

The appellant in this case will recover the value of the Court-fee paid by him on the memorandum of appeal to this Court, and is entitled as against the respondents to his other costs in this Court. The costs in the lower Court will abide the result.

*Appeal allowed ; case remanded.*

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[741] APPELLATE CIVIL.

*Before Mr. Justice Rampini and Mr. Justice Caspersz.*

RAM SUNDER DAS v. KAMAL JHA *alias* KAMAL DAS.\*  
[11th and 12th April, 1905.]

*Receiver—Receiver, appointment of—Pending suit for recovery of property.*

Where in a suit pending before a First Subordinate Judge for recovery of property, an application has been made for the appointment of a Receiver and granted.

*Held*, on appeal, that it is inadvisable to go into the merits of a case, which is pending before a Court, where the appointment of a Receiver is under consideration. Such a course is undesirable and tends to prejudice the case.

SECOND APPEAL by the defendant Ram Sunder Singh :

The plaintiff Kumar Das brought a suit against the defendant Ram Sunder Singh for the recovery of possession of the properties moveable and immoveable and appurtenant to the Mohuntship of Asthal Barahi Nanahi.

Pending this suit Kamal Das applied for the appointment of a Receiver under section 503 of the Civil Procedure Code, and the first Subordinate Judge of Mozafferpur, Babu Nalini Nath Mitter, made an order on the 3rd January 1905 appointing a Receiver. From this order the defendants appealed to the District Judge of Mozafferpur, Mr. E. P. Chapman, who on the 9th January 1905 confirmed the order of the First Subordinate Judge, and ordered him to pass such further orders as to security, accounts, and remuneration, as he might consider proper.

On the 11th January 1905 Babu Nalini Nath Mitter, First Subordinate Judge passed an order appointing Mr. E. H. Stevens as Receiver and ordered him to take immediate possession of the property in suit. The Receiver was to have 10 per cent. com-[742] mission on the rents and profits of the property collected or realized by him, and should furnish security to the extent of Rs. 4,000. He should pass his accounts at the end of each month and submit a copy of the same in Court; also deposit the balance due thereon in the Court, every month. He was further ordered to exercise the powers in respect of the management of the property as provided under section 503 of the Code.

From this order the defendant Ram Sunder Singh appealed.

Mr. Garth (with him Babu Chandra Sekhar Banerji and Babu Joy Gopal Ghose) for the appellant, Ram Sunder Singh. The question here is whether the plaintiff has made out a *prima facie* case of title as against the defendant. The defendant has a right to be in possession of the property as against a stranger. The Court will not take that possession away from the defendant, unless a strong *prima facie* case is made against him,

\* Appeal from Order No. 27 of 1905, against the order of Mr. E. P. Chapman, District Judge of Tirhoot, dated the 9th of January 1905, affirming the order of Babu Nalini Nath Mitter, Subordinate Judge of Mozafferpur, dated the 3rd January 1905.

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or unless it can be shown that he has been wasting and mismanaging the property. In the case of *Sia Ram Das v. Mohabir Das* (1) waste had been committed, but that is not so in the present case. The Subordinate Judge thinks that there may be future waste, but does not say that waste has been proved by the plaintiff.

An affidavit must give the source upon which a statement upon information and belief is made. *In re Young Manufacturing Company, Limited* (2): The rule as laid down in the above case is the same on both the Original and Appellate side of the High Court here. The affidavits of the plaintiff in this case, I submit, are not worth the paper they are written on. Before the plaintiff can make out any case at all, a strong *prima facie* case, of title must be shown. As regards the appointment of a Receiver, see *Sidheswari Dabi v. Abhoyeswari Dabi* (3). I submit the defendant has made out a strong *prima facie* case of title. *Owen and Gutch v. Homan* (4): The defendant's case is upon the facts stronger than the case of *Sidheswari Dabi v. Abhoyeswari Dabi* (3) or *Phandidat Jha v. Padmanand Singh Bahadur* (5). I submit no Receiver ought to be appointed in this case.

[743] *Dr. Rash Behari Ghose*, and *Babu Lachmi Narayan Singh* for the respondent were not called upon.

RAMPINI J. This is an appeal against the orders of the Subordinate and District Judges of Mozafferpur dated respectively the 3rd and the 11th January 1905, appointing a Receiver of certain property, which is in dispute in this suit.

The plaintiff claims the property, as having the right to succeed to the post of Mohunt of a certain *asthal* by right of election.

The defendant claims to be the Mohunt by right of appointment by Harnam Das, the late Mohunt of the *asthal*, who died on the 22nd August 1904.

The Subordinate Judge has held that it is necessary in this case to appoint a Receiver to prevent waste; and he has come to the conclusion, after taking into consideration the very numerous affidavits filed on both sides, that a fair *prima facie* case has been shewn to exist for appointment of a Receiver. He seems to have been actuated by the following reasons in arriving at this conclusion. In the first place, he has pointed out that the property in dispute is of very considerable value, and that the claimants on both sides are mendicants possessed of no worldly property whatsoever; and he relies on a passage which he has cited from the judgment in the case of *Sia Ram Das v. Mohabir Das* (1) in holding that, until the rights of the claimants have been determined, it is proper that a Receiver should be appointed. Then he points out that the title set up by the appellant in this appeal is open to suspicion. He says that the appellant claims to have a right to the property and to the post of Mohunt under a will, executed by the late Mohunt and that he also sets up a gift of the *asthal* property made about four days before the death of the late Mohunt. In the opinion of the learned Subordinate Judge the fact of the will having been followed by a deed of gift on the death-bed of the late Mohunt "is a matter which goes much way to throw suspicion on the *bona fides* of the transaction as well as on the custom alleged by the defendant." He next [744] proceeds to deal with the question of waste; and this is the strongest reason he gives for the appointment of a Receiver.

(1) (1899) I. L. R. 27 Cal. 279.  
(2) (1900) 2 Ch. 753.  
(3) (1888) I. L. R. 15 Cal. 818.

(4) (1858) 4 H. L. C. 997, 1082.  
(5) (1895) I. L. R. 22 Cal. 459, 464.

He says: "Further, the circumstances that the defendant has already removed some money, crops and other moveables belonging to the *asthal*, that he is trying to absolve the debtors from liability by realising only small portions of the amount due from them, and that he is still trying to misappropriate the very large quantity of winter paddy, the output of the current year, and to waste the other properties of the *asthal* are also matters which are calculated to raise suspicion about the *bona fides* of the transactions alleged by the defendant. Further it appears from the affidavits filed on behalf of the plaintiff that the defendant is a man of straw and is possessed of no worldly property, and that he, being young, has no ability to manage such a big estate, the annual income of which is about twenty-four thousand Rupees."

The order of the Subordinate Judge was passed on the 3rd of January, and he sent the case to the District Judge. The learned District Judge, after going into the case and hearing the parties, affirmed the order of the Subordinate Judge, appointing a Receiver to the estate. The District Judge records his reasons for affirming the order of the Subordinate Judge. He points out:—

- (1) that the plaintiff was the eldest *baiyagi Chela* ;
- (2) that the defendant was a *girhast Chela* and so, it is said, could not properly be appointed Mohunt ; and
- (3) that the plaintiff was actually installed and recognized by the surrounding Mohunts, and that consequently the other *Chelas* of the *asthal* support the plaintiff's case.

Finally he says "Having regard to the above considerations and to the written opinion of the experienced Subordinate Judge, who is trying the case, I hold that a sufficiently strong *prima facie* case was made out to justify the appointment of a Receiver."

Now the learned Counsel for the defendant impugns these orders of the Subordinate Judge and District Judge. He has addressed us at considerable length as to the merits of the case and the title of the parties, and has called attention to the documents, by which the case for the defendant is supported.

We do not think it necessary to follow the learned Counsel in the discussion of these documents. On the contrary we think it [745] inadvisable to do so at this stage. Such a course, when the appointment of a Receiver is under consideration is always regarded as undesirable and as tending to prejudice the case and prejudice the parties. For these reasons we abstain from dealing with the document ; and it is sufficient for us to say that we are of the same opinion as the Subordinate Judge and the District Judge, who are both, as local authorities, in a far better position to judge as to whether it is desirable in this case to appoint a Receiver or not.

We will, however, only say this that the property is of very considerable value, that the claimants are both mendicants and have no worldly property of their own, and that acts of waste have been found to have been committed by the defendant, who is now in possession. For all these reasons we are unable to disturb the orders complained against in this case and we dismiss this appeal with costs.

CASPERSZ J. I agree.

I think that the local officers were in the best position to weigh the merits of the affidavits filed on either side ; and I see no reason to differ from their conclusions.