

Before Mr. Justice Rampini and Mr. Justice Pratt.

SOURINDRA MOHUN TAGORE (DEFENDANT) *v.* SIROMONI DEBI
AND OTHERS (PLAINTIFFS).^a

1900
August 9.

Parties—Substitution of Parties—Civil Procedure Code (Act XIV of 1882), ss. 372, 588 (21)—Devolution of interest pending suit—Chota Nagpore Encumbered Estates Act (VI of 1876), s. 16—Manager of encumbered estate—Owner—Appeal from order disallowing objections to substitution—Reports of cases.

The words "devolution of interest" in s. 372 of the Civil Procedure Code do not mean only devolution by *death*, but are applicable to a case in which, pending a suit instituted by the Manager of a Chota Nagpore encumbered estate, the estate is released from management and restored to the owners. It is open in such a case to persons alleging themselves to be owners of the estate, to apply to be made plaintiffs in the place of the Manager, under s. 372 of the Civil Procedure Code.

On an application for substitution made under s. 372 of the Civil Procedure Code, it was objected that the application could not be granted, but the Court overruled the objection and ordered the substitution applied for. *Held*, that the order for substitution was practically the same as an order disallowing objections, and that there was nothing in the terms of s. 588, cl. 21, of the Civil Procedure Code to prevent an appeal from that order.

The proper use to be made, by Courts, of Reports of cases, considered.

PARGANA AMBIKANAGGUR formed the zemindari property of one Nimai Churn Dhabal Deb. He borrowed money from the late Raja Ram Chunder Deo Dhabal Deb and mortgaged to him the said zemindari and executed in his favour an ijara pottah in respect of it, retaining some properties out of the zemindari in khas possession.

On the 6th October 1886, the properties of the late Raja Ram Chunder, including the said mortgage and ijara, came into the hands of one Bishnu Churn Kaviraj, Manager appointed under the provisions of the Chota Nagpore Encumbered Estates Act.

The zemindari right of the said Nimai Churn passed to Raja Sir Sourindra Mohun Tagore, by virtue of a purchase in the

^a Appeal from Original Order, No. 6 of 1900, against the order of Babu Triguna Prosonno Bose, Subordinate Judge of Bankura, dated the 26th of September 1899.

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name of his son. On the 10th April 1896, the said Raja took, with the sanction of the Commissioner and the Board of Revenue, a dar-ijara settlement of the zemindari.

The suit in the course of which the order appealed from was made was brought by the said Bishnu Churn Kaviraj as Manager of the Dhalbhoom encumbered estate, against the said Raja Sourindra Mohun, for arrears of rent due under the said dur-ijara settlement. The suit was instituted on the 15th April 1899.

On the 27th May 1899, the said estate was released from management under the Chota Nagpore Encumbered Estates Act, and an order was passed by the Deputy Commissioner directing one Raja Satrugan Dhal to take over-charge as proprietor of the estate.

On the 1st June 1899, when the suit was pending, Rani Churamoni Debi and Rani Padmabati Debi, widows of the late Raja Ram Chunder, prayed for the substitution of their names as plaintiffs in the suit in the place of the said Manager, Bishnu Churn Kaviraj, making the third widow, Rani Siromoni, who was not willing to become a plaintiff, a defendant in the suit. The third Rani subsequently applied to be made a co-plaintiff with the other Ranis. It was alleged that in suit No. 1 of 1899, brought by the said Rani Siromoni, it was held by the District Judge that Ambikanaggur was the property of the three Ranis and that they should get possession of the same after it was released from management.

The said Raja Satrugan Dhal also applied for substitution of his name as a plaintiff in the place of the said Manager, Bishnu Churn Kaviraj.

The defendant, Raja Sir Sourindra Mohun Tagore, objected that the prayer made by the Ranis for substitution of their names should not be granted, and that the suit could not proceed at the instance of any one of the parties claiming to be substituted as plaintiff. Amongst the grounds urged in support of the objection were (1) that the Privy Council having by an interlocutory order directed that the Dhalbhoom Estate should continue

to be under the management of the Manager appointed until the appeals pending before that Council were disposed of, none of the applicants had any right to represent the estate ; and (2) that Rani Siromoni having acquired, on the strength of a release, the rights of the two other Ranis in the property, and having after acquisition sold the whole property to him (the objector), the Ranis could not be substituted as plaintiffs.

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The Subordinate Judge overruled the objections, and ordered "that the Ranis be substituted plaintiffs in the place of the Manager who has given up management."

Against this order, the defendant, Raja Sourindra Mohun Tagore, appealed to the High Court.

1900, AUGUST 9. Dr. *Rashbehary Ghosh*, Babu *Lalmohan Das*, and Babu *Charu Chandra Ghose*, for the appellant.

Babu *Digamber Chatterjee*, and Babu *Joygopal Ghose*, for the respondents.

Babu *Digamber Chatterjee* took the preliminary objection that no appeal lay in this case. He referred to s. 588, cl. 21, of the Civil Procedure Code.

Dr. *Rashbehary Ghose* submitted that an appeal lay in the present case, as the order of the Court below substituting the Ranis was tantamount to an order disallowing objections under s. 372 of the Code.

As to the merits, he contended that the Subordinate Judge was wrong, inasmuch as the Manager having been discharged, the Ranis, or whoever wanted to come under s. 372 of the Code, must show that there was some "devolution of interest" to them. The words "devolution of interest" have a definite meaning, and it has been held in England that they apply to special cases, *e.g.*, where the interest has devolved by *death*. See the cases collected in the *Annual Practice*, 1899, Vol. 1, p. 216. [RAMPINI, J.—But we must interpret the words as we find them in the Civil Procedure Code.] Yes, but where the words in the Indian Code and in the English Statute are identical, the Courts in this country in the absence of any decided case on the point, may examine carefully the interpretation that has been put upon them in England. The Manager is only the agent of the

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party entitled, and as there has been no change in the ownership pending the suit, the order of the Court below under s. 372 of the Code was wrong. See *Wilkinson v. Gangaadhar Sirkar* (1). See also Kerr on *Receivers*, 4th Edition, pp. 156 and 157.

In the *second* place there was an order of their Lordships of the Privy Council directing the Manager to continue in the management; and *thirdly*, the appellant having purchased the interests of the Ranis, the suit could not proceed at their instance.

Babu *Digamber Chatterjee* was heard in reply.

1900, AUGUST 9. The judgment of the High Court (RAMPINI and PRATT, JJ.) was as follows :—

This is an appeal against an order of the Subordinate Judge of Bankura, dated the 26th of September 1899.

The facts of the case are these. A suit for arrears of rent was brought by one Bishnu Churn Kaviraj, the Manager of the Dhalbhoom encumbered estate, against the defendant, Raja Sir Sourindra Mohun Tagore. During the pendency of the suit the estate in question was released from the management of Babu Bishnu Churn Kaviraj and an order was passed by the Deputy Commissioner directing the proprietor of the property to take over charge of it. The question then arose as to who was to carry on the suit against Raja Sir Sourindra Mohun Tagore. The Ranis of Raja Ram Chunder Deo Dhabal Deb applied to be made plaintiffs under s. 372; and an order was passed to that effect by the Subordinate Judge.

The defendant, Raja Sourindra Mohun Tagore, now appeals to this Court and contends that the Subordinate Judge was not right in disallowing his objections to the substitution of the Ranis as plaintiffs in the suit.

A preliminary objection has been taken to the hearing of this appeal on the ground that there is no appeal from an order passed under s. 372 of the Code of Civil Procedure, and that the provisions of s. 588, cl. 21, Code of Civil Procedure, only allow an appeal against an order disallowing objections. That may be so. But we think that the order of the Subordinate Judge, disallowing the objection, is practically the same as his order substituting the Ranis as plaintiffs; and therefore we

(1) (1871) 6 B. L. R., 486.

do not think that the appellant is prevented from appealing to this Court by the somewhat ambiguous terms of cl. 21 of s. 588, Code of Civil Procedure.

Three pleas have been urged by the learned pleader for the appellant: (i) That the provisions of s. 372, Civil Procedure Code, are not applicable to the facts of this case; (ii) that there is a Privy Council order directing that the Manager of the Dhalbhoom encumbered estate should continue in the management of the estate; and (iii) that the Raja Sourindra Mohun Tagore purchased the interests of the three Ranis and therefore the suit cannot proceed at their instance.

As to the first of these contentions we would say that we think that the provisions of s. 372, Civil Procedure Code, are applicable to this case. It is true that there has been no assignment of interest. But it appears to us that there has been a devolution of interest pending the suit. Under the provisions of s. 16 of Act VI of 1876, so long as the property remains under the management of the Manager, the proprietors cannot sue or recover rents. The Manager only can do so; and now that the Manager has been removed, it seems to us that there has been a devolution of the right to realize and recover rents from the Manager to the proprietor of the estate.

The learned pleader for the respondent argues that words "devolution of interest" in s. 372, Civil Procedure Code, apply to devolution of interest by death, and he cites certain English cases to show that this is the interpretation put in England upon these words. But the Code of Civil Procedure does not prevail in England, and we must interpret its terms as best we may without reference to English cases. In our opinion the words "devolution of interest" in s. 372 are not used in a technical sense, because the latter part of the section speaks of such interest *coming* to a person "either in addition to or in substitution for the person from whom it has passed, as the case may require." From the use of the word "come" in the latter part of the section it would appear that the words "devolution of interest" in the first part of the section do not mean only devolution by death.

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Then, with regard to the second contention of the learned pleader for the appellant, it appears that the Subordinate Judge in his judgment says that their Lordships of the Privy Council have by an interlocutory order passed in the case of *Mohesh Chunder Dhal v. Satrughan Dhal* (1) directed that the Dhalbhoom estate should continue to be under the management of the Manager. But we do not think that we are entitled to refer to the *Calcutta Weekly Notes* for such an order, or to take cognizance of such an order as is said to have been passed in the report of the *Calcutta Weekly Notes*. No copy of any such order has been filed on the record, and we cannot act upon the order unless it is so filed. We are entitled to refer to reports of cases as precedents, but if an order is meant to be operative in a particular case, that order must be produced and filed in the record of that case.

Then, with regard to the appellant's third plea, it appears to us that the Subordinate Judge has only made the three Ranis provisional plaintiffs. For he has, subsequent to the order making the Ranis plaintiffs, framed three issues in the case which are to be found at page 20 of the paper-book of appeal from Original Order No. 348 of 1899. These are: "5th, whether Rani Siromoni has sold her rights to the zemindari to the defendant, and whether she is entitled to any one; 6th, whether the suit can proceed at the instance of the other two Ranis; 7th, whether the Ranis Padmabati and Churamoni have relinquished their rights to the zemindari in favour of Rani Siromoni, and whether the latter has sold the same to the defendant."

Now we do not understand that the Subordinate Judge has by his order meant to exclude the defendant from giving evidence in support of these issues, and certainly the order of the Subordinate Judge must not be considered as having that effect. These issues must be tried in the course of the trial; and should it appear that the interest of the three Ranis has passed to the defendant, their names must be removed from the category of plaintiffs; or if the interest of any one of the Ranis has passed to the defendant, her name must be removed therefrom. In the

(1) (1899) I. L. R., 27 Cal., 1; 3 O. W. N., cexevii.
L. R. 26 I. A., 381.

meanwhile, the order of the Subordinate Judge making the Ranis provisional plaintiffs appears correct.

This appeal, therefore, fails and we dismiss it with costs, which are to be divided equally between the two sets of respondents.

M. N. R.

Appeal dismissed.

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Before Mr. Justice Rampini and Mr. Justice Pratt.

NALINAKSHYA GHOSAL (PLAINTIFF) v. MAFAKSHAR HOSSAIN
AND OTHERS (DEFENDANTS).³

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August 8.

Appeal—Amendment of decree—Order amending a decree not in conformity with the judgment—Appeal from such an order—Decree—Review of judgment—Civil Procedure Code (Act XIV of 1882), ss. 206, 588, 622, 624.

There is no appeal from an order under s. 206 of the Code of Civil Procedure, amending a decree not in conformity with the judgment. The remedy, if any, in such a case would be by an application under s. 622 of the Code.

Kali Prosunno Basu v. Lal Mohun Guha (1) discussed. Joy Kishen Mookerjee v. Atanor Rohoman (2); Surtta v. Ganga (3); Abdul Hayai Khan v. Chunia Kuar (4); and Muhammad Sulaiman Khan v. Fatima (5) referred to.

THE plaintiff brought this suit in the Court of the Additional Munsif of Kalna for a declaration of his title to various plots of land to the extent of his shares as described in the plaint; for possession, after partition, of such plots as were partible; and for joint possession of such other plots as were impartible.

On the 17th of September 1891 the Additional Munsif passed his judgment in the suit, and a decree was framed, but not in conformity with the judgment, as found by the Courts below.

It appears that, according to the usual practice in these suits, the partition as decreed was effected in the execution proceedings.

* Appeals from Appellate Decrees Nos. 2549 and 2550 of 1898, against the decree of Babu Kedar Nath Mazumdar, Subordinate Judge of Burdwan, dated the 7th September 1898, affirming the decree of Babu Basanta Kumar Ghose, Munsif of Kalna, dated the 7th February 1898.

(1) (1897) I. L. R., 25 Calc., 258.

(2) (1880) I. L. R., 6 Calc., 22.

(3) (1885) I. L. R., 7 All., 875.

(4) (1886) I. L. R., 8 All., 377.

(5) (1889) I. L. R., 11 All., 314.