

APPELLATE CIVIL.

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

1926

Dec. 22.

MAI BU

v.

MAI OH GYI.*

Civil Procedure Code (Act V of 1908). Order 40, Rule 1—Grounds for appointment of receiver—Joint ownership and enjoyment for a long period—Suit for partition.

Held, that in a case where parties are near relatives who have lived together for many years and have jointly enjoyed the property as joint owners for many years, and now owing to differences plaintiff asks for partition and claims a half share of the property and it appears from the pleadings that the plaintiff would probably be entitled to one-fourth only of the property, it was improper to oust the defendant from the enjoyment of the admitted half share of the property by appointing a Receiver for the whole property.

Poreshnath Murkerji and others v. O. N. Nitta, 17 Cal. 614; *Ramji Ram v. Salig Ram*, 5 I.C. 96—referred to.

Chatterjee and Ganguli—for Appellant.

E Maung (1)—for Respondent.

CUNLIFFE, J.—The point in this appeal is a very short one. It turns on the question whether the learned Judge in the Court below exercised his judicial discretion correctly in appointing a receiver to certain property.

The appellant and the respondent to the appeal are two old ladies who have lived together for many years. They are the joint owners of the remainder of the estate belonging to the late U Waik Gale and his wife Ma Kyu. The estate consists, it is said, of both immoveable and moveable properties. In the end, however, the two old ladies quarrelled. The result of this quarrel was that Ma Oh Gyi brought an action against her friend Mai Bu in which she claimed (1) a declaration that she was entitled to a

* Civil Miscellaneous Appeal No. 98 of 1926 against the order of the District Court of Minbu in Civil Miscellaneous No. 2 of 1925.

half share of the joint property; (2) an account of the dealings in the joint property; and (3) mesne profits. She also applied for an order appointing a Receiver for the whole property, as she alleged that the income had been wasted and was likely to go on being wasted by extravagance in household expenses and over-subscription to charities to the detriment of herself. The learned Judge made an order appointing a receiver. During the course of his order he made use of these words: "There is no authority to show that in a case like the present the Court cannot appoint a receiver, although the Court is required to proceed with extreme caution where the defendant is in possession of the property in suit."

1926
 MAI BU
 7.
 MAI OH GYL.
 CUNLIFFE, J.

There may be no authority to show that the Court cannot appoint a receiver in these circumstances, but I have been unable to find any authority in similar circumstances that it is in the habit of so doing. The appropriate order relating to such appointment in the Code of Civil Procedure is Order 40. That order is widely drawn in that it lays down that the appointment of a Receiver may take place when it appears to the Court to be just and convenient.

There have been cases where a Receiver has been appointed in suits for partition (see the cases of *Ranji Ram v. Salig Ram* (1) and also in the case of *Poreshnath Mukerji and others v. Omerto Nauth Nitta* (2)). But the facts of neither of these two cases, in both of which the appointment of the Receiver was at the commencement of the dispute soon after the cause of action had arisen, approximate in any way to the circumstances of the present case. In considering whether it was just and convenient, I do not think that the learned Judge considered

(1) 5 Indian Cases 96.

(2) (1890) 17 Cal. 614.

1926
MAI BU
v.
MAI OH GYL.
CUNLIFFE, J.

fully the effect of what he was doing. Both the parties have over a very long time, as has been stated, been enjoying for their maintenance the joint income derived from the disputed property. The grounds of the application to appoint the Receiver were very unconvincing, as the conduct of which complaint was made had been going on for a long period without protest and probably with the actual approval of the respondent. I cannot think that an appointment in such circumstances is justified in any way under Order 40, Rule 1, and therefore this appeal succeeds and the appointment of the receiver is cancelled.

HEALD, J.—I agree that in a case where the parties are sisters-in-law who have lived together for many years and are still living together, where they are admittedly joint owners of property which they have enjoyed jointly for many years, where the dispute which has now arisen between them is as to the shares to which they are entitled in that property, and where on the statements made in the plaint itself it seems probable that the plaintiff's claim that she is entitled to half of the property is untenable and that she is actually entitled to only one-fourth, it was improper to oust the defendant from the enjoyment of her admitted half share of the property, by appointing a Receiver for the whole property, and I concur in setting aside the order directing that a Receiver be appointed. Respondent will pay appellant's costs in the appeal, Advocate's fees to be three gold mohurs.