

the Excise Superintendent from the offices of the East Indian Railway in Fairlie Place to which it had gone apparently by mistake.

It must be taken on the finding of the Magistrate that the receipt was in fact found with the accused, and the only question [559] now to be determined is whether the possession of the railway receipt, by the production of which the petitioner might have obtained delivery and physical possession of the opium, is possession of the opium within the meaning of the section. By the possession of the railway receipt the petitioner had dominion or control over the parcel in the sense that he could have passed the right to take delivery of it to any other person. It is true that it was not in his actual or physical possession, but it was certainly in his potential possession. Such possession carrying with it, as it does, the control of the goods would apparently be sufficient in a case of dishonestly receiving possession of stolen goods, provided, of course, there was proof of knowledge of their nature: see *Reg. v. Hill* (1) and *Reg. v. Wiley* (2). We are not prepared to say that the mere possession of the railway receipt for a parcel containing opium would in all cases amount to possession of the opium. The possession of the receipt might be accounted for in various ways. It might be shown that the person, in whose possession it was found, had no knowledge of the contents of the parcel, or that the receipt had been "planted" by some one with a view to get him in trouble, or that he was a mere tool in the hands of others. Here, however, the receipt was in the name of the accused, it was carefully locked up and secreted in his box, and the suggestion that he knew nothing about it has been found to be untrue. It was hardly likely that the consignor would have sent as much as 2½ seers of opium, which is worth at least Rs. 100, if his object was merely to get the accused into trouble. The possession of the receipt in the circumstances mentioned being conceded, the petitioner's denial shows that he had a reason for denying the possession of the receipt.

The receipt, it should be stated, did not mention the contents of the consignment. It was for a parcel merely.

If the accused was innocent of its contents, his natural course was to have said so, and the explanation would have been at least a plausible one. His conduct, in our opinion, showed that he was aware of the contents of the parcel and that it was [560] sent to him with his full knowledge. Under these circumstances the possession of the railway receipt must, in our opinion, be taken as possession of the opium within the section under which he was charged. We, therefore, discharge the Rule.

Rule discharged.

32 C. 561.

[561] APPELLATE CIVIL.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice,
and Mr. Justice Mitra.*

AJOY KUMARI DEBI v. MANINDRA NATH CHATTERJEE.*
[22nd March, 1905.]

*Compromise—Decree—Administration suit—Civil Procedure Code (Act XIV of 1889)
Sch. IV, Form 130.*

* Appeal from Original Decree, No. 193 of 1903, against the decree of Bhagabati Charan Mitter, Subordinate Judge of 24-Parganas, dated February 27, 1903.

(1) (1849) 1 Den. C. O. 458.

(2) (1850) 2 Den. C. O. 37.

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After the preliminary decree in an administration suit declaring the right of a defendant to a certain share in the estate, the Court ought not to sanction a compromise between the plaintiffs and the executors to the effect that the entire estate should be made over to the plaintiffs and the executors released from further accounting, entirely ignoring the rights of the other defendants.

In decrees in suits for administration the Subordinate Courts ought to follow the form prescribed in No. 130, Sch. 4 of the Civil Procedure Code.

APPEAL by the defendant No. 3 Ajoy Kumari Debi.

Ananda Chandra Chattopadhyya died possessed of considerable property on the 9th Falgun 1293, having made his last will on the same day appointing his nephew Dinabandhu Mukerji, in the defendant No. 1, and his widowed daughter-in-law Mokshada Sundari Debi, the defendant No. 2, executor and executrix. The deceased left four grandsons, namely, Manindra, Tarapada and Fanindra, the three plaintiffs, and Haripada, who died subsequently on the 12th Aswin 1300 leaving his widow, the appellant Ajoy Kumari, as his sole heiress. Probate of the will was granted to the executor and executrix on the 4th May 1887, and thereupon the defendant No. 1, as the plaintiffs alleged, took upon himself the sole charge and management of the estate. The three grandsons of Ananda Chandra Chattopadhyya brought the present suit on the 18th January 1900 for the administration of the estate of the deceased and for an account against the executor [562] and executrix, who were the defendants Nos. 1 and 2, the widow Ajoy Kumari being impleaded as defendant No. 3. The plaint alleged that the will of Ananda Chandra provided that on all the plaintiffs Nos. 1, 2 and 3 attaining the age of majority the executors should make over the estate to them and the husband of defendant No. 3, and that the plaintiff No. 3, the youngest of the grandsons had attained the age of majority in Jaista 1305. The plaint further alleged that the plaintiffs were fully entitled under the provisions of the will of Ananda Chandra to the estate left by him and that the defendant No. 3 had no share in it. The plaint contained allegations of waste and misappropriation against the defendant No. 1. The particulars of the estate were given in three schedules annexed to the plaint.

The defendant No. 1 took various objections to the frame of the suit and on the merits pleaded that some of the properties, namely, those mentioned in schedule *kh* annexed to his written statement, claimed in the plaint as forming part of the estate of Ananda Chandra, belonged to himself, and that as to the rest he had no objection to make them over to the plaintiffs. He denied the allegations of waste and misappropriation. The defendant No. 2 pleaded that she had nothing to do with the taking of the probate or the management of the estate, and that she was not liable to account. The defendant No. 3 pleaded that the executors and the plaintiffs had been dealing with the estate ignoring her rights, that the adjustment of accounts and administration of the estate were necessary, that the allegation of the plaintiffs that they were entitled to the whole estate was wrong and that she, as the sole heiress of her deceased husband Haripada, was entitled to a fourth share of the estate.

The following issues were framed :

- (i) Is the suit maintainable in its present form ?
- (ii) Has the suit been properly valued and stamped ?
- (iii) What are the properties of which the estate of the late Ananda Chandra Chattopadhyya consists ?

- (iv) Do the properties described in schedule *khuc* of the written statement of the defendant No. 1 appertain to the estate of the late Ananda Chandra Chattopadhyaya?
- [563] (v) What are the rights of the parties upon a true construction of the will of Ananda Chandra Chattopadhyaya?
- (vi) Is the defendant No. 3 entitled to a fourth share of the estate let by Ananda Chandra Chattopadhyaya and the accumulations thereof? If not, what rights has she in the said estate?
- (vii) Is the defendant No. 1 alone, or are the defendants Nos. 1 and 2 together, bound to render accounts of the entire estate of Ananda Chandra Chattopadhyaya?
- (viii) Is the defendant No. 1 guilty of the maladministration complained of in the plaint, and as such personally liable for costs?
- (ix) Are the plaintiffs in receipt of the income of the properties belonging to the estate of Ananda Chandra? If so, can the plaintiffs maintain this suit?
- (x) Did the defendant No. 1, in the course of his administration, make any advance to the estate? If so, is he entitled to get back the same or any portion of it?

The will was not produced. The Court on the 20th May 1901 decided the sixth issue holding from the statements of the pleaders of the parties that the defendant No. 3 was entitled to a fourth share of the estate of Ananda Chandra and passed a preliminary decree in the following terms:—

“That an enquiry be made and account taken of what moveable and immovable properties the deceased was seized of or entitled to at the time of his death.

“That an account be taken from defendants Nos. 1 and 2 of all the moneys and other properties that came into their hands as executors as well as of all legitimate expenditure made by them. That such account be taken in separate heads.

First—As regards undisputed moveables.

Secondly—As regards disputed moveables.

Thirdly—As regards undisputed immovable properties.

Fourthly—As regards disputed immovable properties.”

An order was also made for the appointment of a Commissioner to take the accounts on payment of the necessary costs.

[564] On appeal by the defendant No. 1 to the High Court, the decree was modified only as regards the manner of taking the accounts.

On the case going back to the lower Court, the Commissioner was ordered to adjust accounts according to the directions contained in the decree of the High Court. While the case was going on before the Commissioner a petition of compromise between the plaintiffs of the first part and the defendant No. 1 of the second part was submitted to the Court, whereby the latter made over to the plaintiffs all the properties which he admitted to belong to the estate of the deceased, and the plaintiffs gave up the rest of their claim against the executor, and both parties prayed that the suit might be disposed of in accordance with the terms of the compromise. The defendant No. 3, who was no party to the compromise, put in a petition objecting to the suit being so disposed of. But the Court by its order, dated the 27th February 1903, disallowed her objection, and ordered the final decree to be drawn up in terms of the compromise,

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holding "that the defendant No. 3, if she likes, can get her redress by a fresh suit."

The defendant No. 3 appealed to the High Court.

Babu *Jogendra Chundra Ghose* (Babu *Sarat Chundra Ghose* with him) for the appellant. It is an administration suit; the preliminary order declared that the defendant No. 3 was entitled to a fourth share, that order was never questioned; the Court had no power after that order to make a decree upon the terms of the compromise between the plaintiffs and the executors by which the entire estate was to be made over to the plaintiffs. If there is no will the defendant No. 3 would still be entitled to a fourth share. She is a necessary party and cannot be ignored.

Babu *Braja Lal Chakravarti*, for the executors. The will was not before the Court and could not be construed, the Court therefore could not deal with the suit as an administration suit.

Babu *Amarendra Nath Bose* for the plaintiffs. The defendant No. 3 is not bound by the decree, and she may have her [565] name expunged from the decree: it is open to her to bring a fresh suit against us. The proper course for her was to apply to be made a plaintiff.

MACLEAN, C. J. This is suit to administer the estate of one Ananda Chandra Chattopadhyaya. He was the grandfather of the three plaintiffs. He died leaving four grandsons, the three plaintiffs and the husband of the defendant No. 3. The plaintiffs set up a will of Ananda Chandra Chattopadhyaya, under which they, in effect, said that the whole of the deceased's estate, which consisted of moveable and immoveable properties of considerable value, were given to them, and that the defendant No. 3 had no share in the estate. Although the will was part of their case, they never put it in evidence, and, in the absence of such will, the husband of defendant No. 3 would have taken a one-fourth share, and she, through him, such share.

A preliminary decree was made, and one of the issues in the suit was whether the defendant No. 3 was entitled to a one-fourth share of the estate. On the 20th May 1901, the Subordinate Judge of Alipore held that from what he could gather from the pleadings of the plaintiffs and the defendant No. 3, it appeared to him that she was entitled to a one-fourth share of the estate, and, in the end, certain accounts were ordered to be taken. The defendant No. 1 appealed to this Court, and, on that appeal there was no suggestion that the defendant No. 3 was not entitled to a one-fourth share of the estate, and this Court on appeal varied the principle upon which the accounts were directed by the Subordinate Judge to be taken. A Commissioner was then appointed to take the accounts, but, before he had proceeded very far, the plaintiffs and the defendants Nos. 1 and 2, who are the executors of the will, came to terms, and effected a compromise, which they asked the Court to sanction. The Court gave sanction notwithstanding the earnest protest of defendant No. 3. I am not at all surprised that she did protest, for, in effect the compromise was that the whole of the property should be given up to the plaintiffs Nos. 1, 2 and 3, and that the defendants Nos. 1 and 2, the executors, should be released from further accounting and should [566] also receive a certain sum of money. That compromise entirely ignored the rights of defendant No. 3, and she has accordingly appealed against that order, and says, and properly says, that the effect of the order of the Subordinate Judge is to deprive her of the one-fourth share of the estate, to which in any view she is entitled. The Judge in the Court below says:—"The defendant No. 3,

if she likes, can get her redress by a fresh suit." That would be of little avail, when in the present suit, to which she is a party, an order has been made, the effect of which is to deprive her of her one-fourth share of the estate. What redress could she, in such circumstances, obtain by a fresh suit? None. The Court ought never to have made such an order. The appeal must be allowed with costs, and the case must go back for the accounts to be proceeded with, unless the parties are reasonable and come to terms, and give the widow, defendant No. 3, her proper share of the estate.

I should like to add a word about the form of the preliminary decree. I have often had to notice, and adversely, the almost fanciful form in which decrees in administration suits are framed in the Subordinate Courts. The Subordinate judiciary ought, in decrees in administration suits, to follow the form prescribed in No. 130 of the Fourth Schedule of the Code of Civil Procedure, and not to draw them up in such careless and unsatisfactory terms as they often do. Much time and trouble would be saved, if they adopt, as they are bound to adopt, the prescribed forms, which have been carefully prepared.

MITRA, J. I agree.

Appeal allowed : Case remanded.

32 C. 56 (= 3 C. L. J. 141.)

[567] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Holmwood.

GIRINDRA CHANDRA PAL CHOWDHRY v. SREENATH PAL CHOWDHRY.*
[22nd February, 1905.]

Landlord and tenant—Co-sharers, suit for rent by—Joint property—Liability for rent.

The plaintiff and the defendants, being some of the co-owners of a zamindari purchased certain holdings under the zamindari and were in occupation of separate portions of them :—

Held, the defendants were not, in the absence of any agreement between themselves and the plaintiff to pay him rent, the tenants of the plaintiff in respect of the lands actually occupied by them and were not liable to pay him rent for the same.

[Dist. 7 C. L. J. 512.]

SECOND APPEAL by the principal defendants, Girindra Chandra Pal Chowdhry and others.

The appeal arose out of a suit for rent or, in the alternative for damages for depriving the plaintiff of the proceeds of the land held and enjoyed by the defendants.

The material allegations in the plaint were as follows :—

The plaintiff owned a 2 annas 5-2-2 share of the zamindari right in certain *mouzas* besides owning certain shares of *putni* and *darputni* interests therein, and the principal defendants Nos. 1 to 5 also owned a 2 annas 5-2-2 share in the zamindari. In the said *mouzas* certain tenants had a number of holdings of which a one-third share was owned by the

* Appeal from Appellate Decree, No. 2733 of 1902, against the decree of J. D. Cargill, Offg. District Judge of Nadia, dated Sept. 25, 1902, affirming the decree of Ram Charan Mullick, Munsif of Meherpur, dated Feb. 15, 1902.