under the control and direction of a competent Receiver and Manager appointed from time to time by the Civil Court and invested with general powers for the management and regulation of the property and its enjoyment, and the application of the rents and profits. The Collector is at present the appointed Receiver, and there is no doubt that it is of the very greatest advantage to the estate and the parties interested that he should continue to act as Receiver and Manager, as we trust he will be able to do. The continuance of his appointment will therefore be decreed; but should it be necessary, the Civil Judge must appoint a fit and proper person in the Collector's place, taking sufficient security for the discharge of his duties and fixing a fair and reasonable remuneration for his services.'

"The High Court in the view that it took of the case found it unnecessary to raise an issue as to the validity of the alleged adoption of the fourteenth defendant, observing that 'if found to be valid (a result at present very problematic), his present claim by right of adoption being as lineal heir of the Raja in preference to the widows would not be maintainable. To that claim the absolute ownership of the Government in the interval between the death of the Raja until the act of State by which the transfer was made to the widows and daughter is, we think, fatal,' see 3 Mad. H.C. Rep., p. 455.

"More than twenty years have passed since that decree, and we are of opinion that the same reasons which in 1868 made the appointment of a Receiver imperatively necessary still exist in all

their force. Old age and twenty years more of that seclusion which is the lot of ladies of exalted rank in this country can hardly have made their Highnesses better fitted for the management of an estate whose annual income is more than $1\frac{1}{2}$ lakhs of rupees and which was valued in 1868 as worth about 68 lakhs of rupees (the moveable property in jewels and cash alone being worth nearly 20 lakhs). If given back at all, the chief management would, under the terms of the Government order, vest in the senior widow,—a lady now over 70 years of age and who twenty-four years ago, on 5th January 1864, intimated to the then Civil Judge of Tanjore that she had formed the resolution ‘of withdrawing from all worldly transactions and transient pleasures and resolved from that moment to lead a life of seclusion, &c.’ see 3 Mad. H.C. Rep., p. 437.

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“For more than twenty years this decree has secured the estate and these ladies immunity from litigation,—but, at the death of the last surviving widow, the Government order vests the estate in the daughter of the late Raja, or failing her, in the next heirs of the late Raja if any.”

The Judges concluded by adverting to the probability of future litigation if the management of the property should be restored to the widows.

On this appeal,

Mr. J. D. Mayne appeared for the appellants.

His argument was that under the Proceedings of the Madras Government of 21st August 1862, printed in the report of *Jijoyi-amba Bai Saiba v. Kamakshi Bai Saiba*(1), and the construction put upon it in the judgment in the latter suit, the property vested in the Ranis for the estates of Hindu widows. They, thereby, became full owners, and represented the estate, subject to the legal restrictions upon their disposing of the property. One of the incidents of a widow's estate was a right to management. Of this she could only be deprived on the objection of some one interested in the good management of the property; but no such objection was made here. The present application was supported by all who had a vested interest in the estate. The Receiver had been appointed in consequence of the proceedings in a suit which had come to an end.

(1) 3 Mad. H.C. Rep., 428.

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Their Lordships' judgment was delivered by
Sir BARNES PEACOCK :—Their Lordships are of opinion that it was entirely a matter of discretion with the Court as to the removal of the Receiver, and, looking to the case, their Lordships think that the Court have exercised a very sound discretion in not removing him. They will therefore humbly advise Her Majesty to dismiss this appeal.

Solicitors for the Appellants : Messrs. Lawford, Waterhouse, and Lawford.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

HALL AND OTHERS (DEFENDANTS), APPELLANTS,

v.

VENKATAKRISHNA (PLAINTIFF), RESPONDENT.*

1889.
February 13.
April 3.
1890.
March 17.

Malicious prosecution—Matters in issue—Burden of proof.

In a suit for damages for malicious prosecution it was found that the charge brought by the defendant against the plaintiff was unfounded, and that it was brought without probable cause :

Held, that the absence of probable cause did not imply malice in law, and that on the failure of the plaintiff to prove that the defendant did not honestly believe in the charge brought by him, the suit should have been dismissed.

SECOND APPEAL against the decree of V. Srinivasacharlu, Subordinate Judge of Cocanada, in appeal suit No. 452 of 1887, confirming the decree of L. Narayana Row, District Munsif of Rajahmundry, in original suit No. 67 of 1887.

The District Munsif passed a decree for the plaintiff, which was confirmed on appeal by the District Judge.

The defendants preferred this second appeal.

Mr. *Michell* for appellants.

Mahadexa Ayyar for respondent.

The facts of this case appear sufficiently for the purposes of this report from the judgment.

JUDGMENT :—The appellants are merchants carrying on business at Cocanada on their own account and as agents of Messrs.

* Second Appeal No. 1300 of 1888.