

In Re: Pirojshaw Adarji Shroff

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Court : Mumbai

Decided On : Aug-03-1945

Reported in : (1946)48BOMLR640

Judge : Blagden, J.

Appeal No. : O.C.J. Miscellaneous No. 137 of 1945

Appellant : In Re: Pirojshaw Adarji Shroff

Judgement :

Blagden, J.

1. This is a petition by a Mr. P. A. Shroff made to the Court under very extraordinary circumstances. The petitioner is one of four coowners in certain mortgaged property, which is in a bad state of repair. The amount outstanding on the mortgage is at the moment Rs. 12,000; or thereabouts. A chance has arisen to dispose of the property for Rs. 45,000, which is strongly recommended by a competent architect, and appears to me obviously in the interests of the co-owners. The remaining co-owners are the petitioner, his sister, Mr. Byramji A. Shroff and Mr. J. A. Shroff. Of the two latter, the first named has been adjudged a lunatic by this Court, and the proposed sale has been sanctioned by this Court on his behalf. The present difficulty arises in relation to Mr. J. A. Shroff who, it seems, left Bombay for China about twenty-eight years ago and was last heard of in 1939, when a letter was received, purporting to come from him and to have been written

from China, which showed (if it was genuine) that he was then alive and well. Less than seven years have elapsed from that date, and there is therefore no ground for presuming him to be dead, particularly having regard to the history of the last six years. The petitioner asks the Court to appoint a proper person to look after his affairs with authority to join in the proposed sale. Mr. Boovarivala for the petitioner contends that the Court has power to do that under Section 151 of the Civil Procedure Code, for, he says, it is contrary to the ends of justice that a man, merely by disappearing, should be able to fetter the hands of his co-owners of property when they want to make a beneficial and obviously prudent disposition of that property. Therefore, he says, it is 'necessary for the ends of justice' that the Court should make some such order as that which he asks for. If there were no authority on the matter, I should, myself, have thought that that was right. Actually, there is some authority, though very little. In an unreported case in this Court Mr. Justice Mirza made an order such as I am now asked to make, but in another Mr. Justice Kania refused to make one, being apparently of the opinion that there was no such jurisdiction. It does not appear, however, that the latter's attention was called, as mine has been called, to the judgment in *Lola Gobind Prasad v. Lola Jugdip Sahay* I.L.R (1924) Pat. 378. There, Mr. Justice Bucknill, with whom Mr. Justice Ross agreed, observed, with regard to cases such as the present, as follows (p. 385) :.It seems to me that there are two possible alternative, courses, which might be utilized one might be that if the circumstances were such as would justify, a prudent person in coming to the conclusion that death was extremely probable, an application might be made to the proper Court upon affidavit showing the circumstances and asking leave to presume the death; or, in the alternative, if the Court did not think that the evidence produced before it was sufficient upon which it could prudently be said that death could be presumed, then in such cases the Court could and should appoint some person to look after the affairs of the individual who had disappeared until his return or until his death can properly be presumed. Those two courses- and I have known both adopted-seem to me to be remedies 'for or rather solutions of the very practical difficulty which has arisen in this case.

It, is true that these observations were not necessary to their Lordships' decision, but I am sure that if 'Mr. Justice Kania had known of them and disagreed with

them, he would have indicated his reasons: and I cannot help noticing that Mr. Justice Bucknill, a Judge of great experience of the law in two countries, said that he himself had known the latter of the two courses to be adopted. I am not sure if he was alluding to India or to England; or to both countries: but what is necessary to the ends of justice in one country can hardly, be the opposite in the other. In these circumstances I am prepared to follow the precedent of Mr. Justice Mirza, as against that of Mr. Justice Kania, and to hold that there is jurisdiction in the extraordinary circumstances of the present case to make an order such as is asked for. The order, therefore, would be that the petitioner be appointed manager, without security, of the undivided one-fourth share of Mr. J. A. Shroff in the property agreed to be sold, with power to join in the proposed sale of the property and to execute all deeds or other instruments necessary for the purpose, on the terms that the amount of the net purchase money coming to the share of J. A. Shroff be paid to the Accountant General, High Court, Bombay with directions to invest the same in three and a half per cent, non-terminable Government Promissory Notes and hold the same, and the accumulated interest due thereon, until further orders of this Honourable Court, I further sanction the agreement for sale and declare the same to be in the interests of J. A. Shroff and for his benefit. Costs, of this application, fixed at Rs. 200, to come out of the share of Mr. J. A. Shroff, before paying the same over to the Accountant General.

2. The attorneys of the petitioner undertake to send the net balance of Mr. J. A. Shroff's share to the Accountant General.

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