

ORIGINAL CIVIL.

Before Mr. Justice Sala.

1895
May 28.

MANICK LALL SEAL, MINOR, BY HIS NEXT FRIEND PUNNA LALL ADDY
(PLAINTIFF) v. SURRUT COOMAREE DASSEE, WIDOW AND
ADMINISTRATRIX TO THE ESTATE AND EFFECTS OF PUNNA
LALL SEAL, DECEASED, AND ANOTHER
(DEFENDANTS).⁴

Receiver—Attorney, Improper conduct of—Agreements entered into with one party to a suit—Administrator-General's Act (Act II of 1874)—Infant.

A Receiver appointed by the Court entered into two private agreements, one prior to, the other subsequent to, the date of his appointment, with one of the defendants in the suit, restricting and controlling his powers. Neither agreement was at any time brought to the notice of the Court: *Held*: this was a gross contempt of Court, for which the parties were liable to committal. A Receiver is a servant of the Court, and has only such power and authority as the Court may choose to give him.

THIS was an application in the above suit by William Henry Ryland, the Receiver of the moveable and immovable estate of Punna Lall Seal, deceased, for leave to lay certain matters before the Court, and, subject to the terms and conditions of two agreements, dated the 10th September 1894 and the 4th October 1894, so far as they were not inconsistent with the order of the Court, dated the 11th September 1894, to be allowed to act as Receiver of the estate.

The Receiver, William Henry Ryland, was appointed by the Court Receiver of the estate on 11th September 1894, by consent of all the parties in the suit; but it appears that, at the time of the order of appointment being made by the Court, two private agreements were entered into between Sreemutty Surrut Coomaree Dasseo, widow of Punna Lall Seal, one of the defendants in the suit, and W. H. Ryland, containing the terms on which W. H. Ryland was required to act as Receiver. The first agreement was dated 10th September 1894 and was drawn up and prepared by Messrs. Remfry and Rose, attorneys for the defendant Surrut Coomaree Dasseo. Subsequently a second agreement, prepared by the same firm of attorneys, slightly modifying the first agreement,

* Suit No. 338 of 1883.

and dated the 4th October 1894, was executed by the same parties, W. H. Ryland and Surrut Coomaree Dassee. Neither of these two agreements had ever been, up to the present time, brought to the notice of the Court.

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In a petition put forward in support of his application, the petitioner W. H. Ryland stated :—

1. That, on the 21st July 1884, the Administrator-General of Bengal became the Administrator to the estate of Punna Lall Seal, deceased, under a transfer of letters of administration made to him by the defendant Surrut Coomaree Dassee, the widow and administratrix of the estate of the deceased, by a deed of transfer and other acts done pursuant to section 31 of the Administrator-General's Act II of 1874.

2. That your petitioner was appointed manager of the estate of Punna Lall Seal in April 1894 under the said Administrator-General of Bengal, acting as administrator of the estate of the deceased.

3. That the estate was then, and had been for several years previously, involved in a course of litigation, which litigation has lately been brought to a close.

4. That, while negotiations for a settlement of the litigation were pending, proposals were made by the defendant, Surrut Coomaree Dassee, to your petitioner for the appointment of your petitioner as a private Receiver to the estate, and such appointment was approved by the Administrator-General, who agreed to make over the estate to your petitioner, upon an order being obtained for the purpose.

5. That, previous to the order for appointment of your petitioner as Receiver being applied for, the attorneys for Surrut Coomaree Dassee caused to be prepared an agreement containing the terms upon which they required your petitioner to act as their Receiver, and such agreement was signed by your petitioner and bears date the 10th September 1894, (a copy of which is hereunto annexed and marked A.)

6. That on the 11th September 1894, a consent order was made in this suit for the appointment of your petitioner as Receiver, (a copy of which is hereunto annexed and marked B.)

7. That the attorneys for Surrut Coomaree Dassee, having afterwards suggested a modification of the agreement, your petitioner executed a further Memorandum, which bears date the 4th October 1894, (a copy of which is hereunto annexed and marked C.)

8. That your petitioner consented to enter into the aforesaid agreement with the object of protecting himself from unnecessary litigation, and without intending that his duties as Receiver should be affected in any way.

9. That your petitioner has given security to the satisfaction of the

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Registrar of this Honourable Court, but has not yet taken over charge of the estate as Receiver.

10. That the said Registrar, having been informed by your petitioner that he had entered into the said agreement, said that the agreements were improper, and that your petitioner could not, as a Receiver, act under them.

11. That your petitioner has since been advised by Counsel to lay the matter before this Honourable Court.

12. That on the 26th March 1895 your petitioner wrote to the attorneys of the defendant Surrut Coomaree Dassee, asking them to move in the matter, but has received no reply; (a copy of this letter is hereunto annexed and marked D.)

Your petitioner, therefore, prays for an order that he may be at liberty to take charge of the estate and act as Receiver thereof, subject to the terms of the said agreements; so far as the same may not be inconsistent with the order of the Court, dated 11th September 1894, or as far as the terms of the said agreement may be sanctioned, or for such order as, under the circumstances hereinbefore stated, this Honourable Court may deem fit.

The first agreement, dated 10th September 1894, between Surrut Coomaree Dassee of the one part and W. H. Ryland of the other part, was as follows:—

“Whereas Babu Punna Lall Seal, who was one of the five sons of the late Babu Mutty Lall Seal, of Colootollah, in Calcutta aforesaid, died, on the 24th day of September 1878, intestate, leaving him surviving the said Surrut Coomaree Dassee, his sole widow, a daughter named Nittomoney Dassee by the said Surrut Coomaree Dassee, and two grandsons and five granddaughters by the said daughter, and leaving considerable moveable and immoveable property both in Calcutta and in different districts of Bengal.

And whereas the said Surrut Coomaree Dassee applied for and, on the 21st day of January 1879, obtained letters of administration to the said estate of the said Punna Lall Seal from the High Court of Judicature at Fort William in Bengal in its Testamentary and Intestate Jurisdiction.

And whereas the said Surrut Coomaree Dassee entered into possession of the said estate, and, on the 26th of November 1877, she, in pursuance of an authority in that behalf given by the said Punna Lall Seal, duly adopted Manick Lall Addy, now Manick Lall Seal, as a son unto the said Punna Lall Seal, and the said Manick Lall Seal became entitled thereupon to his said estate as his sole heir.

And whereas by an order made by the said High Court in the matter of the said Manick Lall Seal, an infant, on the 10th October 1882, the said Surrut Coomaree Dassee was appointed the guardian of the person and estate of the said Manick Lall Seal, subject to her giving security to the satisfaction of the Registrar of the said High Court, which she did on the 4th of April 1883.

And whereas by a deed of assignment, dated the 21st day of July 1894, the said Surrut Coomaree Dassee purported to transfer to Mr. L. P. D Broughton, the then Administrator-General of Bengal, all the estates and effects and interest vested in her by the said letters of administration, but the said deed contained no specification of the said estate.

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And whereas the said estate of the said Punna Lall Seal has been since the date of the said deed and is now in the possession of the said Administrator-General.

And whereas the said Surrut Coomaree Dassee is about to apply to the High Court for an order for the appointment of a private Receiver to be nominated by her to take charge of the entire estate of the said Punna Lall Seal, and that the said Administrator-General should deliver possession thereof to such private Receiver.

And whereas the said W. H. Ryland has, at the request of the said Surrut Coomaree Dassee, agreed to act as such private Receiver as aforesaid, upon his being so appointed by the said High Court, subject to the terms and conditions hereinafter contained.

Now it is hereby mutually agreed between the said parties hereto as follows :—

1. That this agreement shall only come into force and effect, when the said W. H. Ryland shall be appointed by the said High Court Receiver of the immoveable property and of the rents and profits of the immoveable property of the said Punna Lall Seal, deceased.

2. The said W. H. Ryland, when so appointed private Receiver as aforesaid, shall devote the ordinary business hours of the day to the business of the estate of the said Punna Lall Seal.

3. The said W. H. Ryland shall be entitled, as remuneration for his services as such private Receiver as aforesaid, to a salary of Rs. 500 per mensem, and shall in addition be entitled to the use, whilst he shall continue as such Receiver as aforesaid, of a carriage and horse, to be provided at the expense of the said estate, and also to all necessary travelling expenses, when he may visit the Mofussil for the business of the said estate.

4. The said W. H. Ryland shall also, at the expense of the said estate, be provided with suitable office accommodation and with a suitable and necessary staff or establishment at Calcutta, to enable him to efficiently discharge his duties as such Receiver. The total amount of the expenses of such establishment at Calcutta shall, if necessary, be settled by the Registrar of the High Court, when settling the order appointing the said W. H. Ryland as such Receiver.

5. All monies realized by the said W. H. Ryland in the said estate shall, as received, be deposited in the Bank of Bengal in the name of the said W. H. Ryland, as such Receiver as aforesaid, and all monies required to be expended shall be drawn by him by cheques on such banking account.

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6. That after providing for the maintenance of the said Surrut Coomaree Dassee and of the said son, and the payment of Government Revenue and cesses, Municipal rates, assessments, rents due to superior landlords, establishment, law charges, repairs to houses, the interest on loans and other necessary expenses, the said W. H. Ryland shall, at the close of each and every year, invest any surplus of the monies belonging to the said estate in Government Promissory Notes of the 3½ per cent loan, and which said Government securities shall stand in the name of the said W. H. Ryland as such Receiver as aforesaid, and shall be deposited for safe custody in the family house under lock and key of the said Receiver.

7. All receipts for rents, whether of the Calcutta or Mofussil properties, or for any monies whatsoever, payable to the said estate, shall bear the signature of the said W. H. Ryland as such Receiver as aforesaid, and shall also bear the seal of the said Surrut Coomaree Dassee.

8. The said W. H. Ryland shall monthly and every month submit to the said Surrut Coomaree Dassee a statement of the receipts and disbursements of the said estate for the preceding month for her information.

9. The said W. H. Ryland will, in all important matters connected with the said estate, consult the said Surrut Coomaree Dassee, and keep her from time to time fully informed of the affairs of the said estate.

10. The said W. H. Ryland shall have exclusive power to employ and dismiss the servants of the said estate, and the said Surrut Coomaree Dassee shall not in any way interfere with the authority of the said W. H. Ryland in this respect.

11. Should the said Surrut Coomaree Dassee be desirous at any time of discharging the said W. H. Ryland as such Receiver as aforesaid and of appointing another Receiver in his place and stead, he, the said W. H. Ryland, will not in any way oppose or object to any application which may be made to the said High Court for such purpose, but if the said W. H. Ryland shall, at the instance of the said Surrut Coomaree Dassee, be discharged from acting as private Receiver as aforesaid, within three years from his appointment as such, then and in such a case the said Surrut Coomaree Dassee shall pay to the said W. H. Ryland the sum of Rs. 6,000 as and by way of compensation, unless the removal of the said W. H. Ryland shall have been brought about by any serious misconduct or mismanagement on the part of the said W. H. Ryland.

A second private agreement, modifying slightly the terms of the first agreement, was drawn up by Messrs. Romfry and Rose, the attorneys of Surrut Coomaree Dassee, and executed by Surrut Coomaree Dassee and W. H. Ryland, to the following effect:—

1. That the office accommodation of the said W. H. Ryland referred to in para. 4 of the said agreement shall be in the vicinity of the residence of

the said Surrut Coomaree Dassee, and in the event of a permanent family dwelling-house being secured for the residence of the said Surrut Coomaree Dassee and her son Manick Lall Seal, suitable office accommodation shall be provided therein for the said W. H. Ryland and his office staff.

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2. Instead of investments in Government paper being made at the close of the year by the said W. H. Ryland, as provided for in para. 6 of the said agreement, they shall be so made as opportunity shall from time to time permit.

3. In all other respects the said agreement shall continue unaltered.

On the 26th March 1895 a letter was written by W. H. Ryland to Messrs. Remfry and Rose as follows:—

MESSRS. REMFRY & ROSE.

26th March 1895.

DEAR SIRS,—With reference to your letter of the 23rd instant I am unwilling to proceed with the application, of which I gave you notice, and therefore withdraw it; but I am advised that I ought not to act as Receiver, until the Court is informed of the position in which I am placed. As Receiver I should, of course, endeavour to meet the wishes of the beneficiaries, as far as it is possible to do so, consistently with my duty as an Officer of the Court, but I have been asked to consent to terms which may not be regarded with approval by the Court. As I am advised that the Court should be informed of those terms, I shall be glad if you will take the initiative and submit the matter to the Court.

This may be done by an application to the Court, that I may be permitted to take charge, subject to the agreement in question. In that case I need not even appear.—(Signed) W. H. RYLAND.

No reply to this letter was received from Messrs. Remfry and Rose, and, in consequence, on the 20th May, W. H. Ryland, through his attorney, Mr. Swinhoe, served a notice on the attorneys of all the parties interested, and made this application to the Court.

Mr. *Henderson* for the applicant, W. H. Ryland.

Mr. *Caspersz* for the Administrator-General of Bengal.

Mr. *T. A. Apear*, Mr. *Mitter*, and Mr. *Chakravarti* for Surrut Coomaree Dassee.

Mr. *Garth* for the infant Manick Lall Seal, and Messrs. Gillanders, Arbutnot & Co. (mortgagees).

[In the course of the hearing, Mr. *Apear*, on behalf of Surrut Coomaree Dassee, stated that she was prepared now to unreservedly withdraw the agreements, having regard to the views expressed by the Court.]

SALU, J.—This is an application by a Receiver appointed by an order, dated 11th September 1894. The object is to bring to

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the notice of the Court certain facts connected with his appointment, and to ask for the directions of the Court under the circumstances. The estate in suit is the estate which was of the late Punna Lall Seal. The plaintiff is his adopted son, having been adopted after his death by his widow Surrut Coomaree Dasse. The suit was instituted against Surrut Coomaree Dasse for the purpose of obtaining administration of the estate and a declaration of the plaintiff's rights. In 1879 Surrut Coomaree obtained letters of administration of her husband's estate, and, by virtue thereof, entered into possession of the estate and managed it from 1879 to 1884. Then by a deed, dated 21st July 1889, executed by her under section 31 of the Administrator-General's Act, II of 1874, she transferred the estate to the Administrator-General, who, on the same day, was also appointed Receiver of the estate and has been in possession ever since. It appears that the Administrator-General acted as Receiver until he was discharged by an order dated 19th March 1888.

A decree was made in this suit on the 3rd of December 1889, declaring the rights of the plaintiff, as the adopted son of Punna Lall Seal, and that Surrut Coomaree was entitled to maintenance out of the estate, and directing certain enquiries. This decree was followed by various proceedings, to which it is unnecessary to refer particularly. Finally a scheme was proposed, by which it was intended to raise a considerable sum of money for the purpose of paying off the liabilities of the estate, and it was a part of the scheme that for the future the estate should be managed by a Receiver to be appointed by the Court.

Under that scheme Mr. W. H. Ryland was proposed as a fit person to be appointed Receiver, and it now appears that Surrut Coomaree's assent to his appointment was given on certain conditions, then undisclosed, which were embodied in an agreement signed by her and Mr. Ryland. It is not necessary to refer to all the terms of the agreement. It is sufficient to say that the object was to place in the hands of Surrut Coomaree very extensive control over the Receiver in the management of the estate. One of the clauses provided that all receipts for collection should be signed by the Receiver, and should also bear the seal of Surrut Coomaree.

Another clause provided that Surrut Coomaree should have the right of dismissing the Receiver at any time, without objection on his part, subject only to the condition that, if she exercised that right within three years from the appointment of the Receiver, she would pay him the sum of Rs. 6,000.

When Surrut Coomaree applied for the appointment of Mr. Ryland, as Receiver, she filed a petition, the 22nd paragraph of which is as follows : "That your petitioner has arranged with Mr. W. H. Ryland, of No. 15, Kyd Street, in Calcutta, who was at the time of his retirement from Government service acting as Superintendent of Stamps and Stationery, and who was formerly for some time manager of the estate of Baboo Gopal Lall Seal, a co-sharer of the said Punna Lall Seal, and who has for some time past been the manager of the said estate of the said Punna Lall Seal under the said Administrator-General, to act as such private Receiver as aforesaid, subject to the sanction and approval of this Honourable Court at a monthly salary of Rs. 500, a suitable carriage and horse being provided for the use of the said Mr. W. H. Ryland, and he being provided with suitable office accommodation, and a suitable establishment for both the Sudder and the Mofussal kutcheries."

Now I would observe that this statement of the arrangement is wholly of a misleading character. The suggestion is, that this is a fair and full statement of the arrangement ; whereas it is obvious that the most objectionable features of the arrangement are omitted from that statement.

Upon the petition of Surrut Coomaree, to which no objection was suggested, an order was made for the appointment of Mr. Ryland as Receiver. Then a fresh agreement was entered into, which also was not brought to the notice of the Court, the effect of which was to modify the previous agreement in some minor particulars. Subsequently, but before Mr. Ryland took charge of the estate, his attention was called to the grave impropriety of the Receiver having come to an arrangement with a party to the suit, which had not been brought to the notice of the Court, the object of which was to allow the parties, or one of them, opportunities of very serious interference with the management of the property. A correspondence ensued between Mr. Ryland and Messrs.

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Remfry and Rose, the attorneys for Surrut Coomaree, in which Mr. Ryland insisted that notice of the agreements should be given to the Court, and the Court's directions obtained in respect of his appointment. On the other hand, Messrs. Remfry and Rose, on behalf of their client, insisted either that Mr. Ryland should abide by the agreements entered into, and, "loyally," as they put it, carry them out, or resign his appointment.

There is one circumstance of which I was informed by Surrut Coomaree's Counsel, and have omitted to mention, namely, that one of the original clauses of the agreement provided that the Receiver should employ Messrs. Remfry and Rose as attorneys for the estate. This clause was objected to and was properly struck out, but it shows that, while it was intended to obtain for Surrut Coomaree an advantage in respect of the management of the estate, it was also intended to secure to her attorneys a benefit in the form of professional employment in connection with the estate.

Now the first question is as to what effect these agreements ought to have on Mr. Ryland's appointment as Receiver. I have no hesitation in expressing my opinion that the parties concerned in making the agreements were guilty of gross contempt of Court, for which they were each and all liable to committal. It is clearly a gross fraud on the Court to put forward a person as Receiver, who has come to a secret arrangement of this character with one of the parties to the suit. There can be no doubt that, if before the appointment, the Court had been aware that the parties intended by a secret arrangement between themselves to control the conduct of the Receiver, the appointment would not have been made. It cannot be too clearly understood that a Receiver appointed by the Court has only just such power and authority to manage the property committed to his charge as the Court may choose to give him. He is a servant of the Court and not of the parties to the suit, and any interference with his management by a secret agreement, whether come to before or after the appointment, is nothing short of an interference with the Court in the management of the estate. The party so interfering renders himself liable to the penalties of contempt. The question however is, whether, under the circumstances, I ought to allow the fact that the Receiver has, without the knowledge of the Court,

entered into these agreements, to operate as a permanent disqualification. In the first place, when I indicated my views of these agreements, the parties at once expressed themselves willing to withdraw them, and have done so. That is a circumstance to which, I think, I ought to give due weight. Further, in the affidavits filed by the Receiver and by Surrut Coomaree, they both say in effect that they were not aware that, in entering into the agreements, they were doing anything improper, nor did they intend that the agreements should have the effect of interfering with the due discharge by the Receiver of his duties. In a letter written by Messrs. Remfry and Rose on behalf of Surrut Coomaree to Messrs. Carruthers and Co., acting as attorneys for Mr. Ryland, they say: "It is to be regretted that it did not occur to us, or to Mr. Ryland, to bring the agreement to the notice of the Court at the time." Now if it be that the impropriety of conduct of the parties in making these agreements was not present to the mind of Messrs. Remfry and Rose, who are attorneys of experience, it perhaps is not singular that it should not have occurred either to Mr. Ryland or to Surrut Coomaree that they were doing anything improper in making the agreements. They might well have thought that if there was any impropriety in their conduct, the attorneys acting in the matter would have been aware of it, and have warned them. However willing I may be to accept the assurances of Mr. Ryland and Surrut Coomaree that they were acting *bonâ fide* in becoming parties to the agreements, I am bound to say that I find it very difficult indeed to accept any such assurance on behalf of the attorneys. That they should have been unaware that there was anything improper in the agreements entered into by the parties with their assistance, is, I confess, as incomprehensible as it is inexcusable.

Accepting, then, Mr. Ryland's assurance that he was entirely unaware that he was doing anything contrary to or inconsistent with the proper discharge of his duties as Receiver, and looking to the fact, admitted on all hands, of his special fitness for the management of this estate, it seems to me that I shall be doing the best for the estate, if I abstain from removing him from the office of Receiver and permit him forthwith to take charge of the estate. That is the order I propose to make on this application.

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Mr. Garth applied on behalf of a corporation stated to have advanced money in pursuance of the scheme, to which I have referred. I said then that I thought he had no *locus standi*. I am still of that opinion.

As to the costs of this application, they certainly ought not to be borne by the estate. I shall make no order as to the Receiver's own costs, but as regards the costs of the plaintiff and of the Administrator-General, they must be paid by Surrut Coomaree, who proposed the original agreement and adhered to it until the hearing of the application, when it was withdrawn.

I feel bound to add, that if the attorneys in this matter had done their duty to the Court, as they ought, this application would not have been necessary, and the parties would not have been put to the costs occasioned thereby.

Attorney for the plaintiff: Babu Bhoopendra Nath Bose.

Attorney for the defendant,
 the Administrator-General
 of Bengal:

Mr. Swinhoe.

Attorneys for the defendant,
 Surrut Coomaree Dassee:

Messrs. Remfry & Rose.

Attorneys for the mortgagees,
 Messrs. Gillanders Arbuth-
 not and Co.:

Messrs. Sanderson & Co.

G. R. G.

APPELLATE CIVIL.

Before Mr. Justice Prinsep, Mr. Justice Ghose, and Mr. Justice Rampini.

TEJENDRO NARAIN SINGH (PLAINTIFF) v. BAKAI SINGH

AND OTHERS (DEFENDANTS). *

Contract Act (IX of 1872), section 74—Penalty—Suit by a joint proprietor for arrears of rent—Bengal Tenancy Act (VIII of 1885), section 29 (b), Kabuliat executed prior to—Covenant for a higher rate—Bengal Act VIII of 1869, section 5.

In a *kabuliat* executed in 1881, it was stipulated that, upon the expiry of the term of seven years fixed therein, a fresh lease should be executed; that,

* Appeal from Appellate Decree No. 2339 of 1893, against the decree of Babu Huro Gobind Mookerjee, Subordinate Judge of Bhagalpore, dated the 31st of August 1893, affirming the decree of Babu Uma Churn Kur, Munsif of Modhepura, dated the 4th of March 1893.