

*Before Mr. Justice Banerji.*

1896  
March 3.

IN THE MATTER OF THE PETITION OF SARAT CHANDRA SINGH.  
PANDIT GOKUL CHAND (DEFENDANT)\*<sup>v.</sup> KUAR SARAT CHANDRA  
SINGH (PLAINTIFF).

*Civil Procedure Code, sections 372, 582—Appeal—Devolution of interest pending appeal—Array of parties in appeal—Review.*

*Held* that section 372 of the Code of Civil Procedure applies as well to the case of a devolution of interest pending an appeal as to the case of a devolution of interest pending a suit.

*Held* also that a person may, under section 372, be added or substituted as a party either on his own application or on the application of one of the parties already on the record.

*Held* also that an application by a respondent to an appeal, whose interest had at one time been represented by an official receiver, to replace upon the record of the appeal as a party respondent the name of such official receiver, which had been struck off owing to a misrepresentation of fact, might be treated as an application for review of the order striking off the name of the official receiver.

THE facts of this case are fully stated in the order of Banerji, J.

Mr. J. N. Pogose for the applicant.

Messrs. A. E. Ryves, W. Wallach and Pandit Sundar Lal for the opposite parties.

BANERJI, J.—The facts which have given rise to the application before me are these:—

Mr. Raj Narain Mitter, who was appointed by the High Court of Calcutta as receiver of the Paikpara estate, instituted a suit against the appellant, Pandit Gokul Chand, in the Court of the Subordinate Judge of Agra, in respect of property belonging to the estate situated in the districts of Muttra, Aligarh and Bulandshahr. He obtained a decree for a part of his claim on the 30th of September 1893.

On the 23rd of January 1894, Pandit Gokul Chand preferred an appeal from that decree to this Court, making Mr. Mitter the sole respondent to his appeal.

On the 1st of April 1895, Mr. Mitter represented to this Court that he had ceased to have any interest in the subject-matter of the suit, and he prayed that his name should be withdrawn from

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\* Application in First Appeal No. 14 of 1894.

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the appeal. No opposition having been made to his application, his prayer was granted on the 1st of June 1895, and he was dismissed from the appeal.

Thereupon the appellant, Gokul Chand, made an application to bring on the record Kuar Sarat Chandra Singh, the present applicant, as respondent, and an order has been made in accordance with that application.

Kuar Sarat Chandra Singh, by the application which is now under consideration, prays that the following persons should be added as respondents, namely, (1) The Administrator-General of Bengal as representing the estate of Raja Indra Chandra Singh, (2) Kuar Satish Chandra Singh, (3) Mr. Raj Narain Mitter as receiver of the Paikpara Raj in respect of mauza Hathia, and (4) Mr. Raj Narain Mitter as receiver of the share of Kuar Sirish Chandra Singh.

Notices having been issued to those persons and to the appellant, the application is opposed by Mr. *Wallach* on behalf of the Administrator-General of Bengal, by Mr. *Ryves* on behalf of Mr. Mitter, and by Mr. *Sundar Lal* on behalf of the appellant. Mr. *Sundar Lal's* opposition is confined to the prayer for the restoration of Mr. Mitter to the record as a respondent.

It appears from the affidavits filed that the suit in which Mr. Mitter was appointed receiver was one for partition. A decree was made in that suit on the 11th of December 1893, by which the property in the Muttra district, with the exception of the village Hathia, which was endowed property, was allotted to the share of Kuar Sarat Chandra Singh; the property in the Aligarh district was assigned to the share of Raja Indra Chandra Singh, and that in the Bulandshahr district to the shares of Raja Indra Chandra Singh, Kuar Satish Chandra Singh and Kuar Sirish Chandra Singh. By an order dated the 16th of August 1894, Mr. Raj Narain Mitter was discharged from his office as receiver except in respect of the estate of Kuar Sirish Chandra Singh and the endowed property referred to above. Raja Indra Chandra Singh having died, the Administrator-General of Bengal is in possession of his estate.

So far as the Administrator-General of Bengal and Kuar Satish Chandra Singh are concerned, there has been a devolution of interest in their favour pending the appeal, and Mr. *Pogose's* application is one under section 372 of the Code of Civil Procedure read with section 582.

Mr. *Wallach* contends that section 372 does not apply to appeals. I am unable to accede to that contention. By section 582 "the appellate Court shall have in appeals under this Chapter the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter V." There can be no doubt that a Court of original jurisdiction has the power under section 372 to make a person a party to a suit on whom an interest in the subject-matter of the suit has devolved pending the suit otherwise than by death, marriage, bankruptcy or insolvency. The same power is conferred by section 582 on an appellate Court in respect of appeals. The last portion of the first paragraph of that section which is confined to "proceedings arising out of the death, marriage or insolvency of parties to an appeal" does not, in my judgment, limit the scope of the first portion of that paragraph and render the provisions of section 372 inapplicable to appeals.

Mr. *Wallach's* next contention, which Mr. *Sundar Lal* also pressed on behalf of the appellant, namely, that an application to add a respondent can only be made by the appellant, is, in my opinion, equally untenable. It is true that ordinarily it is the appellant in an appeal or the plaintiff in a suit who selects the person or persons against whom he seeks relief. But, where a devolution of interest has taken place pending a suit or appeal, it would be prejudicial to the person on whom such interest has devolved or to some of the parties to the suit if he could not be brought on the record otherwise than on the application of the plaintiff or the appellant, as the case may be. Take the case of an assignee from the defendant after the institution of the suit. He would be bound by the result of the suit, but, if Mr. *Wallach's*

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contention were correct, he would not have an opportunity to contest the claim and support his own title. His assignor will no longer have any interest in opposing the claim. Similar results may ensue in appeal also. If a plaintiff happens to be the respondent his assignee pending the appeal must be allowed an opportunity to support the decree. Instances may also arise in which one of the respondents may be seriously prejudiced by reason of persons who had acquired an interest in the subject-matter of the appeal pending the appeal not being added or substituted as parties. For example, as in this case, in the event of the appeal succeeding, the whole burden of the appellant's costs would fall on the only respondent on the record, and he might not be in a position to claim contribution from persons who were interested in the litigation equally with him, but were not parties to the appeal. In my judgment a person may under section 372 be added or substituted as a party either on his own application or on the application of one of the parties already on the record.

In this case Kuar Sarat Chandra Singh may be seriously prejudiced by reason of the persons named in his application not being added as respondents. If the appeal succeeds, he alone will be cast in costs and the other persons interested in the subject-matter of it will escape liability. In my opinion the Administrator-General of Bengal, as representing the estate of Raja Indra Chandra Singh, and Kuar Satish Chandra Singh should be added as respondents and I order accordingly.

The case of Mr. Raj Narain Mitter presents some difficulties, and it was in consequence of these difficulties that I took time to consider my order. He has not acquired an interest pending the appeal. He was already the receiver of the Paikpara estate, including the *devattar* village Hathia and the share of Kuar Sirish Chandra Singh, when the appeal was filed, and he has not been discharged from his office of receiver in respect of that village and the said share. His case does not therefore come under the provisions of section 372. He now admits that he has an interest in the subject-matter of the suit, however small the extent of that interest

may be. The decree passed against the appellant has, it appears, reference to the *devattar* village Hatkha, and to the property in the Bulandshahr district in which Kuar Sirish Chandra Singh has acquired a share under the decree of the Calcutta High Court. Mr. Mitter has, therefore, still an interest in the subject-matter of the appeal, and it is clear that he obtained the order for his dismissal from the array of parties under a misrepresentation of facts. That misrepresentation was in all probability not intentional, but had the facts been correctly stated the order would not have been made.

Now the question is whether the Court is competent to set aside that order on the application of Kuar Sarat Chandra Singh. There can be no doubt that an order can be set aside upon an application for review of judgment. I see no reason why I should not treat Kuar Sarat Chandra Singh's application as one to review my order of the 1st of June 1895. He was not, it is true, a party to that order in his own person, but he was represented by the receiver Mr. Raj Narain Mitter, so that he was substantially a party to the proceeding in which that order was passed, and as such is entitled to ask for a review of it. As that order was obtained on an erroneous representation of facts, and as Mr. Raj Narain Mitter, in his capacity as receiver of the *devattar* village and the share of Kuar Sirish Chandra Singh, never ceased to have an interest in the subject-matter of the appeal, his name should never have been removed from the array of respondents. I accordingly set aside my order of the 1st June 1895, and direct that Mr. Raj Narain Mitter, as receiver of the Paikpara Raj in respect of mauza Hathia and as receiver of the share of Kuar Sirish Chandra Singh, be brought on the record as a respondent. The result is that the rule obtained by Mr. Pogose is made absolute.

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