

APPELLATE CIVIL.

*Before Mr. Justice Mosely.*A.M.M.R.M. CHETTYAR *v.* SAW EU HOKE.*

1939

Jan. 27.

Receiver—Remuneration to be fixed by Court—Functions of the Court—Non-interference by the parties—Secret agreement to pay interest to receiver—Receiver, a decree-holder—Conflict of interest and duty.

A receiver being an officer of the Court the Court only is to determine his remuneration and the parties cannot by any act of theirs add to, or derogate from, the functions of the Court without its authority. A secret agreement by which a party agrees to pay interest to the receiver is unenforceable, even though the receiver be the decree-holder in the case. Such an agreement may well stand in the way of his tendering proper advice to the Court.

Gurijala Subramonian v. Damavarapu Venkatasubba, 156 I.C. 949; *Jiteswari Dassi v. Subha Krishna*, 139 I.C. 186; *Manick Lall v. Surrat Coomaree*, I.L.R. 22 Cal. 648; *Nugent v. Nugent*, 1 Ch.D. 546; *Prakash Chandra v. E. E. Adlan*, I.L.R. 30 Cal. 696, referred to.

Clark for the appellant.

Darwood for the respondent.

MOSELY, J.—The plaintiff-appellant A.M.M.R.M. Chettyar was a decree-holder in another suit, suit No. 5 of 1936 of the District Court of Amherst, against the defendant-respondent. In that suit a decree of compromise was passed for Rs. 31,000 with a charge on the suit land and a lien on the Fire Insurance money obtained under a policy on the mill. The decree-holder was to be at liberty to execute the decree personally against the defendants if they failed to realize the decretal amount out of the insurance money or from the sale of the land. It was also there agreed in the application for a compromise decree that the plaintiff should be appointed Receiver for the collection of the insurance money without remuneration and that he should pay the surplus money to Saw Eu Hoke through the Court immediately after realizing the

* Special Civil 2nd Appeal No. 287 of 1938 from the judgment of the District Court of Amherst in Civil Appeal No. 34 of 1938.

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amount due on the decree. The Chettyar Firm was accordingly appointed on the 18th June 1936, in Miscellaneous Case No. 18 of 1936 of the District Court of Amherst, to take charge of the rice mill and to collect the fire insurance money.

On the 8th August the agent of the Chettyar Firm in his capacity as Receiver filed a report stating that the Companies concerned had offered a sum of Rs. 47,118 only though the total loss was assessed at over Rs. 69,000, that when Saw Eu Hoke had been informed accordingly he wrote to the Companies protesting against this low offer and that the Companies had written to the Receiver stating that they were not prepared to offer a higher amount.

Orders were passed on this report on the same day that the Receiver should take further steps to get an adequate amount from the Insurance Companies as the amount offered was considered to be inadequate, and a date was fixed for further report by the 29th August.

On that date the agent as Receiver filed another report stating that the Insurance Companies would not enhance their offer, and he asked that Saw Eu Hoke be called upon to state whether he would finance such legal action as might be advised by the Court against the Companies concerned to recover the full claim, failing which, sanction, it was prayed, might be given to the Receiver to accept the offer made by the Companies. On this the defendant asked for an adjournment and several further adjournments were given to allow Saw Eu Hoke to prosecute his claim before the Insurance Companies. On the 7th December an order was passed that these negotiations should be conducted through the Receiver.

On the 8th April 1937 the Receiver reported that Saw Eu Hoke had arrived at an agreement in November 1936 with the Companies. On the 12th June the

Receiver reported that it was only two Companies who had communicated to him their willingness to pay their proportionate two-third share of Rs. 47,118 and that the third Company had not yet replied. The Receiver finally reported on the 16th July 1937 that he had received that amount from the Insurance Companies and deposited it in Court. On that date, for the first time, the Receiver in his application mentioned that Saw Eu Hoke had agreed on the 22nd August 1936 to pay him interest on the decretal amount of Rs. 31,000. (The compromise decree had not provided for any interest to be paid.)

The Receiver's application to be allowed to deduct the interest which he claimed was disallowed and he then filed the suit now under appeal for Rs. 4,019 odd as interest. This claim was allowed in the Sub-divisional Court but reversed on appeal by the District Judge and the Chettiar is now appealing against that decree.

The agreement in question (Exhibit H) is a letter dated the 22nd August 1936 from Saw Eu Hoke to the Chettiar Firm promising to pay the decretal amount of Rs. 31,000 as per the terms of the compromise of the 4th June 1936 together with interest at the rate of one rupee per cent per mensem from the date of the decree up to the date of realization in full of the decretal amount. The letter ends thus: "I request you to wait for two months time."

The plaintiff's case was that he had received an offer of Rs. 47,118 from the Insurance Companies in July and that he then advised Saw Eu Hoke to accept it but that the latter thought he could get more from the Companies and promised to pay him interest if he would wait. He communicated with his principal and on getting a reply from the Insurance Companies on the 21st August that they could not increase their

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offer he asked Saw Eu Hoke on the 22nd to give an agreement in order to pay the stipulated interest of one per cent if he wanted further time to get a better offer. Both Courts accepted this version of the transaction.

The District Court on appeal held that though the word "Receiver" was not mentioned in Exhibit H it must follow that the Chettyar Firm was asked to stay its hand as Receiver for two months to enable the defendant to get a better offer. However, the plaintiff tried to make out that the contract was entered into with him only *qua* decree-holder.

The District Court went on to hold that the promise given in consideration of the Receiver promising to stay his hand was not enforceable. The cases of *Gurijala Subramonian v. Damavarapu Venkatasubba Reddi* (1) and *Jiteswari Dassi v. Subha Krishna* (2) were cited where it was held that a purchase by a Receiver of property included in his Receivership was invalid without the previous permission of the Court. In the latter case the general principle followed was that laid down in *Nugent v. Nugent* (3), that no one should be allowed to get into a position where his interest conflicts with his duty, and that the Court carries out this principle not by examining each particular case and weighing the details of the conflict but by certain prohibitions with regard to persons who hold positions in which a conflict might arise.

The learned District Judge said that in the present case he had no doubt that the promise given by the plaintiff was one which was likely to create a conflict between the plaintiff's personal interest and his duty as Receiver. If no promise to pay interest was given it would be in the interest of the plaintiff to advise the Court to accept the offer so that the decretal amount

(1) 156 I.C. 949.

(2) 139 I.C. 186.

(3) 1 Ch. Div. 546.

might be realized without further delay. On the other hand on account of the promise to pay interest at a profitable rate it might be in the interest of the plaintiff to prolong the Receivership even if the defendant had no further hope of obtaining better terms.

I consider that this principle was rightly applied here. No secret agreement could be enforceable which put the Receiver in a position which might affect his advice to the Court and consequently the Court's decision as to whether time should be granted.

It is argued before me for the plaintiff-appellant that the Receiver was approached as the other party to the suit, the decree-holder, and not in his capacity as Receiver. But I think it is obvious that the plaintiff was approached in a dual capacity. No doubt had the Receiver not been a party to the suit the defendant would ordinarily have gone to the other party to get his consent and then to the Receiver. It was only the Receiver who could stay his hand or rather agree to an application filed by the other side to the Court to stay the proceedings until a better offer was made. It is clear in this case that the Receiver did *qua* Receiver acquiesce in prolonged adjournments for this purpose, and what is more the Receiver kept this agreement from the knowledge of the Court until the claim was realized.

It is argued that it cannot necessarily be inferred that the Receiver was making a profit on the agreement which the Court would not have allowed had the circumstances been reported to it. It may or may not be that the Court would have allowed an agreement to pay this interest at one per cent per mensem, or at least interest at the Court rate, which is a little less, 9 per cent per annum. The Court would have granted further time if the Court thought that there was a reasonable prospect of getting a better offer within a

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reasonable time, but it does not follow that the Court would have allowed interest to be exacted. It seems to me clear that the party could only in his capacity as Receiver give time, or rather agree not to oppose applications for adjournment, and as the Receiver undoubtedly got something out of the agreement to which he was not entitled under the decree, it was his plain duty to report the agreement to the Court and get it ratified by the Court.

For the respondent two very apposite decisions have been quoted. One is *Manick Lall Seal v. Surrat Coomaree Dasse* (1) where it was stated that when a Receiver appointed by the Court had entered into two private agreements, one prior, the other subsequent to the date of his appointment with one of the defendants, restricting and controlling his powers, these agreements were a gross contempt of Court.

Another case is *Prokash Chandra Sarkar v. E. E. Adlam* (2). There it was held that a promise to pay the salary of a Receiver without leave from the Court being in contravention of the law is not binding on the promisor. A Receiver being an officer of the Court, the Court only is to determine his remuneration and the parties cannot by any act of theirs add to, or derogate from, the functions of the Court without its authority.

Here the Receiver was appointed by the Court to do a certain act, and he could not, without permission from the Court, agree to give further time to the defendant other than the time allowed by the Court. The agreement was entered on the 22nd August and it must be remembered that the Court had ordered on the 8th August that the Receiver should take further steps by and report by the 29th August. On the latter date

(1) (1895) I.L.R. 22 Cal. 648.

(2) (1903) I.L.R. 30 Cal. 696.

both sides kept the agreement from the knowledge of the Court. This was clearly a fraud on the Court. In my opinion the agreement is one not enforceable by law.

The order of the District Court will be upheld and the appeal dismissed with costs.

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