

they were out of time and no sufficient cause had been shown for the delay. The substantive appeals came on for hearing on the 20th March 1900, when the Court held that the appeals had abated and could not therefore proceed. The present appeals are from the decrees then made.

[495] By s. 368 of the Civil Procedure Code, if any defendant dies before decree and the right to sue does not survive against the surviving defendant or defendants alone, the plaintiff may apply to have a specified person, whom he alleges to be the legal representative of the deceased, substituted for him, and the Court is thereupon to enter the name of such person on the record, but it is provided that, when the plaintiff fails to make such application, within the period prescribed, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

By s. 582 the words "plaintiff," "defendant," and "suit" include an appellant, respondent, and an appeal respectively.

By s. 66 of the Civil Procedure Code Amendment Act (Act VII of 1888) the period of six months from the date of the death of the deceased defendant is the period prescribed for making an application under s. 368 of the Civil Procedure Code.

It is not disputed that the right to sue did not survive against the other defendants alone, nor could it be successfully contended that the appeals could proceed in the absence of a representative of Abhoy Churn Chowdhry. But applications to substitute his legal representative for the deceased respondent were not made, until after the expiration of the period of six months from that respondent's death. The legal representative of Abhoy Churn Chowdhry was constituted nearly two months before the expiration of the period, and there was no apparent difficulty in making the application in proper time. The only question therefore could be whether the Court was satisfied that the appellants had sufficient cause for not doing so. No serious attempt was made for this purpose. In the circumstances therefore the Court had no option and the present appeals are perfectly idle. Their Lordships will humbly advise His Majesty that they should be dismissed. The appellant will respectively pay the costs of them.

*Appeals dismissed.*

Solicitors for the appellants: *T. L. Wilson & Co.*

Solicitors for the respondents: *Barrow, Rogers & Nevill.*

31 C. 495.

[495] CIVIL RULE.

*Before Mr. Justice Brett and Mr. Justice Mitra.*

KHAGENDRA NARAIN SINGH v. SHASHADHAR JHA.\*

[25th March 1904.]

*Appeal—Order refusing to accept nomination of appointment of Receiver—Civil Procedure Code, (Act XIV of 1882) s. 503.*

Where a District Judge receives a report from the Subordinate Court recommending the appointment of a Receiver, and on that report and recommendation he refuses to make the appointment, his order must be taken as an order made under s. 503 of the Civil Procedure Code, and is appealable under cl. 24 of s. 588 of the Code.

[Foll. 33 I. C. 735 ; 902. Ref. 17 Bom. L. R. 680.]

\* Civil Rule No. 2586 of 1903.

1904  
FEB. 11.  
MARCH 2.

PRIVY  
COUNCIL.

31 C. 487=31  
I. A. 71=14  
M. L. J. 147=  
8 C. W. N.  
442=1 A. L.  
J. 147=8  
Sar. 623.

1904  
MARCH 25.  
CIVIL RULE.  
31 C. 495.

RULE granted to the plaintiffs Khagendra Narain Singh and another.

On the 30th August 1895 one Khagendra Narain Singh instituted a suit in the Court of the Subordinate Judge of Tirhoot against Rani Srimati Mussamat Durgabati and others for a declaration that the Chapahi Raj was held by the said Rani by right of her being the mother and heiress of her predeceased son ; and that he (plaintiff) was the next reversioner in respect of the said Raj. The other plaintiff Maharajah Sir Rameswar Singh in consideration of his supplying the said Khagendra Narain with funds to carry on the litigation, was made a party to the suit on the application of the defendants. On the 25th March 1898, the said suit was decreed by the Subordinate Judge and the decree was upheld by the High Court on the 22nd January 1901. Pending the appeal to the High Court the aforesaid Rani Srimati died and the said plaintiffs on the 31st May 1900 instituted a suit in the Court of the Subordinate Judge of Tirhoot against Durgabati and other for possession of the properties, in respect of which the abovementioned declaratory decree was obtained. Against the decree passed by the High Court, the [496] defendants Durgabati and others preferred an appeal to Her Majesty in Council and on the 27th March 1901 leave was obtained. Pending the appeal to Her Majesty in Council the Subordinate Judge of Tirhoot by an order dated the 3rd June 1902 stayed the trial of the aforesaid suit for possession. Thereupon the plaintiff applied under s. 503 of the Civil Procedure Code to the Subordinate Judge for the appointment of a Receiver, and the learned Judge after having taken evidence on the 25th May 1903 ordered that a Receiver be appointed during the pendency of the suit, and on the 11th January 1903 made a reference to the District Judge under the provisions of s. 505 of the Code of Civil Procedure. The learned District Judge by an order dated the 3rd July 1903 refused sanction to the appointment of a Receiver altogether. Against this order the plaintiffs moved the High Court under s. 622 of the Code of Civil Procedure and obtained this Rule.

Dr. *Rash Behary Ghosh* (with him *Babu Ram Churn Mitter* and *Babu Atul Chundra Dutt*) for the petitioners.

The *Advocate-General* (Mr. *J. T. Woodroffe*) (with him *Babu Baldeo Narayan Sing*) for the opposite party. The order was one under s. 503 of the Civil Procedure Code and appealable, therefore the petitioner could not move the High Court under s. 622 of the Civil Procedure Code. See Mr. *J. G. Woodroffe's* *Tagore Law Lectures*, 1897, p. 168, and the cases of *Gossain Dulmir Puri v. Tekait Hetnarain* (1), *Boidya Nath Adya v. Makhan Lal Adya* (2) and *Venkatasami v. Stridavamma* (3). The whole case was open to the District Judge. See *Birajan Kooer v. Ram Churn Lall Mahata* (4).

Dr. *Rash Behary Ghosh* for the petitioner. The order now under review was made under s. 505 of the Code of Civil Procedure and therefore there was no appeal under s. 588 of the Code. Section 503 of the Code says that the Subordinate Court is only to submit names with grounds for nomination, and not the whole case. The word Court in that section does not mean the District Court or the High Court. Section 505 does not [497] empower a District Court to sit in appeal from an order of the Subordinate Court, except in so far as it relates to the appointment of the person nominated.

(1) (1880) 6 C. L. R. 467.

(2) (1891) I. L. R. 17 Cal. 680.

(3) (1886) I. L. R. 10 Mad. 179.

(4) (1881) I. L. R. 7 Cal. 719.

[MITRA, J. Is not s. 503 of the Code controlled by s. 505.]

I submit it is not. S. 589 of the Code speaks of appeal, and supposing there is a case pending before the plaintiff, which is valued at less than Rs. 5,000, and he makes a nomination for the appointment of a Receiver, but the District Judge accepts or refuses to accept the nomination, then an appeal according to the other side, will lie to the very Court, (District Court), which has already expressed an opinion on the subject. An order under s. 503 can only be made by the Court in which an action is pending. The concluding words of s. 505 of the Code—"or pass any other order that it thinks fit"—do not confer upon the District Court the power itself to appoint a Receiver not nominated by the Subordinate Court. See *Amar Nath v. Raj Nath* (1).

1904  
MARCH 25.  
CIVIL RULE.  
31 C. 498.

BRETT AND MITRA, JJ. In this case a Rule was issued calling upon the opposite party to show cause, why the order of the District Judge in the matter of the appointment to a Receiver mentioned in the petition should not be set aside and the case sent back to him so that the matter might be determined in accordance with law.

It appears that in a case pending in the Court of the Subordinate Judge of Mozufferpore the Subordinate Judge considered it necessary that a Receiver should be appointed and that he reported the matter to the District Judge nominating a certain person for appointment as Receiver and submitted the name of that person with the grounds for the nomination to the District Judge. The District Judge however after receiving the report appears to have taken into consideration the grounds stated by the Subordinate Judge and holding that there were no sufficient grounds for the appointment of a Receiver he declined to sanction the appointment and refused the application. This Rule has been obtained to set aside that order.

[498] The Advocate-General, who appears for the opposite party, has raised a preliminary objection that, as an appeal lies against the order passed by the District Judge refusing the application, this Rule must be discharged.

We have been referred to the different cases in this Court and in the Madras Court, in which it has been held that there is an appeal against the order refusing to appoint a Receiver, and that where the District Judge receives a report from the Subordinate Court recommending the appointment of a Receiver, and on that report and recommendation he refuses to make the appointment, his order must be taken as an order made under section 503 of the Code of Civil Procedure and not one falling under section 505 of that Code. As it is an order falling under section 503 it is appealable under clause 24 of section 588 of the Code.

We have considered the cases to which we have been referred and are satisfied that they are sufficient to support the contention, and that the remedy open to the petitioners in this case was by way of appeal and not by way of an application under section 622 of the Code of Civil Procedure.

That being the case this Rule must be discharged.

*Rule discharged.*

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(1) (1896) I. L. R. 18 All. 453.