

**APPELLATE CIVIL.***Before Mr. Justice Cox and Mr. Justice Imam.*

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KESOBATI

*March 27.*

v.

MOHAN CHANDRA MANDAL.\*

*Ghatwali tenure—Attachment—Receiver, appointment of—Execution of decree.*

On an application for execution of a decree, although an order directing attachment of a ghatwali estate may be erroneous, an order appointing a Receiver to receive the rents and profits of such estate is sanctioned by authority.

*Udoy Kumari Ghatwalin v. Hari Ram Shaha* (1) referred to.

APPEAL by the defendant, Rani Kesobati.

This appeal arose out of an application for execution of a decree. One Mohan Chandra Mandal obtained a decree against the defendant Rani Kesobati, on a compromise, for a sum of Rs. 11,000. It was stipulated that the said sum would be payable in three instalments and on failure to pay any two consecutive instalments the decree-holder would be entitled to realize the entire amount due at the time of such default from the estate of the late Raja Udit Narayan Singh (deceased husband of the defendant) and from the defendant personally by executing the entire decree. There having been default in the payment of the first two instalments, the decree-holder applied in the Court of the Subordinate Judge of Dumka for execution of the decree for the entire amount. He prayed, that inasmuch as the immoveable properties (13 Taluks)

\* Appeal from order, No. 645 of 1911, against the order of the Subordinate Judge of Dumka, Sonthal Parganas, dated Dec. 1, 1911.

in the possession of the judgment-debtor Rani Kesobati were declared in another suit to be ghatwali, and as she had no other valuable properties from which the decree could be satisfied, the decretal amount be realized by the appointment of a Receiver of the said 13 Taluks. On a notice being issued on the judgment-debtor why a Receiver should not be appointed, she appeared and stated that she had arranged to raise a loan and prayed for an adjournment of 15 days to execute the necessary documents for the loan, to pay off the decree-holder. The learned Subordinate Judge by an order dated the 1st December 1911 rejected the application of the judgment-debtor, directed the properties to be attached, appointed the Deputy Commissioner, as Receiver, and issued directions to the *musta jirs* and raiyats not to pay rents to anybody other than the Deputy Commissioner or his duly constituted agents. The judgment-debtor was forbidden to make any collection till the attachment was withdrawn. Against this order the judgment-debtor appealed to the High Court.

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*Dr. Rashbehary Ghose (Babu Gunada Charan Sen with him)*, for the appellant. A ghatwali tenure being in the nature of a salary attached to a public office cannot be attached in execution of a decree: see section 60 of the Code of Civil Procedure, and section 62 cl. (f) of the Transfer of Property Act. It could neither be attached nor could a Receiver be appointed of the rents and profits of such tenure: see *Bally Dobey v. Ganei Deo* (1), *Sartuk Chunder Dey v. Bhugut Bharut Chunder Singh* (2), *Rajkeshwar Deo v. Bunshidhur Marwari* (3), *Nilmoni Singh Deo v. Bakra Nath Singh* (4) and *Binoderam v. The Deputy*

(1) (1882) I. L. R. 9 Calc. 388.

(3) (1896) I. L. R. 23 Calc. 873.

(2) (1853) S. D. A. 900.

(4) (1882) I. L. R. 9 Calc. 187, 207.

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*Commissioner of Sonthal Pergunnahs* (1). The tenure is not assignable nor are the rents and profits of it, so the Court is incompetent to appoint a Receiver : see *Knill v. Dumergui* (2), *Birch v. Birch* (3), *Lucas v. Harris* (4) and *Binoderam Sein v. The Deputy Commissioner of Sonthal Pergunnahs* (5). Remuneration paid to a public servant for discharge of duties is extra-commercial. The case of *Udoy Kumari Ghatwalin v. Hari Ram Shaha* (6) proceeded upon a wrong basis. If at all a Receiver can be appointed, it cannot be done without setting apart a fair remuneration for the ghatwal.

*Babu Mohendra Nath Roy* (*Babu Peary Mohan Sikdar* with him), for the respondent. The tenure attached is a Khurrugpur ghatwali tenure; such a tenure is attachable. The contention that a ghatwali tenure is not attachable, and as such a Receiver could not be appointed, was not raised in the Court below, and it ought not to be allowed to be raised now. The question raised is not a question of law, but is a pure question of fact. A ghatwali tenure is property within the meaning of section 51 of the Civil Procedure Code. The Court has power generally to appoint a Receiver of the property of the judgment-debtor. Under Order XL rule 1, a Court may appoint a Receiver of any property; it was not suggested by either side that a ghatwali tenure in the hands of a ghatwal is not property; that being so, a Court can appoint a Receiver with regard to such property. A Ghatwali tenure in Khurrugpur is liable to sale in execution of a decree. In the case of *Udoy Kumari Ghatwalin v. Hari Ram Shaha* (6), it was pointed out that an application for the appointment of a Receiver ought to have been made

(1) (1867) 7 W. R. 178, 179.

(2) [1911] 2 Ch. 199.

(3) (1883) 8 P. D. 163.

(4) (1886) 18 Q. B. D. 127.

(5) (1866) 6 W. R. 129.

(6) (1901) I. L. R. 28 Calc. 483.

in that case. The profits ought to have been regarded as personal property of the ghatwal; see *Rajkeshwar Deo v. Bunshidhur Marwari* (1). Section 60 of the Code of Civil Procedure no doubt provides that salaries of a particular description are not attachable, but it cannot therefore be asserted as a general rule that no salary can be attached.

*Babu Gunoda Charan Sen*, in reply.

*Cur. adv. vult.*

COXE AND IMAM JJ. This is an appeal against an order of the Subordinate Judge of Dumka allowing an attachment of the estate of the judgment-debtor and appointing a Receiver.

By a compromise between the parties in Appeal from Original Decree No. 467 of 1907, it was decreed that the decretal amount was to be paid to the decree-holder in three instalments and failure to pay any two consecutive instalments was to entitle the plaintiff decree-holder to realize the entire amount due at the time of such default by executing the entire decree, it being further stated in the petition of compromise that the decretal amount was realizable from the estate of the late Raja Udit Narain Sing (the deceased husband of the judgment-debtor) as well as from the defendant judgment-debtor personally.

There having been default in the payment of two consecutive instalments, the decree-holder applied for execution of his entire decree and prayed for realization of the decretal amount by the appointment of a Receiver for 13 Taluks mentioned in the schedule to the application. This application states as a ground for the realization of the decretal amount by means of a Receiver the fact that in another suit the 13 Taluks had

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been declared ghatwali. On this application the judgment-debtor was called upon to show cause why her estate should not be attached and placed under a Receiver. She appeared and applied for two weeks' time (which application was refused), and the whole of her estate, with some exceptions specified in the order, was attached and the Deputy Commissioner was appointed Receiver, the Court issuing directions to the *mustajirs* and raiyats not to make payments to anybody other than the Deputy Commissioner or his duly constituted agents. The judgment-debtor was forbidden to make any collections during the continuance of the attachment.

Though the order relates to two matters, *viz.*, attachment and the appointment of a Receiver, this appeal is in respect of the latter only. A preliminary objection that no appeal lay was raised on behalf of the respondent, but as it was not pressed we need not deal with it at any length. It will be sufficient for us to say that in our view an appeal does lie against the order of the Subordinate Judge.

Though in the grounds of appeal no exception has been taken to the attachment, the argument on behalf of the appellant addressed to us has been directed mainly to show that a ghatwali estate is not liable to attachment and sale in execution of a decree and we have been referred to the cases of *Nilmoni Singh Deo v. Bakranath Singh* (1), *Ram Chunder Singh v. Madho Kumari* (2), *Kustoora Kumaree v. Binoderam Sein* (3), *Binoderam v. The Deputy Commissioner of Sonthal Pergunnahs* (4), *Binoderam Sein v. The Deputy Commissioner of Sonthal Pergunnahs* (5), and *Udoj Kumari Ghatwalin v. Hari Ram Shaha* (6).

(1) (1882) I. L. R. 9 Calc. 187.

(2) 1885) I. L. R. 12 Calc. 484, 490.

(3) (1865) 4 W. R. Mis. 5.

(4) (1867) 7 W. R. 178.

(5) (1866) 6 W. R. 129.

(6) (1901) I. L. R. 28 Calc. 483.

On a consideration of these cases we are unable to say that they go so far as to lay down that the surplus rents and profits of ghatwali tenures cannot be attached in the lifetime of the ghatwal, though they do lay down that the estate itself cannot be attached. The case of *Kustoorā Koomaree v. Binoderam Sein* (1), is clear authority for the proposition that the surplus-proceeds of a ghatwali tenure collected during the lifetime of the judgment-debtor are his personal property and thus liable to be taken in execution. In *Surajmal Marwari v. Kristo Pershad Singh* (2), it was held that the income of a ghatwali property was not itself ghatwali property, and as such was liable to be sold. The appointment of a Receiver in this case is in entire accord with the view taken in the case of *Udoy Kumari Ghatwalin v. Hari Ram Shaha* (3), which like *Rajkeshwar Deo v. Bunsidhur Marwari* (4), came from the Sonthal Pergunnahs. It may be open to question whether a Receiver ought to be appointed to collect rents and profits that have not accrued at the time of the appointment, but we do not think that we ought in the present case to dissent from the decision in *Udoy Kumari Ghatwalin v. Hari Ram Shaha* (3). For all that we know to the contrary, rents and profits may have accrued prior to the appointment. Had there been merely a prohibitory order issued to the ghatwal not to receive any rents and profits from the raiyats and also to the raiyats not to pay their rents to the ghatwal without the appointment of a Receiver, the order might have been open to question, but the appointment of a Receiver to receive the rents and profits seems to us an order sanctioned by authority. The order for attachment of the estate may be

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(1) (1865) 4 W. R. Mis. 5.

(3) (1901) I. L. R. 28 Calc. 483.

(2) (1906) 10 C. W. N. cclx.

(4) (1896) I. L. R. 23 Calc. 873.

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erroneous, but as the practical effect of the appointment of the Receiver is merely to ensure that the rents and profits are properly dealt with, we do not think it necessary to interfere. We, therefore, in the view we take, dismiss this appeal, but in the circumstances we do not allow costs.

S. C. G.

*Appeal dismissed.*

### APPELLATE CIVIL.

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 April 2.

*Before Mr. Justice D. Chatterjee and Mr. Justice N. R. Chatterjea.*

RAIMONI DASSI

v.

MATHURA MOHAN DEY.\*

*Kabuliyat—Lease—Landlord and Tenant—Kabuliyat without pottah if constitutes a lease—Transfer of Property Act (IV of 1882) ss. 4, 105 and 107—Amending Act (III of 1885), s. 3—Registration Acts (III of 1877), s. 3, and (AVI of 1908), s. 2(7).*

A registered *kabuliyat* signed by the lessee and accepted by the lessor is sufficient to constitute a lease within the meaning of section 107 of the Transfer of Property Act.

*Akram Ali v. Durga Prasanna Roy Chowdhuri* (1) referred to.

*Nand Lal v. Hanuman Das* (2), *Kashi Gir v. Jogendro Nath Ghose* (3), *Sheo Karan Singh v. Maharaja Parbhu Narain Singh* (4), *Turof Sahib v. Esuf Sahib* (5), *Kaki Subbanadri v. Muthu Rangayya* (6) discussed.

*Syed Ajam Sahib v. Madura Sree Meenatchi Sundareswarar Devasthanam* (7) approved.

*Nilmamud Sarkar v. Boul Das* (8) distinguished.

\* Appeal from Appellate Decree, No. 1411 of 1909, against the decree of J. E. Phillimore, District Judge of Sylhet, dated March 16, 1909, confirming the decree of Adaitya Chandra Chakravarti, Subordinate Judge of Sylhet, dated Oct. 5 1907.

(1) (1910) 14 C. L. J. 614.

(2) (1904) I. L. R. 26 All. 368.

(3) (1904) I. L. R. 27 All. 136.

(4) (1909) I. L. R. 31 All. 276.

(5) (1907) I. L. R. 30 Mad. 322.

(6) (1909) I. L. R. 32 Mad. 532.

(7) (1910) 21 Mad. L. J. 202.

(8) (1909) 14 C. W. N. 73.