

FULL BENCH.

Before Das, James and Rowland, JJ.

SURENDRA PRASAD SINGH

v.

TEKAIT SINGH.*

Santal Parganas Settlement Regulation, 1872 (Reg. III of 1872), section 27—equitable execution—judgment-debtor, agricultural lands of, in Santal Parganas, whether receiver can be appointed in respect of.

A decree-holder is not entitled to have a Receiver appointed for the agricultural lands of a judgment-debtor in the Santal Parganas by way of equitable execution.

Sardami Datar Kaur v. Ram Rattan(1) and *Rajindra Narain Singh v. Sundra Bibi*(2), distinguished.

Appeal by the decree-holders.

The facts of the case material to this report will appear from the following Order of Reference :

DAS and FAZL ALI, JJ.—The question raised in this appeal is one of great importance and is not covered by any authorities of this Court. The appellants have obtained a decree as against the respondents; and they seek to execute the decree by the appointment of a Receiver in respect of the agricultural lands belonging to the judgment-debtors. Now it is conceded that these agricultural lands, being in Santal Parganas, are inalienable and cannot be sold in execution of a decree. The decree-holders, however, contend that there is no reason why a Receiver should not be appointed in respect of the surplus profits of these agricultural lands. The learned District Judge has considered the matter in a very careful judgment and has taken the view, with some amount of hesitation, that he should not exercise his discretion in favour of the decree-holders. Mr. Naresh Chandra Sinha contends before us that as the Courts have for many years appointed Receivers in respect of the surplus profits of ghatwali lands which are equally inalienable, there is no reason why we should not

*Appeal from Appellate Decree no. 94 of 1928, from an order of E. S. Hoernle, Esq., District Judge of Santal Parganas, dated the 3rd March, 1928, confirming an order of Babu D. B. Sarkar, Subordinate Judge of Deoghar, dated the 11th April, 1927.

(1) (1928) I. L. R. 1 Lah. 192. (2) (1925) I. L. R. 47 All. 385, P. C.

apply the principle of those cases to a case of this nature; but in my opinion the question is a difficult one inasmuch as the appointment of a Receiver will operate as dispossession of the agriculturists. We consider that the point of law raised in this case should be decided by a Full Bench; but as we are not differing from any Division Bench on the question of law raised in this appeal, we have no power under the rules of this Court to refer this question to a Full Bench. All that we say is that we desire that this case should be referred to a Full Bench and we direct that the papers be laid before the Hon'ble the Chief Justice for necessary orders under Chapter V, rule 1, of the rules of this Court.

On this reference

J. C. Sinha, for the appellants.

S. N. Bose, for the respondents.

DAS, J.—The question which we have to consider in this appeal is whether a decree-holder is entitled to have a Receiver appointed in respect of the agricultural lands belonging to the judgment-debtor in the Santal Parganas by way of equitable execution. In my opinion he is not so entitled and the appeal ought to be dismissed.

It is contended by the learned Advocate appearing on behalf of the decree-holder that according to Reg. V of 1893, the Code of Civil Procedure governs the matter between the parties and that section 51 of the Code gives him unrestricted right to apply for execution of the decree by the appointment of a Receiver. Section 51 of the Code must, however, be read along with section 27 of Reg. III of 1872 which provides that

“No transfer by a raiyat of his right in his holding or any portion thereof, by sale, gift, mortgage, lease or any other contract or agreement, shall be valid unless the right to transfer has been recorded in the record-of-rights, and then only to the extent to which such right is so recorded.”

It was contended before us that all that is prohibited by section 27 of the Regulation is voluntary alienation by the raiyat; but in my judgment involuntary alienation stands on the same footing as voluntary alienation. It was the policy of the Legislature to make it clear that raiyati holdings of agriculturists in the Santal Parganas should be inalienable; and in my

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judgment to allow equitable execution by the appointment of a Receiver would be both an evasion and an invasion of the statute on this point.

Reliance was placed on two decisions, one of the Lahore High Court and the other of the Judicial Committee of the Privy Council. In *Sardarni Datar Kuar v. Ram Rattan*⁽¹⁾ it was held that the Civil Court can in execution of a decree order a temporary alienation of the land of a judgment-debtor, who is a member of an agricultural tribe, and that section 16 of the Punjab Alienation of Land Act prohibits only a sale and not a temporary alienation of such land. That was a decision on the construction of the Punjab Alienation of Land Act and if we were satisfied on a construction of section 27 of Reg. III of 1872 that a temporary alienation is not prohibited by the section, we would be prepared to accede to the argument advanced before us. It appears that the Punjab Alienation of Land Act allows alienations of a limited nature. In my opinion the decision of the Lahore High Court can throw no light whatever on the question before us. The other decision to which reference has been made was of the Judicial Committee in *Rajindra Narain Singh v. Sundara Bibi*⁽²⁾. Under a deed of maintenance it was provided that the appellant should hold and possess certain villages yielding a certain profit without power of transfer during the lifetime of the grantor. It was also provided that after the grantor's death, the villages were to become the absolute property of the appellant and his descendants, but were not to be transferred so long as the heirs of the grantor were in existence. The respondent had obtained a decree as against the appellant for a large sum of money and in execution of the decree she applied to attach and sell the "zamindari property with sir and khudkasht holdings together with all rights and interests appertaining thereto" which the judgment-debtor has therein "

(1) (1928) I. L. R. 1 Lah. 192.

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in certain villages specified. The Judicial Committee had no difficulty in coming to the conclusion that the right of maintenance which was all that was given to the appellant by the deed to which I have referred was in point of law neither attachable nor saleable. Their Lordships, however, pointed out that "the proper remedy lies, in a fitting case, in the appointment of a receiver for realizing the rents and profits of the property, paying out of the same a sufficient and adequate sum for the maintenance of the judgment-debtor and his family, and applying the balance, if any, to the liquidation of the judgment-creditor's debt." But it is one thing to have a Receiver appointed of the rents, issues and profits of a zamindari property; it is another and a different thing to have a Receiver appointed of agricultural lands. In the one case the appointment of a Receiver does not operate as a dispossession of the judgment-debtor; but in the other case the appointment of a Receiver must inevitably lead to the dispossession of the judgment-debtor. The appointment of a Receiver by way of equitable execution is in fact the equitable attachment of the property; and in my judgment it is impossible to say that the decree-holder can do that indirectly which he cannot do directly by the attachment and sale of the agricultural holding. If the argument of the learned Advocate were well founded it would be open to the decree-holder to apply for attachment and sale of the agricultural holding of the judgment-debtor. It has, however, been held by this Court that an agricultural holding in the Santal Parganas cannot be sold in execution of a decree. In my judgment the view taken of this matter by the learned District Judge is correct.

The appeal fails and must be dismissed with costs.

JAMES, J.—I agree.

ROWLAND, J.—I agree.

Appeal dismissed.

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