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arrive earlier. The amount deposited in the treasury by the defendants will be withdrawn by the plaintiff in part payment of the above decree for mesne profits. The amount paid in as damages for use and occupation for 1977 will also be deducted.

The plaintiff will not be entitled to interest.

KULWANT SAHAY, J.—I agree.

*Appeal allowed.*

### APPELLATE CIVIL.

*Before Kulwant Sahay and Macpherson, JJ.*

SRIMATI JUGAL KISHORE DEBI

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March, 29.

v.

DEVA PRASANNA MUKHERJI.\*

*Receiver, sued with the leave of the court—order granting permission, whether amounts to relinquishment of possession by the court appointing him—court where Receiver sued, whether has jurisdiction to grant injunction against Receiver—conflict of jurisdiction.*

An order of the court giving leave to a party to sue its Receiver does not amount to a relinquishment of possession of the properties by that court, and, therefore, an order or decree against the Receiver cannot be enforced in execution as against him without the leave of the court appointing him.

Where a Receiver is sued with the leave of the court appointing him, the court where the suit is pending has no jurisdiction to grant an injunction restraining the Receiver from distributing the rents and profits of the properties in his possession, inasmuch as such an order would lead to a conflict of jurisdiction.

*Sridhar Choudhury v. Mugniram Bengar* (1) and *Morris v. Baker* (2), followed.

\*Miscellaneous Appeal no. 70 of 1927, from an order of Babu Ramchandra Chaudhuri, Subordinate Judge of Dhanbad, dated the 7th March, 1927.

(1) (1924) I. L. R. 3 Pat. 357.

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

Appeal by the defendants 2 and 28.

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

This was an appeal by the defendants nos. 2 and 28 and was directed against an order of the Subordinate Judge issuing an injunction upon them and upon the defendant no. 1 in the suit.

The plaintiff was a purchaser in execution of a mortgage decree of 9-annas odd of the Joyrampur Colliery. This colliery was owned by a large number of proprietors of whom it is necessary to mention only one, viz., Makund Lal Laik who with his brother Kali Das Laik had a 3-annas 5-gandas share in the colliery. Makund Lal Laik was one of the members of the family who jointly with him were the owners in 3-annas 5-gandas share of the colliery. Jadab Lal Banerji was another co-sharer who held 3-annas 5-gandas share. On account of certain partitions and transfers there was a re-distribution of the shares of Makund Lal Laik and Jadab Lal Banerji and these two with several other persons formed themselves into a firm in order to work the colliery. On the 20th of May, 1909, a mortgage was executed by the Laiks and certain other members of the firm in favour of the father of the plaintiffs for a sum of Rs. 2,00,000 and the property mortgaged was a 10-annas 14-gandas 2-krants share in the Joyrampur Colliery besides other properties. A mortgage suit was instituted in the year 1911 and a preliminary decree was made in favour of the father of the plaintiff on the 9th of May, 1911 and a final decree for sale was made on the 11th of January, 1916. The decree was executed and some of the mortgaged properties were sold on the 9th of February, 1920, with which we are not concerned in this appeal. The 10-annas 14-gandas 2-krants share in the Joyrampur Colliery was sold in execution on the 8th of February, 1921 and purchased by one G. C. Adhikary and K. P. Roy for Rs. 1,50,000; but this sale was subsequently set aside

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on the 16th of January, 1922. Subsequently two suits were instituted by the defendants nos. 9 and 10 in the present suit for a declaration that the mortgage in favour of the father of the plaintiff of the 10-annas 14-gandas 2-krants share was invalid inasmuch as they held certain shares in the colliery. The suits were decreed with the result that only 9-annas 12-gandas odd was declared to be the property of the mortgagors and this share was found to have been properly mortgaged to the father of the plaintiff. This 9-annas 12-gandas odd share was subsequently sold in a fresh execution on the 21st of May, 1924, and purchased by the present plaintiff for Rs. 2,00,000. The sale was confirmed in due course and sale certificate was granted to the plaintiff who obtained delivery of possession and an application for setting aside the sale was dismissed. In 1911, however, before the final decree was made in the mortgage suit, a suit no. 331 of 1911 had been instituted in the Court of the Subordinate Judge at Purulia by some of the co-sharers of Joyrampur Colliery for partition of mauza Joyrampur and other properties. This suit was decided on the 28th of March, 1912. Partition was disallowed; but a receiver was appointed to take charge of the properties and to realise the rents and profits and to distribute the same amongst the co-sharers. The first receiver under this decree was appointed on the 29th of April, 1912, and the present defendant no. 1 was appointed in place of that receiver on the 12th of January, 1918. The present suit was instituted on the 11th of January, 1926, in the Court of the Subordinate Judge at Dhanbad for a declaration of the plaintiff's title by virtue of his purchase in execution of the mortgage decree and for certain other incidental reliefs, and on the 26th of May, 1926, the plaintiff applied for an injunction restraining the receiver, viz., the defendant no. 1, who was made a party to the suit after leave obtained from the Purulia Court, from distributing the rents and profits of the property in his possession to the co-sharers. The

receiver, defendant no. 1, represented to the Court at Dhanbad that he had no objection to an injunction being granted against him restraining him from distributing the rents and profits to the cosharers to the extent of their shares. The application for injunction, however, was opposed by defendant no. 2 who was the widow of Makund Lal Laik and by defendant no. 28 who was his daughter.

The Subordinate Judge held that the plaintiff had made out a prima facie case and he was entitled to an injunction. An objection was taken before him that no injunction should be issued against the receiver who was an officer of the Court of the Subordinate Judge at Purulia inasmuch as the effect of an injunction would amount to a conflict of jurisdiction between the Court at Dhanbad and that at Purulia: the receiver being bound to distribute the rents and profits amongst the co-sharers according to the order of the Subordinate Judge of Purulia by whom he was appointed and the order restraining him from doing so by the Subordinate Judge of Dhanbad would be in direct conflict with that order. The Subordinate Judge held that the effect of an injunction would not interfere with the management of the property by the receiver or with other matters relating to the property in suit.

*Pugh* (with him *A. B. Mukharji* and *G. C. Mukharji*), for the appellants.

*N. C. Sinha* and *N. C. Roy*, for the respondents.

KULWANT SAHAY, J. (after stating the facts, as set out above, proceeded as follows): In the present appeal it has first been contended by Mr. Pugh on behalf of the defendant no. 2 that no prima facie case has been made out by the plaintiff and that the execution of the mortgage decree without making the receiver a party to that proceeding was illegal, and the sale of the mortgaged property in such execution proceeding did not confer any title upon the plaintiff.

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This is a point which has to be considered at the trial in the present suit and it would not be proper for this Court to express any opinion upon a matter which forms one of the issues to be tried in the suit and which may have the effect of prejudicing the decision of the suit. Without expressing any opinion upon the point, it is sufficient to say that I am not inclined to interfere with the order of the learned Subordinate Judge on this ground.

The other point, however, taken by Mr. Pugh as regards the jurisdiction of the Subordinate Judge of Dhanbad to issue an injunction upon the receiver is a substantial question to be determined in the present appeal. No question was raised in the Court below as regards the validity of the appointment of the defendant no. 1 as a receiver by the Purulia Court, and for the purposes of the present appeal it must be taken that his appointment was proper. The effect of such an appointment is that the property passed into the possession of the Court of the Subordinate Judge at Purulia and that Court is in possession of the property through its receiver, viz., the defendant no. 1. The Purulia Court has no doubt given leave to the plaintiff to institute the present suit against the receiver. That, however, does not amount to a relinquishment of possession by the Purulia Court or to a direction that the receiver appointed by that Court should act in accordance with the directions of the Court in which the present suit is instituted. The receiver stated before the Subordinate Judge at Dhanbad that he had no objection to the grant of an injunction against the distribution of the rents and profits to the co-sharers. This he was not competent to do. He was an officer of the Purulia Court and he was bound to carry out the orders of that Court. As was pointed out by Das, J., in *Sridhar Chowdhury v. Mugniram Bengar* (1) "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

(1) (1924) I. L. R., 3 Pat. 857.

party may be asserted." Reference was made in this case to *Morris v. Baker* (1) where the proper procedure to be adopted in a case where a receiver is sued with the leave of the Court appointing him was laid down. That procedure is that, if a decree is obtained against a receiver such decree cannot be enforced in execution as against the receiver without the leave of the Court appointing him. The party in whose favour the decree is passed cannot enforce that decree in execution, but the proper procedure for him to adopt is to go to the Court which appointed the receiver with his decree and to ask him to direct the receiver to act in accordance with that decree. It would clearly amount to a conflict of jurisdiction if contradictory orders are passed against the receiver by the Court appointing him and by the Court in which he is sued with leave of the Court appointing him. I am of opinion that the learned Subordinate Judge had no jurisdiction to grant an injunction restraining the defendant no. 1 from distributing the rents and profits of the property in his possession and paying the same to the defendants nos. 2 and 28. I am, however, of opinion that the learned Subordinate Judge was right in his view that the payment of the rents and profits of the estate to the defendants nos. 2 and 28 should be suspended until the disposal of the present suit. The learned Subordinate Judge ought to have merely made this declaration in favour of the plaintiff, and the order of the learned Subordinate Judge will be modified to this extent and it will be declared that it was a fit case in which payments of the rents and profits of the Joyrampur colliery should not be made by the receiver to the defendants nos. 2 and 28 during the pendency of the suit and that the same should be kept by the receiver or invested by him under orders of the Subordinate Judge at Purulia. The plaintiff ought to go with this order to the Subordinate Judge at Purulia and ask him to give proper directions to the receiver and the learned Subordinate

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Judge at Purulia will then consider what orders should be passed upon the receiver.

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The order of the learned Subordinate Judge in the present case must, therefore, be modified as indicated above. Each party will bear his own costs, in this appeal.

MACPHERSON, J.—I agree.

*Order modified.*

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## APPELLATE CIVIL.

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*Before Mullick, J.*

*(On difference of opinion between Kulwant Sahay and Macpherson, JJ.)*

1928.

UMESHWARDHARI SINGH

v.

NEMAN SINGH.\*

*Land Registration Act, 1876 (Ben. Act VII of 1876), sections 44 and 78—suit for rent by unregistered mortgagee—suit dismissed by first appellate court—registered pending second appeal—decree by court of second appeal.*

A mortgagee whose suit for rent has been rightly dismissed by the first appellate court on the ground that his name has not been registered under section 44 of the Land Registration Act, 1876, is entitled to secure from the court of second appeal a decree for the rent sued for, provided he has, during the pendency of the second appeal, been registered under the Act; this is so even though registration does not take place until after the expiry of the period of limitation for a suit for the rent.

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\*Second Appeals nos. 1188 and 1811 to 1821 of 1925, from a decision of Ashutosh Chattarji, Esq., District Judge of Patna, dated the 4th June, 1925, reversing a decision of Babu Saudagar Singh, Munsif, 2nd Court, Patna, dated the 30th June, 1924.