

We therefore reverse the order of the District Judge, and order that the case be set down and heard before him under ss. 50 and 83 of the Probate and Administration Act. Costs to follow the result,

Appeal allowed.

Before Mr. Justice Tottenham and Mr. Justice Ghose.

KARTIC NATH PANDY (ONE OF THE DEFENDANTS) *v.* PADMANUND SINGH AND ANOTHER (PLAINTIFFS.)*

Receiver—Power of Court to appoint a Receiver—Suit for Arrears of Rent and Ejectment—Bengal Act VIII of 1869, ss. 23, 34, 52—Civil Procedure Code (Act XIV of 1882), ss. 503, 506.

1885

March 31.

Although having regard to the provisions of ss. 23 and 52 of Bengal Act VIII of 1869, s. 503 of the Civil Procedure Code would not apply to a suit brought under Bengal Act VIII of 1869, merely for arrears of rent; there is no provision in that Act which excludes the operation of s. 503, when a suit is brought for recovery of the tenure itself. When, therefore, a suit was brought under Bengal Act VIII of 1869 for arrears of rent and for ejectment of the defendant,

Held, that a receiver of the rents and profits of the tenure might properly be appointed under the provision of s. 503 of the Civil Procedure Code,

In these cases the plaintiff sued for the sum of Rs. 36,000, as arrears of rent, and for ejectment of the defendants, under s. 52 of the Rent Act. The applications in the suits which gave rise to this appeal were for the appointment of a receiver under the provisions of s. 503 of the Civil Procedure Code. The plaintiffs alleged that the defendants' lease was about to expire, and that the greater part of the mahal was *Chowli*, and as it was the harvest season, unless a receiver were appointed, they would be unable to realise the greater portion of their claim as the defendants were heavily involved.

The Second Subordinate Judge before whom the application was made, granted the prayer, and nominated a receiver, and the nomination was subsequently confirmed by the District Judge, on the

* Appeals from Original Orders Nos. 376 and 377 of 1884, against the orders of Baboo Dwarkanath Mitter, Second Subordinate Judge of Bhagulpore, dated the 18th of November 1884.

motion being referred to him under s. 505, who considered the appointment of a receiver not only expedient but imperative.

Against this order one of the defendants now appealed to the High Court, on the ground that s. 503 was wholly inapplicable to the case, and that a receiver could not be appointed to collect the rents and profits of the mehal; that the rents payable by the tenants formed no part of the subject-matter of the suit, and could not therefore be made over to the custody of a receiver; and that the suit being under s. 52 of the Rent Act, s. 503 of the Civil Procedure Code had no application.

1885
KARTIC
NATH
PANDY
v.
PADMANUND
SINGH.

Mr. Bell and Baboo Kalikissen Sen for the appellant.

Mr. Pugh, Mr. Twidale and Munshi Mahomed Yusuf for the respondents.

The judgment of the High Court (TOTTENHAM and GHOSE, JJ.) was as follows :—

These are appeals against an order of the lower Court, appointing a receiver to take charge of the property hold by the defendants on a lease, in suits brought against them under s. 52 of the Rent Law for recovery of arrears of rent and for ejectionment.

The learned counsel for the appellant contends that s. 503 of the Civil Procedure Code, under which the order appealed against has been made, is not applicable to these suits. He says that the suits are really for arrears of rent only, and the ejectionment of the defendant is merely incidental upon the non-payment of the amount of the decree, whatever it may be, within fifteen days from the date of the decree. He also contends that s. 503 of the Code is not applicable at all to suits brought under the Rent Act. He points out that before the passing of Act X of 1859, the landlord himself had the power under the old Regulations to appoint private receivers called *sazawals*, but that that power was taken away by Act X of 1859; and that in Act X of 1859 it does not appear that revenue officers, who, under that Act, had to try rent suits, had any power to appoint receivers; and the learned counsel seems to contend that the present law also excludes even the Civil Courts from the power to appoint receivers. As to this matter we think it clear, on the words of s. 34 of the Rent Law

1885
 KARTIC
 NATH
 PANDY
 v.
 PADMANUND
 SINGH.

of 1869, that all the provisions of the present Code of Civil Procedure apply to suits brought under that Act, save as in the Act otherwise provided. There is no specific provision in Bengal Act VIII of 1869 which excludes the operation of s. 503 in express terms. The learned counsel, however, contends that ss. 23 and 52 of the Rent Law of 1869 together do in effect exclude the operation of s. 503 of the Civil Procedure Code; for s. 23 provides that no lease of a former or other landholder not bearing a permanent or transferable interest in land "shall be cancelled, nor the leaseholder ejected otherwise than in execution of a decree or order under the provisions of the Act;" and s. 52 says that "the decree for ejection shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed." It is argued that the appointment of a receiver is tantamount to the ejection of the leaseholder, and is therefore opposed to the provisions of ss. 23 and 52. If the suit were simply for the recovery of arrears of rent, there is no doubt that s. 503 of the Code of Civil Procedure would not apply. But it seems to us clear that the suit really is one for the recovery of the tenure itself, and therefore s. 503 will apply, unless Mr. Bell is right in his contention that it is excluded by ss. 23 and 52 of the Rent Law. We are of opinion that these sections do not exclude the operation of s. 503 of the Code. The appointment of a receiver is not, we think, the same thing as the cancellation of a lease, or the ejection of a leaseholder. As pointed out by the learned counsel on the other side the possession of the receiver is not adverse to the leaseholder, and could not be pleaded against him in any question of limitation. The possession of the receiver is for the benefit of the parties to the suit. We think, therefore, that the Court below had discretion to appoint a receiver in the cases before us. That being so, we dismiss the appeals with costs.

Appeal dismissed.