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with section 42. The petition warned the respondent that this application would be made; for what it says in paragraph 28 is this:—"That your petitioner is desirous by reason of the matters hereinbefore stated to be enabled to live apart from her husband and to have the custody of her child." This is, I think, a sufficient warning that she intended to apply at the proper time for the custody of the child. And that being so, I think, under the authority of the English cases, notice is not necessary of this application. This is strengthened by the fact that the respondent in his answer deals with paragraph 28, and is also strengthened by the application for *ad interim* custody of the child, in which she said:—"Your petitioner, therefore, humbly prays your Lordship for an order that the respondent do deliver the said child into her custody, or for an order that the said child be placed under the protection of this Honourable Court *pendente lite* in the custody of a guardian to be appointed by this Honourable Court, and that your petitioner be allowed full and free access to the said child." The result is that I think the petitioner need not give any further notice. On the merits she is clearly entitled to the custody of the child. The costs of this application will be costs in the cause.

H. T. H. *Application granted.*

Attorneys for the Petitioner: Messrs. *Orr & Robertson.*

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Banerjee.

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May 8.

HURI DASS KUNDU (DEFENDANT) *v.* J. C. MACGREGOR, RECEIVER, HIGH COURT, AND RECEIVER TO THE ESTATE OF RAJ CHANDER DAS (PLAINTIFF).*

Receiver, powers of—Right to sue without permission of Court—Suit for ejectment—Monthly tenant holding over after expiry of notice to quit.

The order appointing a receiver gave him power "to let and set the immoveable property or any part thereof as he shall think fit, and to take and use all such lawful and equitable means and remedies for recovering

* Appeal from Appellate Decree No. 724 of 1890, against the decree of H. Beveridge, Esq., Judge of 24-Pergunnahs, dated the 15th of May 1890, reversing the decree of Baboo Girindra Mohun Chuckerbutty, Munsif of Alipore, dated the 15th of January 1890.

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realizing and obtaining payment of the rents issues and profits of the said immoveable property, and of the outstandings debts and claims, by action suit or otherwise as shall be expedient." *Held* under the terms of such order, the receiver had power to sue to eject, without obtaining permission of the Court, a monthly tenant whose tenancy was determinable by a notice to quit, which had been duly served. *Drobomoyi Gupta* v. *Davis* (1) distinguished.

IN this case the plaintiff was the Receiver of the High Court, and receiver to the estate of Raj Chunder Das of Jaunbazar, Calcutta. The order of appointment of the plaintiff as receiver of the said estate gave him power "to let and set the said immoveable property or any part thereof as he shall think fit, and to take and use all such lawful and equitable means and remedies for recovering realizing and obtaining payment of the said rents issues and profits of the said immoveable property, and of the outstandings debts and claims, by action suit or otherwise as shall be expedient, and for that purpose to use the names of the plaintiffs and of the defendants who are to be indemnified out of the said estate." The defendant was a monthly tenant of a godown in Bhowanipur in the 24-Pergunnahs belonging to the said estate at a rent of Rs. 4-8 a month. The godown being required for purposes of the estate, a notice to quit was served on the defendant, giving him a month in which to vacate the godown; but as he had not given up possession on the expiration of that period, a suit was brought against him for ejectment, and for damages for his remaining in occupation after the expiration of the notice to quit.

The main defence was that the receiver could not maintain the suit without the permission of the High Court, which he had not obtained. There was also an objection to the sufficiency of the notice to quit, but this was decided against the defendant.

The only issue material to this report was "whether the plaintiff receiver has authority to bring and maintain this suit?" The Munsif found this issue against the plaintiff, and therefore made a decree dismissing the suit.

The Judge on appeal reversed this decision as follows:—

"Admittedly the defendant is a monthly tenant. He says that he has held the godown from the time of his grandfather, but he does not and cannot show any permanent right, and his

(1) I. L. R., 14 Calc., 323.

rent is payable monthly. Now I understand it to be the English law as laid down in Kerr on Receivers, that the power given to a receiver to let and set authorizes him to determine the leases of temporary tenants. I also understand from the decision in the case of *Drobomoyi Gupta* v. *Davis* (1) that the High Court did not dissent from Mr. Evans' exposition of the law on this subject, and I think by implication they admitted that a receiver can issue notices to quit on temporary tenants. The form of appointment of a receiver, which was till lately at least in use in the High Court, is apparently in English form, and should be construed according to English precedents. These show that a receiver can determine temporary leases. Now if a receiver can issue a notice to quit, can he not sue thereon? The Munsif holds that he cannot, and he draws a distinction between the power to put an end to a tenancy by a notice, and the power to sue for ejectment. But I think that the power to determine a tenancy carries with it the power to use the ordinary legal remedies in case the notice is not complied with. I therefore find that the receiver can bring the suit."

The Judge therefore gave the plaintiff a decree, from which the defendant appealed to the High Court.

Baboo *Bhobani Churn Dutt* for the appellant.

Mr. *W. Jackson* and Baboo *Akhoy Coomar Banerjee* for the respondent.

The following cases and authorities were referred to:—

Drobomoyi Gupta v. *Davis* (1), *Miller* v. *Ram Runjun Chuckerbutty* (2), *Doe* v. *Read* (3), *Crosbie* v. *Barry* (4), *Wilkinson* v. *Colley* (5), *Jones* v. *Phipps* (6), *Mansfield* v. *Hamilton* (7), *Anon* (8), *Swaby* v. *Dickon* (9), *Re Montgomery* (10), *Bristowe* v. *Needham* (11), *Wynne* v. *Lord Newborough* (12), *Ward* v. *Swift* (13), and Kerr on Receivers, 2nd ed., pp. 151, 152.

(1) I. L. R., 14 Calc., 323.
(2) I. L. R., 10 Calc., 1014.
(3) 12 East, 61.
(4) Jon. & C., 106.
(5) 5 Burr., 2697.
(6) L. R., 3 Q. B., 572.
(7) 2 Sch. & Lef., 30.
(8) 6 Ves., 287.
(9) 5 Sim., 629.
(10) 1 Moll., 419.
(11) 2 Ph., 190.
(12) 3 Browne's C. C., 87; 1 Ves. Jun., 164.
(13) 6 Hare, 312.

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The judgment of the Court (PRINSEP and BANERJEE, JJ.) was as follows:—

This is a suit for ejectment brought by a receiver appointed on the Original side of this Court against the defendant whose tenancy is found to have been terminated by a notice to quit.

The only question raised for our decision—and this point was raised in both the lower Courts—is whether the suit has been brought by the receiver under proper authority. We have been referred to the case of *Drobomoyi Gupta* v. *Davis* (1) as a precedent for holding that this same receiver was found incompetent, without permission of the Court, to sue for the ejectment of a tenant under the terms of his appointment. We are not disposed to disagree with the rule laid down in that judgment, but we think that it is inapplicable to the present case. That was a suit for the determination of a tenancy of a permanent character. In the present case it has been found that the interest of the tenant was merely temporary and determinable by a notice to quit, which has been served. These two cases, therefore, are not identical. We have also been referred to a long series of cases decided in the Courts in England, quoted in Kerr on Receivers, pages 151 and 152. We observe that in all those cases the power of the receiver was questioned before the Court by which he was appointed. In only two of those cases was the objection raised by the party against whom the receiver was proceeding. In all the other cases the decision of the question only affected the receiver's right to charge his costs in the action against the estate. In the two cases to which reference has been made, *Wynne* v. *Lord Newborough* (2), and in a later proceeding between the same parties (3), where the objection was raised by the parties against whom the receiver was proceeding, it was held that such persons had no valid interest to object, and their applications were refused. Having regard to the terms of the order appointing the receiver, we think that they are sufficient to confer on him the power to bring a suit to eject a tenant having only a temporary interest, such as a monthly tenant in the case before us whose tenancy has been determined.

(1) I. L.R., 14 Calc., 323.
(2) 3 Browne's C. C., 87.
(3) 1 Ves. Jun., 164.

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We have been referred to the case of *Miller* v. *Ram Runjun Chuckerbutty* (1), and although we may say that we do not altogether agree in the general terms of that decision, we find that it is not in point, as it affects the right of a party to proceed against a receiver without permission of the Court appointing him. We accordingly dismiss this appeal with costs.

Appeal dismissed.

J. V. W.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

KABILASO KOER (PLAINTIFF) *v.* RAGHU NATH SAKAN SINGH AND OTHERS (DEFENDANTS).*

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May 28.

Bengal Tenancy Act (VIII of 1885), s. 174—Jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 11—Sale for arrears of rent—Deposit in Court.

No suit is maintainable to set aside a sale under the provisions of section 174 of the Bengal Tenancy Act.

The right under the section to have a sale set aside is not an abstract right which can be enforced by suit against any particular person, but is a right to call upon a Judge to set aside a sale, and on his refusal, to proceed in revision.

SUIT to set aside a sale held under the Bengal Tenancy Act.

One Chowdhry Tribeni Pershad Singh having obtained a rent decree against one Kabilaso Koer, in execution of such decree caused the holding of the judgment-debtor to be sold. At such sale, which was held on the 15th March 1888, Raghu Nath Saran Singh and Sabhlaik Sing became the purchasers of the holding. Within 30 days from the date of such sale, Kabilaso Koer, on the 3rd April 1888, applied to the Munsif in whose Court the sale had been held to have the sale set aside under the provisions of section 174 of the Bengal Tenancy Act; but instead of depositing in Court the amount recoverable under the decree with costs, and

* Appeal from Appellate Decree No. 402 of 1890, against the decree of Baboo Dwarka Nath Mitter, Subordinate Judge of Shahabad, dated the 31st of December 1889, reversing the decree of Baboo Nogendro Nath Roy, Munsif of Arrah, dated the 15th of April 1889.

(1) I. L. R., 10 Calc., 1014.