

WHITE, C.J.,
MUNRO AND
SANKARAN
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VISWESWARA
SARMA
N. NAIR.

entertain a plaintought to return it immediately. It cannot act upon it, though it may be necessary to make an enquiry to decide the question of jurisdiction. This is not acting upon it but only deciding whether it should act upon it. A party is not to be prejudiced if possible by an act of Court afterwards found improper ; and cancellation is therefore of no greater effect than the other proceedings including decrees which may have been passed before the final order was passed to return the plaint.

I therefore answer the question whether the Small Cause Court is "bound to give credit for the fee levied by the City Civil Court" in the affirmative.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

MAHAMED KASIM SAHIB (PLAINTIFF), APPELLANT,

v.

PANCHAPAKESA CHETTI (DEFENDANT), RESPONDENT.*

1911.
March 22, 23,
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Civil Procedure Code, s. 503—Receiver appointed under section, powers of—cannot recover from third parties whose rights date prior to his appointment.

A receiver appointed under section 503 of the Code of Civil Procedure, in respect of any moveable or immovable property is entitled to take possession of it from the parties to the suit, to manage it, etc. He is not entitled to recover possession from a third party, stranger to the suit whose rights date prior to his appointment. Such a receiver has no right to recover property sold before his appointment by the judgment-debtor on the ground that the sale is voidable as against the creditors on the principle embodied in section 53 of the Transfer of Property Act.

SECOND APPEAL against the decree of F. D. P. Oldfield, District Judge of Tanjore, in Appeal Suit No. 21 of 1909 presented against the decree of V. K. Dasika Chariar, Subordinate Judge of Nagapatam, in Original Suit No. 31 of 1907.

The facts for the purpose of this case are fully set out in the judgment.

The Hon. the Advocate-General for appellant.

S. Guruswami Chetti for respondent.

JUDGMENT.—The suit in this case was instituted by a receiver appointed by the Subordinate Court of Negapatam in execution of

* Second Appeal No. 1663 of 1909.

the decree in Small Cause Suit No. 1210 of 1904 of that Court. The object of the suit was to recover certain goods which were attached in execution of this small cause decree and of which the plaintiff was appointed receiver, or the value of the goods. The application for the appointment of a receiver was made on the 19th August, 1907 (Exhibit D) and the order of appointment (Exhibit H) was passed on the 18th September, 1907. The defendant was the purchaser of the goods from the judgment-debtor under a sale deed, dated the 12th September 1904. He contended *inter alia* that the plaintiff had no authority to institute the suit as the order sanctioning the appointment of the receiver was passed only on the 13th of September 1907 after the institution of the suit by the District Court of Tanjore, that the suit was barred by section 244 of the Civil Procedure Code, and that the plaintiff had no right to recover the goods from the defendant to whom they had been sold long before they were attached in execution of the small cause decree. The plaintiff's case was that the alleged sale of the goods was not a *bonâ fide* transaction, but that they were removed by Gopichettiar, the judgment-debtor to the defendant's house on the 30th September 1904 fraudulently with the intention of defeating his creditors. The Subordinate Judge overruled all the pleas referred to above, and held that the transfer to the defendant was made by the judgment-debtor with the fraudulent intention of defeating his creditors, but that there was a debt truly due to the defendant to the extent of Rs. 200. He found that the goods were worth Rs. 500 and passed a decree in the plaintiff's favour for that amount as the goods themselves were not in existence. The plaintiff appealed to the District Court contending that the goods were worth more than Rs. 2,500 and the defendant preferred a memorandum of objections objecting to the Subordinate Judge's decree *in toto*. The District Judge allowed the memorandum of objections and dismissed the suit.

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The only question we have to decide is whether the plaintiff as the receiver was entitled to sue the defendant for the goods or their value. We have come to the conclusion that he was not entitled to do so, and the judgment appealed from, is right. The order appointing the plaintiff (who we may say, by the way, was himself the decree-holder) as receiver was passed

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under section 503 of the Civil Procedure Code and it is to the following effect. "Whereas the property specified in the annexed schedule has been attached in execution of a decree passed in the above suit on the 12th November, 1904, in favour of the plaintiff you are hereby appointed Receiver of the said property under section 503 of the Code of Civil Procedure with full powers under the provisions of that section. You are required to render a due and proper account of your receipts and disbursements in respect of the said property," etc. Then follows the schedule of the property consisting of 22 items of moveables estimated to be worth Rs. 4,000 and odd. It will be remembered that long before the date of the order the judgment-debtor had ceased to be in possession of the goods having sold them to the defendant in 1904. The application for the appointment of receiver brought that fact to the notice of the Court, and the prayer was that a receiver should be appointed for collecting either the property or the price thereof. The order, however, did not appoint the plaintiff as receiver for recovering the value of the goods from the defendant but only as receiver of the moveable property itself. Under section 503 of the old Civil Procedure Code when a person is appointed receiver of any moveable or immovable property, he is entitled to take possession of it from the parties to the suit, to manage it, to realise its incomes and to continue in custody of it until discharged by the Court. The title to the property does not rest in him see *Ram Lochun Sircar v. Hogg* (1). His rights arise only on the date of his appointment and not before, see *Defries v. Creed* (2) and *Edwards v. Edwards* (3). He is not entitled to recover possession from a third party, stranger to the suit, whose rights date prior to his appointment. Nor does his appointment affect any rights previously acquired by third persons—see *Alderson on Receivers*—section 169. In *High on Receivers*, the author states (section 359). "As regards the title acquired by a receiver of a National Bank thus appointed, the rule is that he holds such estate and title as the bank itself had in its assets, his title being similar in this respect to that of an assignee in bankruptcy. He is not a third person in the sense of commercial transactions, and cannot avoid a pledge of estates of the bank which could not be avoided

(1) (1868) 10 W.R., 430.

(2) (1865) 34 L.J., Ch., 607.

(3) (1876) 2 Ch. D., 291.

by the corporation itself. When, therefore, the bank has deposited notes constituting a part of its assets with a creditor as security for advances, the bank itself being concluded by the deposit or pledge, the receiver is not entitled to such notes, and can not maintain an action therefor until the creditor or pledgee is made whole for his advances." No authority has been cited to us, nor are we aware of any in support of the position that a receiver appointed in the circumstances of this case has any right to recover property which has been already sold away by the judgment-debtor on the ground that the sale is voidable as against the creditors on the principle embodied in section 53 of the Transfer of Property Act. Mr. Varadachari relied on a passage in paragraph 454 of High on Receivers where it is laid down that a receiver in proceedings supplementary to execution in some of the States of America may institute actions in his own name to set aside fraudulent assignments or transfer made by a debtor with the view of defeating his creditors, and may recover the property so transferred for the purpose of applying it in satisfaction of the judgments, but the passage has reference to receivers not of particular property attached by the Court but over all the property and effects of a judgment-debtor and as laid down in Alderson on Receivers, section 508. The object of the appointment in such cases is to discover all property which belongs to the judgment-debtor for the benefit of his creditors, and the receiver's right extends not only to all property and rights of property of the debtor, but to property which he has disposed of in fraud, of his creditors. In England also, receivers of the debtor's estate could, formerly at least, be appointed for the benefit of his creditors. "Lord Eldon declared that it was in his day the ancient rule where a judgment-creditor found upon the issue of his execution that the debtor's estate was protected in such a way by circumstances respecting a prior title that the judgment could not be enforced, he might apply for a receiver and that the fact that the creditor could not at law obtain satisfaction of his judgment was sufficient to entitle him to a Receiver of his debtor's estate." But there is apparently no provision in the Indian law for the appointment of such a Receiver. We are of opinion therefore that the Receiver in this case had no power to maintain the suit against the defendant for the value of the goods sold to him on the

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ground that his sale was not binding on the creditors of the judgment-debtor.

We may also note that the plaint does not state, nor does it otherwise appear that the Receiver obtained the permission of the Court to institute this suit. The ordinary rule is that the permission of the Court is necessary to entitle the receiver to institute suits—see Woodroffe on Receivers, pages 241, 242, Kerr on Receivers, page 202 and High on Receivers, section 208. As however no objection was raised by the defendant to the maintainability of the suit on the ground, we do not think it necessary to consider the question further or to rest our decision on it.

We dismiss the second appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

NALAIN PADMANABHAM (PLAINTIFF, APPELLANT,

v.

SAIT BADRINADH SARDA AND OTHERS (DEFENDANTS NOS. 1 TO 3,
7 AND 9 TO 13), RESPONDENTS.*

Opium Act I of 1878, ss. 4, 5 and 9—Contract by which person without license is enabled to sell opium void.

A and B were farmers of opium revenue under Government. They obtained a license from the Collector for the sale of opium, subject to the condition, among others, that they should not sell, transfer or sub-rent their privileges without the permission of the Collector. A and B, without the sanction of the Collector, entered into an agreement with C, by which they admitted him as a partner in the opium business. C brought a suit for dissolution and winding up of the business.

Held that the agreement was void and the suit was not maintainable.

The effect of the agreement between A and B on the one hand and C on the other, was to enable C to sell opium without a license, an act directly forbidden by section 4 of the Opium Act and made penal by section 9. The contract being intended to enable C to do what was forbidden by law was unlawful and void.

The provisions of the Abkari and Opium Acts are not intended merely to protect public revenue but the prohibitions contained in them are based on public policy.

The agreement was also illegal as it amounted to a transfer by A and B of their privilege to C, in violation of the condition against transfer subject to which the license was granted. The combined effect of sections 4, 5 and 9 of the Opium Act is to make the transfer in violation of the conditions in the license, illegal.

* Appeal No. 54 of 1908.