

APPELLATE CIVIL.

Before Mr. Justice Carr.

U ON MAUNG

v.

EBRAHIM.*

1927

Feb. 20.

Suit by or against receiver—Leave of Court essential—Whether leave can be granted after institution of suit—Effect of judgments passed without obtaining leave to sue.

Held, that a receiver cannot either sue or be sued without the permission of the Court which appointed him. If a Court entertains a suit or appeal arising out of such suit, without such leave, it acts without jurisdiction. Where permission has not been obtained before the institution of such a suit, a Court should stay proceedings to allow plaintiff to apply for such permission. In the present case the trial Court and the appellate Court had passed their judgments which they had no jurisdiction to pass, and so it was too late to apply for permission, and the proper course was to dismiss the suit for want of leave to sue.

Villa for the applicant.

Rafi for the respondent.

CARR, J.—The petitioner is the receiver appointed by the District Court of Thatôn of the assets of the N.R.M.A. Chettyar Firm. The respondent sued him in the Township Court for Rs. 250 in his capacity as receiver. The Township Court dismissed the suit but on appeal the District Court reversed this decision and gave the plaintiff-respondent a decree as prayed. The petitioner applies to this Court for revision on a number of grounds. Of these I propose to consider only the first which, in my opinion, is the only admissible ground for revision. This ground is that the Courts below acted illegally in hearing the suit because the District Court's leave had not been obtained to sue the receiver. I think it is now well

* Civil Revision No. 227 of 1927 against the judgment of the District Court of Thatôn in Civil Appeal No. 17 of 1927.

settled law that a receiver cannot either sue or be sued without the the permission of the Court which appointed him. It is admitted, in fact, by Mr. Rafi for the respondent that that is correct. It is not necessary, therefore, to discuss this question in detail, and it will suffice to refer the Courts below to the notes on the subject in Mulla's Civil Procedure Code under the head "Legal consequences arising from the fact that a receiver is an officer of the Court." No permission of the District Court to sue the receiver was, in fact, asked for or obtained. It seems to me clear, therefore, that in entertaining the suit the Courts below acted without jurisdiction. This is not denied by Mr. Rafi who suggested, however, that even at this stage the plaintiff should be given an opportunity of obtaining that permission.

There is authority for the proposition that when permission has not been obtained before the institution of the suit the proper course is for the Court to stay the proceedings for a sufficient time to allow the plaintiff to apply for that permission; but I can find no authority for the extension of that principle to the present proceedings. The result of the defect is that the Courts below had passed judgments in the suit which they had in fact no jurisdiction to pass, and, in my opinion, it is now far too late to give the plaintiff an opportunity of obtaining the permission which he ought to have obtained before instituting his suit at all. But I note that the objection was not taken in either of the Courts below and in view of that fact I shall not allow costs in the case to either party. I set aside the judgment and decree of the District Court and dismiss the plaintiff's suit as not maintainable for want of the permission of the District Court to sue the receiver. Each party will bear his own costs in all Courts.

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CARR, J.