

1905
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APPELLATE
CIVIL.
—
32 C. 268.

jurisdiction, was bound to pay court-fees according to that valuation, under s. 8 of Act VII of 1887.

Moulvi *Mahomed Ishfaq*, for the appellant.

Dr. *Rash Behary Ghose*, *Babu Kaji Kishen Sen*, *Babu Raghunath Singh*, *Babu Karunamoy Bose*, for the respondents, were not called upon.

RAMPINI AND BRETT, JJ. The suit out of which this appeal arises is one for recovery of possession of an occupancy holding, from which the plaintiff, who alleges himself to be the tenant, has been dispossessed by the landlord. He sues not only the landlord but the three persons whom the landlord has inducted into the land.

In these circumstances we do not think that the suit is one under the provisions of section 7, XI (e) of the Court-Fees Act, and that the Court-fee must accordingly be computed on the market-value of the property which the plaintiff seeks to recover.

That being so, the judgment of the Subordinate Judge was right in this case and that of the District Judge substantially right, although we cannot agree with the reasons given by the learned District Judge. The appeal is dismissed with costs.

Appeal dismissed.

32 C. 270 (=3 C.W.N. 247.)

[270] ORIGINAL CIVIL.

Before Mr. Justice Bodilly.

PRAMATHA NATH GANGOOLY *v.* KHETRA NATH BANERJEE.*

[12th December, 1904.]

Receiver—Suit against Receiver without leave of Court—Application for such leave after filing of suit—Practice.

The consent of the Court to an action against a Receiver appointed by the Court, is a condition precedent to the right of the party to sue, and cannot be rectified by a subsequent application for permission to continue the action brought without such permission.

[Diss. 14 C. L. J. 50=15 C. W. N. 872=10 I. C. 527 ; 43 Mad. 793=59 I. C. 568 ; Ref. 18 C. W. N. 546=22 I. C. 623=19 C. L. J. 191 ; 23 C. W. N. 496=51 I. C. 486=46 Cal. 352 ; 15 C. W. N. 54=8 I. C. 1 ; 61 I. C. 888 ; 63 I. C. 843.]

THIS was an application made by one Kunja Lal Seal (the plaintiff) in a suit brought in the Court of the 3rd Subordinate Judge of Hooghly against Mr. J. Chatterjee the Receiver, appointed by the High Court, of the estate of one Nobin Chunder Gangooly) for an order that leave might be given to him by the High Court to continue that suit against the Receiver or in the alternative, for leave to institute a fresh suit against the said Receiver.

In his petition, the plaintiff stated that he had omitted to take the leave of the High Court to sue the Receiver before the institution of the suit ; and that in the event of his not obtaining leave to prosecute the suit, he would be obliged to bring a fresh suit against the Receiver, but in that case a large portion of his claim would be barred by the statute of limitation.

Mr. *B. C. Mitter* for the applicant, Kunja Lal Seal. This omission to obtain leave of this Court to sue the Receiver is not a defect of Jurisdiction of the Mofussil Court to entertain the suit, but is merely in the nature of

* Application in Original Suit No. 879 of 1900.

a bar such as is provided for in s. 44 of the Civil Procedure Code, and in s. 38 of the Land Registration Act (VII B.C. of 1876). In both the latter cases [271] leave may be obtained before the final hearing of the suit upon sufficient cause being shown. I submit, that leave to sue a Receiver is of the nature of a bar similar to those already mentioned.

It is not a defect of jurisdiction of the Mofussil Court to entertain the suit upon obtaining leave under s. 12 of the Charter : see *Allimuddin Khan v. Hira Lall Sen* (1) : Woodroffe on Receivers p. 88 ; *Aston v. Heron* (2). 32 C. 270—9
C. W. N. 247.

Mr. *Chakravarti*, for the Receiver, (*contra*). The ratio for the rule that no suit can be instituted against the Receiver without the leave first obtained of the Court appointing him is, that the Receiver, who is an officer of the Court, may not be unnecessarily harassed by people instituting suits against him all over the country : see Woodroffe on Receivers pp. 85, 86. The property being really in the hands of the Court the suit instituted without such leave becomes in the nature of a contempt of the Court which appointed him. The leave to sue the Receiver should therefore be previously obtained, as would appear from the judgment of the Lord Chancellor in *Aston v. Heron* (2),—a suit in ejectment against the Receiver for acting beyond the terms of the order appointing him.

Mr. *Mitter*, in reply.

BODILLY, J. This is an action brought without leave against a Receiver of this Court and, according to the authorities, the party so proceeding is in contempt of Court.

The Receiver being an officer of the Court it is necessary that he should be protected from being harassed by actions that may be frivolous and vexatious.

There is no direct authority as to whether the Court can subsequently ratify proceedings that have commenced against a Receiver without its permission, and dealing with the matter on principle and without any direct authority being brought to my notice, I am of opinion and I hold, that the consent of the Court to an action to be brought against a Receiver appointed by the Court is a condition precedent to the right of the party to sue, and cannot be rectified by an application to the Court [272] for permission to continue an action wrongly brought without the permission of the Court.

I therefore refuse the first portion of this petition.

As regards the second portion of the petition in which I am asked in the alternative to grant leave to institute a fresh action against the Receiver in respect of the same cause of action, I do not think until the present action against the Receiver has either been dismissed or withdrawn, that I can make any order.

I, therefore, adjourn the application as regards the second prayer until the existing action has been withdrawn, or has abated in some way or other. I give the parties liberty to apply, and I adjourn all question of costs to be dealt with on a future application.

Attorneys for the plaintiff : *Watkins & Co.*

Attorney for the defendant : *M. H. Chattarji.*

(1) (1895) I. L. R. 28 Cal. 87.

(2) (1834) 2 M. & K. 390.