

APPELLATE CIVIL.

Before Das and Ross, J.J.

SRIDHAR CHOWDHURY

v.

MUGNIRAM BANGAR.*

1924.

January, 7.

Receiver—appointment of, by two different and independent courts—conflict of jurisdiction.

In a suit for dissolution of partnership and for partnership accounts in the Calcutta High Court, B was appointed receiver of the partnership assets by the said court. Subsequently X brought a suit in the court of the Subordinate Judge of Dhanbad, in Bihar, against the partners to enforce a mortgage executed by one of them in respect of some of the partnership assets, and with the permission of the Calcutta High Court made the receiver also a defendant in the suit. The plaintiff in the latter suit procured the appointment of the aforesaid B as receiver of the mortgaged properties by the Subordinate Judge who gave certain directions which were not reconcilable with the terms of the order passed by the Calcutta High Court. *Held*, setting aside the order of the Subordinate Judge, that (i) where concurrent proceedings for similar relief are taken in two different and independent courts no order should be passed which may lead to friction or conflict of jurisdiction; (ii) a receiver is merely the officer of the court through whom the court takes possession of the property the subject of a litigation and the possession of the receiver is the possession of the court.

Held, also, that the court retains full control and dominion over the property, though it may give leave to a stranger to sue the receiver.

Jopson v. James(¹) and *Morris v. Baker*(²), referred to.

Nothard v. Proctor(³), distinguished.

*Appeal from Original Order No. 228 of 1923, from an order of Babu Arbutosh Mukharji, Subordinate Judge of Dhanbad, dated the 15th September, 1923.

(1) (1908) 77 L. J. Ch. D. (N. S.) 824. (2) (1904) 73 L. J. Ch. D. (N. S.) 143.

(3) (1876-76) L. R. 1 Ch. D. 4.

1924.

Appeal by the defendant.

SRIDHAR
CHOWDHURY
v.
MUGNIRAM
BANGAR.

The facts of the case material to this report are stated in the judgment of Das, J.

P. K. Sen (with him *Susil Madhab Mullick*, *A. T. Sen* and *N. N. Sen*), for the appellant.

Hasan Imam (with him *S. A. Sami*, *S. K. Mitter*, *S. C. Mitter* and *A. B. Mukerji*), for the respondents.

DAS, J.—I am unable to assent to the order passed by the learned Subordinate Judge. It is of the utmost importance that, where concurrent proceedings for similar relief are taken in two different and independent Courts, no order should be passed which may lead to friction or conflict of jurisdiction. It is because, I think, that the order of the learned Subordinate Judge will lead to conflict between two independent jurisdictions—the jurisdiction of the Calcutta High Court and the jurisdiction of the Court of the Subordinate Judge at Dhanbad—that I have come to the conclusion that it ought not to stand.

In a suit for dissolution of partnership and for partnership accounts instituted in the Calcutta High Court by Sridhar Chowdhury the appellant in this Court, against his brother Nilmoney Chowdhury and another, a consent order was passed on the 17th July, 1923, appointing Mr. R. N. Mitter, an advocate of the Calcutta High Court, Receiver of the partnership assets which included certain colliery properties, the subject-matter of the present suit. Now the Calcutta High Court was without question a Court of competent jurisdiction, and it had undoubted power to direct the appointment of a Receiver to take possession of the partnership assets. This, then, was the position on the 17th July, 1923. On the 14th August, 1923, Mugniram Bangar and certain other persons instituted a suit in the Court of the Subordinate Judge of Dhanbad to enforce a mortgage executed by Nilmoney Chowdhury in their favour on the 22nd January, 1920. They cited as defendants not only Nilmoney Chowdhury, the executant of the mortgage, but also Sridhar

Chowdhury and the Receiver. Their case in the plaint is that the suit in the Calcutta High Court is collusive with the intent and the purpose of defeating or delaying the creditors. They maintain that the colliery properties are the absolute properties of Nilmony Chowdhury and that he was entitled to execute a mortgage of these properties as security for an advance made, or to be made, to him by them. I ought to mention that, before instituting their suit the present plaintiffs obtained the leave of the Calcutta High Court to sue the Receiver.

This being the position disclosed in their plaint, the plaintiffs obtained an order from the learned Subordinate Judge on the 15th September, 1923, appointing Mr. R. N. Mitter Receiver of the mortgaged properties. The conclusion at which the learned Subordinate Judge arrived may be stated in his own words :

"So, in such circumstances," says the learned Subordinate Judge, "I am of opinion that a good *prima facie* case has been made out that the properties in suit belong to Nilmony. that with the object of defecting Kedar Nath and also with (*sic*) the present plaintiffs Nilmony and Sridhar entered into an unholy conspiracy and acted in collusion and by their statements having little foundation and by suppressing facts which should have been disclosed, or, in other words, by practising fraud on the Hon'ble Court succeeded in no time in obtaining the appointment of a receiver Mr. R. N. Mitter and, in my opinion, such an appointment is hardly binding on this Court and that this Court can appoint its own receiver if there be good grounds."

The learned Subordinate Judge then proceeded to discuss the question whether good grounds existed for the appointment of a Receiver; and having come to the conclusion that they did exist, he appointed Mr. R. N. Mitter Receiver of the mortgaged properties; and gave him certain directions which are not reconcilable with the terms of the consent order passed by the Calcutta High Court. It is this order of the 15th September, 1923, which is the subject-matter of the appeal in this Court.

Now, in my opinion, the order of the learned Subordinate Judge is wholly without effect upon the mortgaged properties which are already in the custody

1924.

SRIDHAR
CHOWDHURYv.
MUGNIBHAM
BANGAR.

DAS, J.

1924.

SRIDHAR
CHOWDHURYv.
MUGNIBAM
BANGAR.

DAS, J.

of the Calcutta High Court by the order of the 17th July, 1923. I am somewhat surprised that Mr. Mitter should have agreed to be Receiver of the mortgaged properties, for, by accepting the nomination, he has put himself in a position which is full of peril to himself. The Calcutta High Court is not a Court subordinate to the Court of the learned Subordinate Judge; nor is the Court of the Subordinate Judge in any sense subordinate to the Calcutta High Court. It is not to be expected that the Court of the learned Subordinate Judge will always accommodate itself to the orders that may be passed by the Calcutta High Court, and it is at least conceivable that conflicting orders may be passed by the two Courts, so that, by obeying the order of one Court, the Receiver may make himself liable to attachment for contempt by the other Court. I have a strong feeling that Mr. Mitter should not have compromised his position as an officer of the Calcutta High Court by accepting office at the hands of the Subordinate Judge. His conduct is open to the construction that he has surrendered the mortgaged properties to the Subordinate Judge, and this he could not have done without the permission of the Calcutta High Court, whose officer he is. A Receiver is merely the officer of the Court through whom the Court takes possession of property the subject of a litigation and it was not for Mr. Mitter to take up any attitude except one of absolute loyalty and obedience to the Calcutta High Court. And, if Mr. Mitter had refused the nomination, the learned Subordinate Judge would have found himself in great difficulty, for it is not easy to understand how any officer appointed by him could have recovered possession of the properties from an officer appointed by the Calcutta High Court. But the case is free from complications, even though Mr. Mitter has accepted appointment as Receiver of the mortgaged properties. As I have said, the possession of the Receiver is the possession of the Court. The Calcutta High Court, according to the true interpretation of the consent order of the 17th July, 1923, took possession of the partnership properties.

including the mortgaged properties on that date. There is neither principle nor authority to support the view that any order which may be passed by the Subordinate Judge has or can have the slightest effect on the Calcutta High Court in relation to the properties of which it has assumed control. The refusal of the Calcutta High Court to surrender these properties to the Subordinate Judge will place him in a position of embarrassment, and it is not in the interest of that perfect administration of justice which it is the duty of every Court to aspire to that the Subordinate Judge has invited this conflict between his Court and the Calcutta High Court.

The exact point was decided in *Jopson v. James*(1). On the 27th January, 1908, Hall issued a writ in the Supreme Court of Judicature in Nova Scotia against Antrobus, Jopson and James, claiming an account of the partnership dealings, a dissolution and winding up of the partnership and a sale of the property of the partnership. On 25th February, 1908, Jopson issued a writ in the Palatine Court of Lancashire against James, Hall and Antrobus, claiming, first, a dissolution of the partnership relating to the mining properties in Nova Scotia; secondly, to have the affairs of the partnership wound up; thirdly, to have the said mining properties sold; and, fourthly, to have a Receiver and manager appointed. Hall gave notice of an application for the appointment of a Receiver and Manager in the Nova Scotian action; but while that application was pending a motion by Jopson for the appointment of a receiver and manager came before the Vice-Chancellor in the Palatine action, and on March 16th the Vice-Chancellor made an order appointing James Blakey as receiver and manager with liberty to him to appoint an agent in Nova Scotia. James Blackey by cable appointed James to act as his agent in Nova Scotia. It will be noticed that the application in the Palatine Court for the appointment of a receiver was made after the application

1924.

SRIDHAR
CHOWDHURY
v.
MUGNIBAM
BANGAR.

DAS, J.

1924.
 SRIDHAR
 CHOWDHURY
 v.
 MUGNIREAM
 BANGAR.
 Das, J.

in the Nova Scotian Court, though the appointment was made first in the Palatine Court. On March 27th the Nova Scotian Court made an order appointing James as the receiver of the partnership properties. Hall subsequently applied in the Palatine action for an order that all further proceedings in the Palatine Court might be stayed, and proper directions given for the discharge of the receiver. The Vice-Chancellor refused the application; but on appeal the order of the Vice-Chancellor was set aside. In the course of his judgment, Farwell, L.J., pointed out that the existence of concurrent jurisdiction rendered very necessary the observance of a comity between those jurisdictions, the disregard of which would lead to most unfortunate friction. The learned Lord Justice proceeded to say as follows: "Two points appear to me to be usual on considering whether the Court should have regard and defer to a jurisdiction with which it may come in conflict, or whether the Court can fairly expect that other jurisdiction to defer to it. One is the priority in time, and the other is the extent of the relief asked for or obtainable in the other jurisdiction." Mr. *Hasan Imam* has contended before us that there is no similarity whatever between the Calcutta action and the Dhanbad action. That is true enough; but in regard to the question of the appointment of a receiver, the relief claimed is the same.

Mr. *Hasan Imam*, however, contended that, provided he had established collusion between the parties in the Calcutta action, he was entitled to ask the learned Subordinate Judge to appoint his own receiver; and he relied upon *Nothard v. Proctor* (1). It is difficult for us to express any opinion on the question of collusion especially as it appears that the documents, upon which Mr. *Hasan Imam* relied, were not admitted in evidence by the learned Subordinate Judge. There are sufficient materials in the record to raise a suspicion; and more than that I am not prepared

to say on the materials before us. I will, however, assume that the Calcutta action is a collusive action; but it is for the Calcutta High Court to say so and to recall the order made by it for the appointment of a receiver. *Nothard v. Proctor* (1), in my opinion, does not touch the point. It is important to remember the following dates in order to understand that case. On the 9th August, 1875, Proctor filed a petition for liquidation of his debts by arrangement. No arrangement being arrived at, the plaintiff on the 31st August, 1875, filed a petition for adjudication of Proctor. On 1st September, Mr. Edwards was appointed receiver and manager by the Court of Bankruptcy. On the 7th September Proctor died, leaving a Will by which he gave all his property to his wife and appointed her sole executrix. The executrix at once turned the receiver out of possession and possessed herself of the assets. On the 9th of October the plaintiff filed his bill in the Court of Chancery praying for the administration of the estate and for the appointment of a receiver. The notice of motion for the appointment of a receiver was served on the executrix on the 15th October. On the same 15th of October a suit was commenced in the Lord Mayor's Court by Blewitt, another creditor against the executrix, and, on the same day a decree was made therein by consent for administration of the estate, and Milford was appointed receiver. On the 19th October the motion for a receiver was heard by Vice-Chancellor Bacon in the plaintiff's suit in Chancery, and the Vice-Chancellor being of opinion that the circumstances showed collusion between Blewitt and Mrs. Proctor, made an order for the appointment of a receiver and manager. This order was confirmed in appeal by the Court of Appeal.

Now it will be noticed that no conflict of jurisdiction was possible between the Court of Chancery or, as I should say, the High Court of Justice

1924.

 SRIDHAR
 CHOWDHURY
 v.
 MUGNIRAM
 BANGAR.

DAS, J.

 (1) (1875-76) L. R. 1 Ch. D. 4.

1924.

SRIDHAR
CHOWDHURY
c.
MUGNIRAM
BANGAR.
DAS, J.

and the Lord Mayor's Court. The Lord Mayor's Court is an inferior Court of record, and is subordinate to the High Court of Justice. This aspect of the case was prominently referred to by Lord Justice James who, in the course of his judgment, pointed out that the receiver, when duly constituted, could obtain from the Vice-Chancellor an order authorizing him to use the name of Mrs. Proctor in any proceedings before the Lord Mayor. It is a case, not of conflict of jurisdiction between two independent Courts, but of a superior Court taking the matter out of the hands of a Court subordinate to it. That, in my opinion, is the explanation of *Nothard v. Proctor*(¹).

It was then contended by Mr. *Hasan Imam* that the effect of the order of the Calcutta High Court giving leave to the plaintiffs in the Dhanbad action to sue the receiver was that the Calcutta High Court surrendered the receiver, to quote the exact words employed by Mr. *Hasan Imam*, "to the obedience of the Dhanbad Court" to be dealt with by the Subordinate Judge as his own officer. I am wholly unable to accept the contention. It is well settled that it is not the object of appointing a receiver to keep a third party out of possession who may be entitled to possession; and the Court will readily give leave to sue its receiver if satisfied that there is a case to be tried, so that the claim of the third party may be tried in the presence of the receiver. But, as Mr. *P. K. Sen* pointed out in the course of his very able and interesting argument, by giving leave to sue its officer the Court does not relinquish possession of the properties to the Court where the claim of the third party may be asserted; and he relied upon *Morris v. Baker* (²) which seems to be in point. It was laid down in that case that, where a mortgagee of leaseholds has obtained the appointment of a receiver, the lessor who by leave of the Court brings an action for recovery of the land against the lessee, and recovers judgment, cannot

(1) (1875-76) L. R. 1 Ch. D. 4.

(2) (1904) 73 L. J. Ch. D. (N. S.) 143.

proceed to enforce the judgment as against the receiver in possession without the leave of the Court. Now, it might be said that, if the effect of the leave to sue the receiver was that the Court relinquished possession of the property to be dealt with in the subsequent suit instituted by leave against the receiver, no further leave was necessary to sue out execution if the plaintiff succeeded in the action against the receiver. But the contrary was actually decided. Buckley, J., pointed out that the question was whether the leave extended beyond proceedings to judgment, whether it included the right to issue writs of possession, and he proceeded to say as follows: "In my opinion it did not. The leave given did not extend, I think, beyond proceedings for the determination of the question involved in the writ. The true way of looking at the matter seems to me to be this. Suppose that the Court, being in possession of land or chattels by its receiver, is asked to allow proceedings to be taken between two persons to determine the title, and that leave is given. The party who succeeds ought to come again saying: 'This is my land' or 'These are my chattels, but the fruits of my victory are in your possession and I ask you to direct the receiver to give me possession of them.' If there is nothing more in the case, the Court will give leave for possession but the party is not entitled as against the receiver to get possession without leave—that is, without the consent of the Court in whose possession the property is." The principle that I deduce from this case is that the Court retains full control and dominion over the property, though it may give leave to a stranger to sue the receiver. In my opinion the learned Subordinate Judge should have deferred to the jurisdiction of the Calcutta High Court and declined to appoint a receiver, especially as the order of the learned Subordinate Judge is without effect so far as the Calcutta High Court is concerned.

Apart from any other consideration, it seems to me that this is not a case in which a receiver should have been appointed, especially after the undertaking

1924.

SRIDHAR
CHOWDHURYv.
MUGNIRAM
BANGAR.

DAS, J.

1924.

SRIDHAR
CHOWDHURY

v.

MUGNIRAM
BANGAR.

DAS, J.

given by the parties to keep down the interest and not to sell or dispose of the mortgaged properties. The plaintiffs' claim is for Rs. 8,00,000 for principal and Rs. 1,04,543 for interest. The learned Subordinate Judge has found that the value of the mortgaged properties on the 21st March, 1923, was Rs. 28,00,000. He has accepted the report of certain experts appointed in another suit to value the property. The experts valued the properties (except one which was not referred to them) at Rs. 36,00,000, and not at Rs. 28,00,000, as the learned Subordinate Judge has erroneously supposed. Besides the properties valued by the experts, there is another property which the defendants value at Rs. 5,00,000. It would appear then that the value of the mortgaged properties may be put down at Rs. 41,00,000. The parties gave an undertaking to bring the interest upon the principal sum regularly into Court and not to sell or dispose of the mortgaged properties. Mr. *Hasan Imam* expressed his inability to accept the proposal made by the defendants, as there was no undertaking to pay the interest already in arrears. But the appointment of a receiver will not have any other effect than that of preserving the property and keeping down the interest, and I do not see how the plaintiffs could have secured an order for the payment of the interest in arrears to them by the appointment of a receiver. In my opinion, there was no justification for the order passed by the learned Subordinate Judge.

In the course of his argument, Mr. *Hasan Imam* pressed us to consider the position of his clients with reference to what he calls the collusive suit pending in the Calcutta High Court. I apprehend that the Calcutta High Court has complete power to determine any question as to collusion that may be urged before it. The arm of the Court is long enough to reach any deception that may be practised on it; but it is, in my opinion, intolerable that the learned Subordinate Judge should have been invited to hold on affidavits and in an interlocutory application that deception had

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.

S. A. K.

Appeal allowed.

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.