

APPELLATE CIVIL.

Before Jwala Prasad and Ross, J.J.

TIKAIT DAMODAR NARAIN SINGH

v.

GANGA RAM MARWARI.*

1923.

July: '28.

Ghatwali Tenure in Birbhum—Execution of decree against ghatwal—appointment of Receiver to collect surplus profits—Principles governing appointment of Receiver by way of equitable execution.

Where the Commissioner of the Division in which a Birbhum *ghatwali* is situate has sanctioned the attachment of the surplus profits of the *ghatwali* estate and rateable distribution of the surplus profits amongst the creditors of the *ghatwal*, a court executing decrees' against the latter is competent to appoint a Receiver for the purpose of collecting the surplus profits for payment to the judgment-creditors.

Prithi Chand Lal Chaudhuri v. Kumar Kalikanand Singh(1), *Holmes v. Millage*(2), *Edwards v. Picard*(3), *Lucas v. Harris*(4), *In re Saunders*(5), *Udoy Kumari Ghatwalin v. Hari Ram Shah*(6), *Kesobati v. Mohan Chandra Mandal*(7), *Kustoora Kumari v. Binoderam Sein*(8) and *Rajkeshwar Das v. Bunsidhar Marwari*(9), referred to.

Where the appointment of a Receiver is sought by way of equitable execution of a decree it must be shewn not only that the property over which the appointment is required is capable of assignment, but also, except in cases of fraudulent conduct on the part of the judgment-debtor, or other very special circumstances, that legal execution is impossible owing to some impediment arising from the character in law of the judgment-debtor's interest.

*Appeals from Original Orders Nos. 3, 252, 103, 109, 110, 111 with Civil Revision No. 425 of 1922, from a decision of B. M. N. Sen, Subordinate Judge of Jamtara, dated the 2nd December, 1922.

(1) (1921) 6 Pat. L. J. 366.

(5) (1895) 2 Q. B. 117.

(2) (1893) 1 Q. B. 551.

(6) (1901) I. L. R. 28 Cal. 483.

(3) (1909) 2 K. B. 903.

(7) (1912) I. L. R. 39 Cal. 1010.

(4) (1887) 13 Q. B. D. 127.

(8) (1865) 4 W. R. (M'sc.) 5

(9) (1896) I. L. R. 23 Cal. 873.

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Appeal by the judgment-debtor.

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This was a set of six analogous Miscellaneous Appeals—Nos. 262 of 1922 and 3 and 108 to 111 of 1923. There was also an application in revision being Civil Revision No. 425 of 1922. The appeals and the application in revision were directed against an order of the Subordinate Judge of Jamtara, dated the 2nd December, 1922, made in Money Execution Case No. 12 of 1921, and in certain other execution cases, against the appellant. The following decrees for money were obtained against the appellant: (1) a decree for Rs. 44,570-6-2 by the Maharaja Bahadur of Kasimbazar; (2) a decree for Rs. 22,422-13-6 by Ganga Ram Marwari; (3) a decree for Rs. 2,893-9-6 by Ramdeb Maiya; (4) a decree for Rs. 1,479-8-0 by Hossemi Mian; (5) a decree for Rs. 2,375-1-6 by Gopinath Bhagat; (6) a decree for Rs. 3,583-13-3 by Rameswar Marwari; and (7) a decree for Rs. 152-4-6 by Pasupati Das. The total amount of these decrees was Rs. 77,467-8-5. The judgment-debtor-appellant was Tikait Damodar Narayan Singh, *ghatwal* of Ghati in the Santal Parganas. The Commissioner of the Bhagalpur Division, in whose jurisdiction the Santal Parganas lie, in his letter No. 3345-R., dated the 20th November, 1922, having sanctioned the attachment of the surplus profits of the Ghati *Ghatwali* Estate and rateable distribution of the surplus profits amongst the creditors, the Subordinate Judge of Jamtara, on the 2nd December, 1922, directed the attachment of the rents and profits of the *ghatwali* minus the necessary outgoings, and the appointment of Babu Debendra Nath Singh, General Manager, Wards Estates, Santal Parganas, as Receiver of the attached property. He further directed the removal of the *tikait* from the possession and custody of the Ghati *Ghatwali* and that the same should be committed to the management of the Receiver. He also directed that the Receiver should as soon as possible ascertain the profits and necessary outgoings and submit to the Court for approval at once and subsequently every year an

estimate of collection and expenditure including (1) pay of *chaukidars* and *sardars*; (2) other Government dues; (3) other debts due from the *ghatwal* for which the attachment was ordered; and (4) maintenance of the *ghatwal* and his family. The first two items were to be considered as first charges on the estate. Other necessary directions were given and it was further ordered that a notice should issue on all the *mustajirs* of the estate intimating that the surplus profits had been attached and directing them not to pay rent to any one excepting the Receiver or a person authorized by him and making it clear that if they made any payment henceforth to any other person, they would do so at their own risk and it would not be a legal acquittance.

Hasan Imam (with him *K. P. Jayaswal*, *Nirode Chandra Roy* and *S. C. Mozumdar*), for the appellants.

Saroshi Charan Mitter, *Nitai Chandra Ghosh*, *Susil Madhab Mullick*, *B. B. Ghosh*, *S. S. Bose*, for the respondents.

Ross, J. (after stating the facts, as set out above, proceeded as follows):—

The contention on behalf of the appellant-judgment-debtor is that a Receiver cannot be appointed, inasmuch as the Ghati *ghatwali* is a Birbhum *ghatwali*; that the Subordinate Judge has in effect appointed a Receiver in respect of future rents and profits and this he was not competent to do; that the estate does not go as a heritage but under the Regulation, and that therefore, the debts of the *ghatwal* for the time being do not affect the estate. It is further contended that if a Receiver is appointed that Receiver should be the *tikait* himself.

The form of the order may be open to objection. I should have thought that if there was a legal remedy open by way of attachment, a Receiver by way of equitable execution would not be appointed. The point of form is, however, immaterial because the real

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question for decision is whether a Receiver can be appointed or not. If a Receiver can be appointed the attachment order becomes nugatory :

"Where the appointment is sought by way of equitable execution, the property over which a Receiver will be appointed is more restricted. It must be shown, not only that the property, over which the appointment is required, is capable of assignment, though this is essential it must also be shown, except in cases of fraudulent conduct on the part of the judgment-debtor or other very special circumstances, that legal execution is impossible owing to some impediment, arising from the character in law, of the judgment-debtor's interest." (*Kerr on Receivers*, Seventh Edition, page 153.)

The learned Counsel for the appellant relied on *Prithi Chand Lal Chaudhuri v. Kumar Kailanand Singh* (1) as laying down that a simple contract creditor has no interest in the property over which he seeks the appointment of a Receiver unless he shows that although he may not have a specific charge on the property so as to give him priority, yet he has a right to be paid out of a particular fund. In that case the Court was dealing with the appointment of a Receiver *pendente lite* and different considerations arise in a case of execution. In dealing with the question whether it is just or convenient that a Receiver should be appointed, the learned Counsel relied on the decisions in *Holmes v. Millage* (2), *Edwards v. Picard* (3), *Lucas v. Harris* (4) and *In re. Saunders* (5).

Now these are cases of future earnings, pensions and patents. They are, therefore, not strictly applicable to the present case. There is authority for the appointment of a Receiver in *Udoy Kumari Ghatwalin v. Hari Ram Shah* (6) where it was stated that if the Subordinate Judge had appointed a Receiver to take charge of the rents and profits as they fell due from time to time, no difficulty would arise; and in *Kesobati v. Mohan Chandra Maival* (7). In that case it was pointed out on the authority of *Kustoora Kumari v. Binoderam Sein* (8) that the surplus profits

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of a *ghatwali* tenure collected during the lifetime of the judgment-debtor are his personal property and thus liable to be taken in execution. It was further held that while it might be open to question whether a Receiver ought to be appointed to collect rents and profits that had not accrued at the time of the appointment and a merely prohibitory order without a Receiver might have been open to question, yet the appointment of a Receiver to receive the rents and profits seemed to be an order sanctioned by authority. In *Rajkeshwar Das v. Bansidhar Marwari* (1) it was held that after deduction of all necessary outgoings from the total rent due to the *ghatwal*, the residue, being his own absolute property, could be attached in execution of a personal decree against him.

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The effect of the principles and authorities stated above would seem to be that the rents and profits, other than surplus, being earmarked for the payment of *chaukidars*, *sardars* and Government dues, an order may be made that the surplus be placed at the disposal of the creditors for there can be no question that the creditors are entitled to that surplus in execution of their decrees, and that for this purpose a Receiver may be appointed. This is what the order passed by the learned Subordinate Judge effects and it is not open to any legal objection. Nor is there any reason to interfere in the matter of the person to be appointed Receiver.

The appeals are dismissed with costs. The application in revision is also dismissed.

JWALA PRASAD, J.—I agree.

Appeals and Application dismissed.