

APPELLATE CIVIL.

Before Sir Guy Ruddle, Kt., K.C., Chief Justice, and Mr. Justice Brown.

A. R. A. ARUMUGAM CHETTYAR AND ONE

v.

V. K. S. K. N. M. KANAPPA CHETTYAR.*

1927

Jan. 10

Letters Patent, Clause 13—Civil Procedure Code (Act V of 1908), Order 40, Rule 1 and Order 43, Rule 1 (s)—Appeal from an order of the Original Side appointing receiver—Payment into Court of amount claimed, effect thereof on appointment of Official Receiver

Held, that where an appeal from an order is allowed by the Code of Civil Procedure, such an order is to be construed as a judgment within the meaning of section 13 of the Letters Patent. An appeal therefore lies from an order of the Original Side appointing a receiver. Where a party seeks dissolution of partnership and an account, and the defendant pays into Court the amount claimed as his estimated share, it would be improper to appoint the Official Receiver receiver of the partnership assets especially if such appointment is prejudicial to the business interests of the defendant.

Abdul Gaffoor v. The Official Assignee, 3 Ran. 605; *Mengha Singh v. Sucha Singh*, 3 Ran. 309—*followed*.

N. M. Cowasjee—for Appellants.

Aiyanger—for Respondents.

RUTLEDGE, C.J. AND BROWN, J.—This is an appeal from an order of the Original Side of this Court appointing the Official Receiver to be receiver of the partnership estate and effects in the suit Civil Regular No. 421 of 1926.

A preliminary objection was taken that the order complained of was not a judgment within the meaning of section 13 of the Letters Patent and that consequently no appeal lay. It is an order appointing a receiver under Order 40, Rule 1 and an appeal under the Code is given by Order 43, Rule 1 (s). We are prepared to follow the view expressed by Benches of this Court in *Mengha Singh's* case (1), and *Abdul Gaffoor's* case and (2) say that

* Civil Miscellaneous Appeal No. 200 of 1926 from an order of the Original Side in Civil Regular Suit No. 421 of 1926.

(1) (1925) 3 Ran. 307.

(2) (1925) 3 Ran. 605.

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where an appeal from an order is allowed by the Code or Civil Procedure we shall construe such an order as a judgment within the meaning of section 13 of the Letters Patent.

The facts of this case seem to be that the two appellants and the respondent carried on partnership together under the name of the first appellant A.R.A. The respondent wished to retire and substitute his son for him. The appellants objected, with the result that the firm was dissolved as from 28th January 1926.

For the respondent it is contended that at the dissolution both sides contemplated carrying on business and that in such cases it is customary for the debts and securities to be divided between the parties according to their share. We are not convinced that this was contemplated at all by the respondent. If it had, he would have had some agent to act for him as and from the date of dissolution in January; but it is clear that he had no such agent. His son arrived some time in March not so far as we can see to start business but to settle the accounts of the dissolved partnership and receive what was due to his father. The respondent's grievance was that the second appellant refused or failed to settle the accounts and went on trading regardless of his claims. What respondent is entitled to is whatever is owing to him on the 28th January 1926 *plus* interest on that sum up till time of payment. He estimates this to amount to Rs. 1,00,000. The appellants strenuously object to the appointment of the Official Receiver and say that such appointment will have a very deleterious effect on the credit and trading prospects of the present A.R.A. Firm. And as a proof of how strongly they feel on the subject they have lodged the amount claimed in the Court. This, in our opinion, is all that respondent can reasonably ask. The fact of having paid this large sum into Court makes

it to the interest of the appellants to do all that they can to expedite the taking of accounts. We accordingly allow the appeal and vary the order appealed from on the following terms: The second appellant will be appointed receiver in the place of the Official Receiver on the respondent being allowed to withdraw from the amount paid into Court the sum of Rs. 75,000 without security and in respect of the balance Rs. 25,000 before withdrawing it he must give security to the satisfaction of the Court. The appellants are entitled to costs five gold mohurs.

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APPELLATE CIVIL.

Before Mr. Justice Heald, and Mr. Justice Cunliffe.

MA THAN

v.

MAUNG BA GYAN.*

1927
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 Jan. 17.

Transfer of Property Act (IV of 1882), section 52—Lis pendens, doctrine of—“Suit or proceeding” when can be said to be actively prosecuted—Effect of transfer during interval between return of plaint for presentation in proper Court and its actual presentation in that Court—Analogous phraseology of section 14, Limitation Act (XV of 1877) and of Order 7, Rule 10 of the Civil Procedure Code (Act V of 1908).

Held. that where the subject-matter of the suit is land and the valuation which the plaintiff puts on the land is disputed and where the proper valuation is after inquiry found to be beyond the pecuniary limits of the Court in which the plaint was presented, so that the plaint is returned for presentation in another Court, and where further the plaint is so presented without undue delay, a transfer made in the interval between the return of the plaint and its presentation to the proper Court is a transfer which is prohibited by section 52 of the Transfer of Property Act. The wording of section 14 of the Limitation Act and of Order 7, Rule 10 of the Civil Procedure Code shows that a suit remains a suit though a Court cannot entertain it for want of jurisdiction and has to return the plaint to be presented to the Court in which “the suit” should have been instituted.

Sitaramaswami v. Lakshmi Narasimha, 41 Mad. 510; *Tangor v. Jaladhar*, 14 C.W.N. 322—*referred to*.

* Letters Patent Appeal No. 8 of 1926.