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for the decree-holder to take out execution over again from the first stage to the last. Now, it seems to me that the decree-holder should not be forced to this position. All the properties must be advertised for sale and when they are actually brought into execution and become subject to sale it would be then for the Court to decide on just and equitable principles which property ought to be first sold [*Syed Mohammad Saddik v Saudagar Mian Lahari* (1)]. The result is that all the properties will be advertised for sale and the properties other than those which have been purchased by the respondent will be first put up for sale. If there is a deficiency then those properties also will be put up for sale. There will be no order as to costs.

Ross, J.—I agree.

APPELLATE CIVIL.

Before Das and Ross, J.J.

BHAGWAN DAS

v.

SHEONANDAN PRASAD SAHU.*

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May, 29.

Receiver—Partition suit—appointment of party, principles governing.

Although partnership and partition cases provide an exception to the general rule that a party shall not, save in special cases, be appointed Receiver without the consent of his opponent, the exception does not apply where the court cannot rely on honest and disinterested management on the part of the party seeking to be appointed.

Suprasanna Roy v. Upendra Narain Roy (2), distinguished.

Allen v. Lloyd (3), referred to

* Appeal from Original Order no. 81 of 1924, and Civil Revision no. 175 of 1924, from an order of B. R. C. Chowdhry, Additional Subordinate Judge of Monghyr, dated the 25th April, 1924.

(1) (1910-11) 15 Cal. W. N. 80 (82).

(2) (1918-14) 18 Cal. W. N. 598.

(3) (1879) 7 Ch. D. 447.

Appeal by the petitioner.

The facts of the case material to this report are stated in the judgment of the Court.

Sultan Ahmed, for the appellant.

K. P. Jayaswal, for the respondent.

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DAS AND ROSS, J.J.—This is an appeal against an order of the Additional Subordinate Judge of Monghyr appointing Babu Mahesh Narain, Pleader, as Receiver until partition is completely effected, or until the further orders of the Court. The appellant is defendant no. 1. The suit is a suit for partition brought at the instance of the plaintiff a minor, through his next friend his mother. In *Allen v. Lloyd* (1) Jessel, M.R., pointed out that "It is a settled rule that one of the parties to the cause shall not be appointed Receiver without the consent of the other party unless a very special case is made." This rule is undoubtedly subject to exception in partnership and partition cases. But in partnership cases the exception is limited in this way:

"If the partner actually carrying on the business has not been guilty of such misconduct as to have rendered it unsafe to trust him, the Court sometimes appoints him Receiver and manager without a salary" (Kerr on *Receivers*, 7th edition, page 148).

Reference was made on behalf of the appellant to the decision in *Suprasanna Roy v. Upendra Narain Roy* (2) where the defendant, in a partition suit, actually in possession of the property, was appointed Receiver. Now, so far as the judgment in that case goes, there were no charges of misconduct against the defendant. But in the present case we must be bound by the findings in the judgment delivered by the learned Subordinate Judge in making the preliminary decree for partition; and there is also a report by a commissioner. In view of the findings of the learned Subordinate Judge and of the commissioner's report, it is, in our opinion, not reasonable to expect honest and disinterested management from the defendant; and it is to be remembered that the plaintiff is a minor under the guardianship

(1) (1879) 2 Ch. D. 447.

(2) (1913-14) 18 Cal. W. N. 533.

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of a *pardanashin* lady and therefore peculiarly entitled to the protection of the Court. The learned Subordinate Judge has, in the exercise of his discretion, decided the case against the defendant and has appointed a third party as Receiver. We do not think that it would be right in the circumstances of this case to interfere with the exercise of his discretion.

It has been objected, however, that the remuneration of 7 *per cent.* on the collection imposes too severe a burden on the estate. We think that 7 *per cent.* is too high and the Subordinate Judge should reconsider it. Five *per cent.* ought to be sufficient and the Subordinate Judge will see whether he cannot obtain a suitable person to act as Receiver on this remuneration. The name of Jamuna Prasad has been mentioned on behalf of the appellant. Without in any way, fettering the discretion of the learned Subordinate Judge, we think that this name might be considered along with others. It has also been contended on behalf of the appellant that the cost of the Receiver should be charged to the plaintiff; but, in our opinion, there is no justification for such a course.

With these observations the appeal is dismissed with costs and the application in revision is also dismissed with costs.

Appeal dismissed

APPELLATE CIVIL.

Before Das and Ross, J.J.

RANI JOTIRMOYEE DEBI

v.

RĀGHUNATH PATHAK.*

Attachment before Judgment—Mortgage suit—attachment of properties other than mortgaged properties, legality of.

* Appeal from Original Order no. 222 of 1923, and Civil Revision no. 355 of 1923, from an order of P. M. Robertson, Esq., Subordinate Judge of Rajmahal, dated the 6th July, 1923.

1924.

May, 30.