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omitted from the schedules to the plaint, and ask that such properties may be regarded as the subject matter of the suit. Other properties, which upon investigation, will be found to partake of the same character, namely, that of joint properties must also be brought into the hotchpotch and a decree made.

28 C. 790.

Before Mr. Justice Ameer Ali and Mr. Justice Pratt.

C. E. GREY (*Petitioner*) v. WOGRAMOHUN THAKUR (*Opposite Party*).*
[2nd August, 1901.]

Receiver—Contempt proceedings—Appeal—Receiver appointed pending appeal—Appeal no longer pending—Discharge of Receiver—Jurisdiction of Court.

There is nothing to prevent the Receiver of a property appointed by the Court, from himself applying for taking proceedings against a party for contempt.

When a Receiver of a property has been appointed by an Appellate Court pending an appeal to that Court, even when the appeal is no longer pending, he must be regarded as the Receiver of the property, of which he has been put in possession, until he is finally discharged, and the Appellate Court has jurisdiction to deal with matters relating to the Receiver, including proceedings for contempt, until he has had his accounts passed by it.

A SUIT was brought in the Court of the second Subordinate Judge of Bhagulpur, by one Srimohun Thakur against his nephews for partition of eight annas share of certain properties, the remaining eight annas share of which properties belonged to two brothers Woogramohun Thakur and Pranmohun Takur, who were no parties to the partition suit. That suit was dismissed by the Subordinate Judge on a preliminary ground. There was then an appeal to the High Court, and, pending the appeal, Mr. C. E. Grey was appointed by the High Court, Receiver [791] of the eight annas share in dispute of the properties, on or about the 3rd May 1899.

The High Court, on appeal, set aside the decree of the Lower Court on the 8th February 1901, and remanded the case for trial on the merits. Then, on the 18th March 1901, on the application of the defendants in the partition suit, the High Court passed an order directing the Receiver to submit his final accounts and to deliver possession.

The present Rule was obtained by the Receiver on the 24th June 1901, calling upon the said Babu Woogramohun Thakur, the opposite party, to show cause why he should not be proceeded against for contempt for having forcibly taken exclusive possession of certain joint kamat lands in Mouzah Kusba Barari, in the possession of the said Receiver, on the 17th May 1901.

The Rule came on for hearing on the 2nd August 1901.

Mr. Jackson and Babu Saroda Charan Mitter, for the petitioner.

Mr. W. C. Bonnerjee, Babu Umakali Mukerjee and Babu Joy Gopal Ghose, for the opposite party.

AUGUST 2.—The judgment of the High Court (AMEER ALI and PRATT, JJ.) was as follows;—

This Rule was issued on the application of Mr. Grey, the Receiver, appointed by this Court, of an eight annas share in certain property, calling upon Woogramohun Thakur of Barari to show cause why he

* In the matter of Rule *Nisi*, No. 1614 of 1901.

should not be proceeded against for contempt, for having forcibly taken possession of a piece of land in the possession of the said Receiver without any warrant of authority or the consent of the Receiver, or why such other order should not be made as to this Court may seem fit and proper.

Cause has now been shown by the learned Counsel for the opposite party. It is necessary to set out some of the circumstances before dealing with the matter raised in the Rule.

It appears that Woogramohun Thakur is entitled to a four annas interest in the property in question, another four annas be [792] longs to his brother Pran Mohun Thakur, and the remaining eight annas to the parties to the action in which the Receiver was appointed. The suit was brought by Sri Mohun Thakur for partition of the properties in question, against his relatives, the defendants. It was dismissed by the Subordinate Judge upon a preliminary issue. On appeal to this Court the decree of the Subordinate Judge was set aside on the 8th February 1901, and the case was remanded to the Lower Court for the purpose of taking evidence upon the issues, on which no evidence had been taken and the other questions arising between the parties, excepting such as had been dealt with by the learned Judges of this Court, and directing the Subordinate Judge to make a decree such as the plaintiff might be entitled to under the circumstances of the case. On the 18th March 1901, a further order was made by the Bench, which had disposed of the appeal, directing the Receiver to give up possession, after his accounts were passed. The present Rule was obtained on the 24th June 1901 upon the allegation that Woogramohun Thakur had himself or by his servants entered upon mouzah Kusba Barari, one of the properties of which the Receiver had obtained possession under the order of this Court, damaged the indigo crop growing on it, erected a hut and done other acts to the damage of his co-sharers, without the consent of Mr. Grey, and this Court was moved that proceedings in contempt against the said Woogramohun Thakur might be directed. The application was supported by the affidavits of Mr. Grey and two of his employes, viz., Hari Chand Ghose and Sharada Prasad Singh. Of course Mr. Grey has no personal knowledge of the facts which took place in the moufussil. Whatever statements he makes, he makes upon information received from either Sri Mohun Thakur or those persons, who have made affidavits in support of the application. The opposite party has produced affidavits made, one by himself and the other by his manager, Tarini Prasad Dube, to both of which we shall presently refer.

Mr. Bonnerjee, for Woogramohun Thakur, contended that this application could not be made by the Receiver himself, and that he ought to have moved the parties concerned to take [793] action in the matter. He also raised another what may be properly called a technical objection, viz., that this Court had no jurisdiction in the matter, and as the appeal was over and the case had been sent down to the Court below, the appointment of the Receiver, who had been put in charge of the property, had come to an end.

As regards the first of these two technical objections, we may say that, although ordinarily the Receiver does not himself apply for commencing proceedings of this nature, and although generally speaking the action is taken by the parties beneficially interested in the properties, there is nothing to prohibit his doing so. It is unnecessary to refer to instances. On the other side of this Court Receivers have been known

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to have taken action themselves without the parties coming forward in the matter. In this case, however, it appears that the Receiver was put in motion by the plaintiff, Srimohun Thakur, and we, therefore, think there is no force in the first objection.

As regards the second, we are of opinion, that until the Receiver is finally discharged, he must be regarded as the Receiver of the property, of which he has been put in possession by the direction of this Court, and that this Court has ample jurisdiction, until he has had his accounts passed, to deal with the matter.

We now come to the merits of the case and in our opinion the question raised is not free from difficulty, having regard to the conflicting character of the testimony. As we have said already, the statements made by Mr. Grey depend upon the information he received from his employés and Srimohun Thakur. Neither Srimohun nor Pran Mohun has chosen to make any affidavit. We have therefore to depend upon the facts set out in the affidavits of Hari Chandra Ghose and Sarada Prasad Singh. They say that, in spite of their remonstrances, Woogramohun Thakur or his servants went upon the land, destroyed the indigo crop standing thereon and took exclusive possession of the same. Woogramohun Thakur on the other hand, swears as positively that there was no indigo crop on the land, that when his servants went there, there was no remonstrance to his knowledge made by anybody, and his manager swears to the same effect that no remonstrances were made, that the lands were [794] waste lands, and that they went there to cultivate the *bhadoo* crops. They certainly put forward the case that Woogramohun being a joint proprietor, and the land lying waste, he was not infringing any rule of law or showing any contempt to the Court by cultivating the land, and in his letter which he addressed to Mr. Grey, as well as in his affidavit, he shows himself willing to indemnify the other co-sharers for any loss that they may sustain by his act or, if so willing, they might participate with him in any profit, which he may derive.

Having regard to the nature of the statements in this case and the contradictory character of the affidavits on the two sides it does not seem to us expedient that we should exercise the extraordinary jurisdiction which is vested in this Court to proceed in contempt against Woogramohun Thakur. If the man had been a total outsider, or if the affidavits of Hari Chand Ghose and Sarada Prasad Singh had contained statements which were beyond the shadow of a doubt, we should have considered the matter from a different standpoint.

On the whole we are of opinion that the Rule ought to be discharged, and we accordingly discharge it, but having regard to the circumstances of the case we make no order as to costs.

Rule discharged.

28 C. 794.

Before Mr. Justice Hill and Mr. Justice Harington.

METHURAM DASS (*Plaintiff*) v. JAGANNATH DASS (*Defendant*).^{*}
[4th and 26th July, 1901.]

Defamation—Damages—Action for damage—Investigation—Police Officer—Witness—Privilege.

^{*} Appeal from Appellate Decree No. 236 of 1899 against the decree of Babu Surbessur Mozumdar, Additional Subordinate Judge of Jalpaiguri, dated the 10th of October 1898, reversing the decree of Babu Kanti Chunder Mukerjee, Munsif of Jalpaiguri, dated the 11th of February 1898.