

hard and fast rule on the subject, but the Court must, in each case, consider the motive which has prompted a person to destroy his or her life.

A. N. C.

Revision accepted. SHADI LAL C.J.

1934

MUSSAMMAT
BARKAT

v.

THE CROWN.

APPELLATE CIVIL.

Before Tek Chand J.

SITAL DAS AND ANOTHER (DEFENDANTS) Appellants
versus

1934

March 1.

PUNJAB AND SINDH BANK,
LIMITED (PLAINTIFF)
HOSHNAK MAL-HIRA NAND } Respondents.
AND OTHERS (DEFENDANTS)

Civil Appeal No. 139 of 1934.

Civil Procedure Code, Act V of 1908, Order XL, rule 1:
Interim Receiver—appointment of—in a suit by a mortgagee
(without possession) for recovery of the amount due to him.

The Respondent Bank, having brought a suit against the mortgagors and subsequent mortgagees of a factory, for recovery of the amount due to it on foot of an equitable mortgage, applied to the trial Court for appointment of a Receiver. The Court granted the petition and appointed the subsequent defendant-mortgagees (who were in possession under a lease) Receivers of the mortgaged property. On appeal by the subsequent mortgagees—

Held, that in this Province it is well settled that a mortgagee without possession is entitled to move the Court to appoint an *interim* Receiver and the Court may pass an order to that effect if, in the circumstances of the case, it thinks that it is just and convenient to do so.

Paras Ram v. Puran Mal-Ditta Mal (1), *Sujan Singh v. Punjab & Sind Bank Ltd.* (2), and *Paramasivan Pillai v. Ramasami Chettiar* (3), relied upon.

(1) (1925) 85 I. C. 737.

(2) 1932 Ind. Rulings 648.

(3) (1933) I. L. R. 56 Mad. 915 (F.B.).

1934

SITAL DAS
v.
PUNJAB AND
SIND BANK
LTD.

Miscellaneous first appeal from the order of Sardar Kartar Singh, Senior Subordinate Judge, Lyallpur, dated the 27th November, 1933, appointing Sital Das and Gobind Ram as receivers and directing them to keep intact whatever benefit might accrue from the factory from the date of the order till the decision of the suit.

R. C. MANCHANDA, for Appellants.

DAULAT RAM, for (PLAINTIFF) Respondent.

TEK CHAND J.

TEK CHAND J.—This is an appeal under Order XLIII, rule 1 (s) from the order of the Senior Subordinate Judge, Lyallpur, for appointment of an *interim* receiver in a pending suit. The facts are that the respondent Bank, claiming to be an equitable mortgagee of a factory owned by defendants 1 to 4, brought a suit for recovery of the amount due to it on foot of the mortgage, by sale of the factory. In this suit they impleaded as defendants the mortgagor as well as defendants 5 and 6 who are also mortgagees of the same property under a registered deed. Along with the plaint the plaintiff Bank filed an application for appointment of a receiver alleging that no interest had been paid to them for a number of years, that the charge on the property was increasing and the value of the property was decreasing, that the security had become inadequate, and there was danger of the defendants removing some of the parts of the machinery in the factory.

The application was resisted by defendants 5 and 6, but the learned Senior Subordinate Judge granted the application. He, however, appointed defendants 5 and 6 as receivers and directed them “to keep intact whatever benefit might accrue from the factory from

the date of the order till the decision of the suit " and to prepare an inventory of the machinery and other articles lying on the factory. It is against this order that defendants 5 and 6 have appealed to this Court, and the first contention raised on their behalf is that they are mortgagees in possession, and that their possession cannot, or at any rate, should not be interfered with until the decision of the suit. It is not denied that the mortgage in favour of defendants 5 and 6 is of a date subsequent to that of the plaintiff. Indeed, in the mortgage-deed in favour of defendants 5 and 6, the equitable mortgage in favour of the plaintiff-Bank is expressly mentioned. The mortgage in favour of the defendants was also a mortgage without possession, but it appears that in 1932 they took a lease of the factory from the mortgagors for a period of five years and " paid " in advance the lease money, which, however, was adjusted in deduction of their own loan.

So far as the Courts in this province are concerned, it is well settled that a mortgagee without possession is entitled to move the Court to appoint an *interim* receiver, and the Court may pass an order if in the circumstances of the case it thinks that it is just and convenient to do so, see *Paras Ram v. Puran Mal* (1) and *Sujjan Singh v. Punjab & Sind Bank, Ltd.* (2). The question has been recently considered at great length by a Full Bench of the Madras High Court in *Paramasivan Pillai v. Ramasami Chettiar* (3) in which it has been held that it is competent to a Court in appropriate cases to appoint an *interim* receiver in a suit filed by a mortgagee without posses-

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TEK CHAND J.

(1) (1925) 85 I. C. 737.

(2) 1932 Ind. Rulings 648.

(3) (1933) I. L. R. 56 Mad. 915, 926 (F.B.).

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TEK CHAND J.

sion for recovery of the amount due to him on foot of the mortgage. I hold, therefore, that the order is not contrary to law.

So far as the propriety of the order is concerned, after hearing Mr. Manchanda I do not find any adequate ground for interfering with the discretion of the learned Senior Subordinate Judge. He has amply safeguarded the interests of the appellants by appointing them as the receiver. All that they have been required to do, is to keep an account and also to "keep intact" the benefits accruing from the factory during the pendency of the suit. The hearing of the suit is stated to have been fixed for a day in April. In these circumstances, no real hardship is likely to be caused to the appellants by the order in question.

In my opinion this appeal is without force and must be dismissed with costs. I order accordingly.

P. S.

Appeal dismissed.