

been practised on the Calcutta High Court. It is well established that parties, whose rights are interfered with by having a receiver put in their way, may, on making a proper application to the Court appointing the receiver, obtain all that they may justly require. As Sir John Woodroffe points out in his valuable work on Receivers :

"The Court has the power and will always take care to give a party who applies in a regular manner for the protection of his rights, the means of obtaining justice, and will even assist him in asserting that right and having the benefit of it."

I would allow the appeal, and set aside the order of the learned Subordinate Judge. The appellant is entitled to his costs both in this Court and in the Court below. The cross-appeal is dismissed. Let the hearing of the suit be expedited.

Ross, J.—I agree.

Appeal allowed.

S. A. K.

APPELLATE CIVIL.

Before Das and Ross, J.J.

APARNA DEBI

v.

SREE SREE SHIBA PRASHAD SINGH.*

1924.

January, 8.

Hindu Law—Impartible estate—unrealized arrears of rent, right to—Transfer of Property Act, 1882 (Act IV of 1882), section 36.

The right to recover arrears of rent which fall due during the lifetime of the holder of an impartible estate but which are not realized by such holder, passes to the latter's heirs and not to the person who succeeds to the estate.

As between the heirs of the last holder of the estate and the person who succeeds to the estate, rent is deemed to

*Appeal from Original Decree No. 54, of 1921, from a decision of Babu Brajendra Kumar Ghosh, Subordinate Judge of Dhanbad, dated the 20th January, 1921.

1924.
 APARNA DEBI
 v.
 SREE
 SREE SHIBA
 PRASHAD
 SINGH.

accrue from day to day and to be apportionable accordingly but to be payable on the days appointed for the payment thereof.

Appeal by the defendants.

The facts of the case material to this report were as follows :—

One Raja Durga Prasad Singh, holder of the impartible Jharia estate, died on the 16th March, 1916 corresponding to 24th *Phagoon*, 1322, leaving behind him his widowed Ranees and the plaintiff-respondent who was the reversioner. According to the custom of lineal primogeniture prevailing in the Jharia Raj family the plaintiff succeeded to the impartible estate left by the late Raja. The defendants were persons who had taken settlement of the underground coal-mining rights in some 500 *bighas* of land in the estate from the late Raja Durga Prashad Singh. The rents and cess were payable in two equal instalments in *Assin* and *Chait*.

The plaintiff brought the present suit for the recovery of the royalty-rents, cess and interest from *Chait Kist*, 1317, to *Chait Kist*, 1326, deducting the amount paid from time to time during this period by the defendants. The amount in suit included the arrears that accrued due during the life-time of the late Raja. The Subordinate Judge before whom the suit came up for decision allowed the claim of the plaintiff in so far as it related to the arrears of rent which had accrued due during the life-time of the late Raja. The defendants appealed to the High Court against the decree of the Subordinate Judge.

K. P. Jayaswal (with him *B. N. Mitter*), for the appellant: (1) The estate which the late Raja Durga Prashad Singh held was an impartible estate, the income of which was the self-acquisition of the late Raja. The plaintiff has come in as a reversioner and holds the estate now. The late Raja died leaving widows who, under the Hindu Law, are his heirs. The arrears of royalty-rents, accruing due during the life-time of

the late Raja, will be his personal property, and, as such, will go, after him, to his heirs, and not to the present holder of the impartible estate. Even if he mixed up the two funds, unless there was any intention on his part to incorporate his self-acquisitions with the estate, the income remains his self-acquired property. The decision of the Judicial Committee in *Rani Jagdamba Kumari v. Wazir Narain Singh* (1) is the latest authority on the point. I also rely on *Parbati Kumari Debi v. Jagdish Chunder Dhabal* (2).

1924.
 APARNA DEBI
 v.
 SREE SHIBU
 PRASHAD
 SINGH.

(2) The rent *kist* is to be split up with reference to the date of the death of the late Raja, as rent accrues from day to day. See Halsbury's *Laws of England*, Vol. XVIII, page 482 and Transfer of Property Act, section 36.

Noresh Chandra Sinha (with him *Bindeshwari Prasad* and *B. B. Ghosh*), for the respondent: (1) So long as rents are not realized they are not separated from the estate. They are, as it were, attached to the estate. *Rani Jagdamba Kumari v. Wazir Narain Singh* (1) is distinguishable, inasmuch as it does not relate to unrealized rents.

(2) Rent becomes due on the last day of the *kist*. English law on the point does not apply.

S. A. K.

DAS, J.—The only question in this appeal is whether the plaintiff is entitled to that portion of the rent which accrued due in the life-time of the late Raja of Jharia. The late Raja died on the 16th March, 1916, leaving three widows and the present plaintiff who succeeded to the estate by right of survivorship. It has been held by the Judicial Committee that the produce of an impartible estate does not necessarily belong to and form an accretion to the original property. In this case we have no evidence that the late Raja

(1) (1923) I. L. R. 2 Pat. 319; L. R. 50 Ind. A. 1, P. C

(2) (1902) I. L. R. 29 C. 433.

1924.
 APARNA DEBI
 v.
 SUREE
 SHREE SHIBA
 PRASHAD
 SINGH.
 DAS, J.

treated the produce of the estate as an accretion to the estate. That being so, *prima facie* the plaintiff is not entitled to rent which accrued due in the life-time of the late Raja.

It was, however, contended on behalf of the respondent that unrealized rents cannot be regarded as a self-acquisition as they still adhere to the estate. I am unable to accede to this argument. Rent which has become due is produce of the impartible estate whether that produce has actually come into the hands of the owner or not. I can make no distinction between realized rent and unrealized rent in this respect.

It was next contended that the defendants paid some of the arrears and thereby acknowledged the plaintiffs' title to recover these arrears. There is no substance in this argument. The rent receipt, *Exhibit A*, no doubt shows that certain rent paid by the defendants was appropriated by the plaintiff to arrears but this does not establish that the defendants acknowledged the right of the plaintiff to collect the arrears. Even if they did, that cannot take away their right to contend now upon the decision of the Judicial Committee that the plaintiff is not entitled to the arrears which accrued due in the life-time of the late Raja.

Lastly, it is contended that assuming that the plaintiff is not entitled to rent up to and including the *Assin kist*, 1322, he is, in any event, entitled to the *Chait kist*, 1322. As I have said, the late Raja died on the 16th March, 1916, which corresponds to the 24th, *Falgun*, 1322. The rent is payable in two *kists*, *Assin* and *Chait*. It is obvious that the plaintiff is not entitled to the *Assin kist*, 1322. Mr. *Noresh Chandra Sinha's* contention is that rent does not accrue from day to day and that the *Chait kist* accrued due in *Chait* when the plaintiff succeeded to the estate. He accordingly argues that the plaintiff is entitled to the *Chait kist* of 1322. In my opinion this argument

is not correct. Under section 36 of the Transfer of Property Act, rent, upon the transfer of the interest of the person entitled to receive rent, is deemed as between the transferor and transferee to accrue from day to day and to be apportionable accordingly but to be payable on the days appointed for the payment thereof. In other words, the *Chait kist*, though payable in *Chait*, must be deemed to accrue due from day to day and to be apportionable accordingly.

The result is that the plaintiff is not entitled to any rent up to and including the 24th *Falgun*, 1322. The decree passed by the learned Subordinate Judge must be modified accordingly. The appellant is entitled to the general costs of the appeal but not to a hearing fee.

Ross, J.—I agree.

Decree modified.

FULL BENCH.

Before Das, Ross and Kuvant Sahay, J.J.

BALMAKUND MARWARI

v.

BASANTA KUMARI DASI.*

1924.

January, 19.

Restitution—Application for—Limitation—Limitation Act (Act IX of 1908), Schedule I, Article 181 or 182—Remand—Code of Civil Procedure, 1908 (Act V of 1908), Order XLI, rule 23—Expression of opinion on a point of law—appeal from the order on remand—Res judicata.

The question formulated for the decision of the Full Bench was: Whether Article 181 or 182, Schedule I of the Limitation Act, 1908, was applicable to an application for the exercise of the power of restitution conferred either by

*Appeal from Appellate Order No. 65 of 1923, from an order of Maulavi Najabat Hussain, Subordinate Judge of Purulia, dated the 18th January, 1923, reversing an order of Babu Sham Narayan Lal, Munsif of Purulia, dated the 26th November, 1921.