

*Before Mr. Justice Trevelyan and Mr. Justice Beverley.*

LATAFUT HOSSEIN AND ANOTHER (JUDGMENT-DEBTORS, PETITIONERS) v.  
ANUNT CHOWDHRY AND OTHERS (DEGREE-HOLDERS, OBJECTORS.) \*

1896  
February 20.

*Receiver, Appointment of—Jurisdiction of District Judge to appoint Receiver—  
Civil Procedure Code (Act XIV of 1882), sections 503 and 505.*

A District Judge has no jurisdiction to appoint a Receiver of properties which are the subject of a suit or attachment in other Courts, even though such Courts may have been subordinate to his Court. Sections 503 and 505 of the Civil Procedure Code (1882) reviewed.

In a suit upon a mortgage, the mortgaged property was directed to be sold and the time of grace had expired. An application was then made by the judgment-debtor to the Court of execution for the appointment of a Receiver under section 503, both as regards the mortgaged property as well as other properties belonging to the judgment-debtor.

*Held*, that the Court had no power to appoint a Receiver of properties other than the subject-matter of the suit, and as regards the mortgaged property a Receiver could not be appointed on the mere ground that the property would not fetch so much by forced sale as it would by sale under a private contract.

THE appeal No. 111 of 1895 relates to a petition made to the District Judge of Patna for the appointment of a Receiver under section 503 of the Civil Procedure Code. There were several decrees passed against the petitioners in several Courts subordinate to the Court of the District Judge, and properties of the debtors were attached and advertised for sale. The material portion of the petition was as follows :—

“6. That your petitioners, along with this petition, beg to file a list of the decretal money payable by them and another list of the properties owned and possessed by them, a reference to which would show that if the properties can be managed to be sold by private sale with circumspection, then after the satisfaction of the whole debt, about at least one-third of the properties of your petitioner, should be freed from all liability and be saved.

“7. That in case the sale be held in execution of decree, all the properties will be sold, and the whole family of your petitioners will be ruined.

“9. That under the circumstances your petitioners, by filing this petition under section 503 of the Civil Procedure Code, pray that a Receiver may be appointed by the Court for the management and preservation of the properties

\* Appeals from Original Order Nos. 111 and 112 of 1895, against the order passed by J. Tweedie, Esq., District Judge of Patna, dated the 5th of February 1895.

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and payment of debts, so that your petitioners may have justice done to them."

Objections were filed on behalf of the different decree-holders on various grounds, one of the grounds being that the District Judge had no jurisdiction to entertain the application. The District Judge, mainly on that ground, dismissed the petition of the judgment-debtors.

The facts relating to appeal No. 112 appear from the judgment of the High Court.

The judgment-debtors appealed to the High Court.

The Advocate-General (Sir *Charles Paul*), Mr. *Z. Ahmed*, Babu *Saligram Singh*, Babu *Raghunandan Pershad*, Babu *Makhan Lal* and *M. Syed Mahomed Taher* for the appellants.

Sir *Griffith Evans*, Babu *Debendra Chandra Mallik* and Babu *Lakshminarayan Singha* for respondents in appeal No. 111.

The respondent in appeal No. 112 did not appear.

The arguments on both sides appear sufficiently from the judgment of the High Court (TREVELYAN and BEVERLEY, JJ.), which was as follows :—

We propose to deal with the two appeals Nos. 111 and 112 of 1895 and the rules Nos. 857 and 1832 of 1895 in the same judgment.

Appeal No. 111 of 1895 is an appeal from an order made by the District Judge of Patna on an application which, it is admitted by the learned Advocate-General, who appears for the appellant, was wholly unprecedented. The position is this: The applicants had decrees made against them in various Courts in the Patna District, some by the first, some by the second and some by the third Subordinate Judge, and one by the third Munsif. They applied to the District Judge for the appointment of a Receiver of the whole of their property, not only properties, the subject of mortgages upon which decrees had been made, and properties attached in execution of money decrees, but also other properties possessed by them, and neither the subject of suits nor under attachment. They asked for the appointment of a Receiver in respect of all these properties and for the payment of the money due to creditors by making sale

*ijara* or *thika* settlements, mortgage or other arrangements, and after paying the debts of the petitioners for the return to them of whatever properties would be left.

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Now the first question which we have to decide is whether the District Judge had any jurisdiction at all to appoint a Receiver of property the subject of a suit or under attachment in other Courts, even though such Courts may have been subordinate to his Court. The District Judge was of opinion that he had no such jurisdiction, and that was the ground upon which he refused the application. We think he was right in so doing. Section 503 of the Code of Civil Procedure in our opinion clearly intends to give the power only to the Court in which the suit is brought, or by which the property has been attached. There is no doubt that a Court cannot appoint a Receiver, except it has seisin of the property, either by a suit being pending or by proceedings in execution of decree made in a suit being pending and attachment having been made. Also it is only the Court in which a proceeding is pending, and which has thereby the property under its control that can appoint a Receiver. No case has been mentioned to us where any Court has under section 503 exercised jurisdiction over property which was the subject-matter of a suit in another Court, or under attachment by another Court. It is contended that section 505 practically gives District Judges jurisdiction in this matter. But section 505, it must be borne in mind, is not an enabling section at all. It is a section limiting the powers given to the Courts by section 503. It excludes from the operation of section 503 all Courts except High Courts and District Courts. It does not say that High Courts and District Courts are to exercise this power in matters which would ordinarily, if they possessed the powers, have to be dealt with by subordinate Courts. On the contrary, it expressly provides a procedure for cases pending before subordinate Courts. It is for the Judge of the subordinate Court first of all to consider whether it is expedient that a Receiver should be appointed, that is to say, to consider the matters referred to in section 503, and to that extent to decide the questions as if he were a Court having power to appoint a Receiver, and then to nominate a person for the appointment. He has no power to go

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further and appoint a Receiver, but must submit to the District Court the name of the person with the grounds for his nomination, and it is for the District Court on the receipt of such report and not under other circumstances to authorize the subordinate Court to appoint the person so nominated, or to pass such other orders as it thinks fit. It is only, we think, where the procedure contained in section 505 has been adopted that a District Court can appoint a Receiver in suits pending before or attachments made by subordinate Courts.

As all questions which arise in this proceeding have been argued, we think it would be better to dispose of the other questions. In the first place this application, we think, must fail as being one with which section 503 can have no concern. It is really an attempt made by the applicants to obtain all the benefits of the insolvency procedure of the Code without any of its burdens. They wish the Court to collect together all their property, wherever it may be found, and in as easy a manner to them as may be possible to liquidate their debts without reference to the urgency or otherwise of the claims of the debtors. They do not desire to place themselves in the position of being examined and having to prove the matters which ordinarily would give them a right to relief under the insolvency provisions of the Code. It is likely also that they are not desirous, although the nature of their application to us shows that they are insolvents, of being styled such. Moreover, it has not been shewn to us how, even apart from the objection of jurisdiction and the objections to which we have referred, the order of the Court is in any way necessary for the realization, preservation or better custody or management of the property. As far as the mortgaged property is concerned, it is about to be realized in the way provided by law for that purpose. It is unnecessary to preserve this property, and with regard to its better custody or management it is not established that it is likely to be injured at all. The only case made is that this is an old family; and that, unless the Court steps in and saves them from their debts and the consequences of their debts, they may be ruined.

It is not the business of the Courts, and they have no power whatever to act in cases of this kind where persons are unable to pay their debts. The remedy given is that given by the insol-

veny provisions of the law. This is enough to say with regard to appeal No. 111.

As regards appeal No. 112 it appears that, after the Judge had held that he had no jurisdiction, the parties applied to the Subordinate Judge in one of the mortgage suits asking him to appoint a Receiver of the property, the subject of the mortgage, as well as of other property, not the subject of the mortgage. The learned Subordinate Judge on the merits refused this application, and we think he was right in so doing. In the first place, so far as the other property is concerned, it is clear that he had no power whatever to appoint a Receiver of it; and with regard to the mortgaged property there was no reason whatever why the mortgagee should in any way be impeded in the execution of his decree. The property had been directed to be sold, the time of grace had expired, and there was no reason whatever, as far as we can see, why the mortgagee should not be entitled to have the property sold and the amount of his debt paid. Again, with regard to this application there is nothing in the words of section 503 which could have any bearing upon it. It was not necessary for the realization of the property. The property was to be sold in the ordinary way. It might be that it fetched less than it would have fetched, if it had been sold by private contract; but it was to be sold in the best way the Court could sell it. If we were to assent to an application of this kind, the result would be that in any case a judgment-debtor could require that a decree be not executed in the manner provided by law, but that a Receiver be appointed. There is nothing to distinguish this case from any other case, where the judgment-debtor says that a property will not fetch so much by a forced sale as it will by a sale under a private contract.

We think that the lower Court was quite right in what it did, and that this appeal, like appeal No. 111, must be dismissed, but without costs.

S. C. C.

*Appeals dismissed.*

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