

Puhan Mal and ors. Vs. Janki Pershad Singh and anr.

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Court : Kolkata

Decided On : Jul-22-1901

Reported in : (1901)ILR28Cal680

Judge : Rampini and ;Gupta, JJ.

Appellant : Puhan Mal and ors.

Respondent : Janki Pershad Singh and anr.

Judgement :

1. This is an appeal against certain proceedings of the District Judge of Gya, which have been characterized and very correctly characterized as being of a somewhat unusual nature.

2. It appears that on the 6th of January, 1900, an application was made by certain ladies, who were members of a joint Hindoo family, for the appointment of a guardian of their minor children. The husbands of these ladies were living. There was no allegation of the children having separate property, and the District Judge, after considering the matter, recorded an order that he did not see how the Guardian and Wards Act could apply, and accordingly no order under the Guardian and Wards Act was made. Subsequently, on the 17th of the same month, the Judge recorded an order to the effect that the whole estate having come under the management of the Court, owing to joint petitions from the owners and the guardians of the minor sharers, the Nazir of the Court was authorized to

raise any sum ' that might be required to pay off certificates, etc., on the security of the whole estate.' The learned Judge also directed that rubokaris should issue to the Collector and all the Subordinate Courts. A further order was recorded on the 22nd of the same month to the effect that nothing further would be done for the major Pandooi Babus, until they signed a document that the estate was to remain under the Court, till the minors came of age. On the same date Munder Lai who, we understand, is the Nazir of the Judge's Court, was appointed receiver for three months. On the ,23rd of January, 1900 Janki Pershad Singh and Ram Raohhiya Singh filed an application stating that they agree to the estate remaining under the management of the Court. Then, on the order sheet, we find further orders of the 25th of January and the 31st of January 1900 acknowledging the receipt of letters from the Soubordinate Judge, 2nd Court, informing the District Judge that certain proceedings in the Pandooi estate cases had been stayed.

3. The applicants before us are the judgment-creditors in the execution case, and the opposite parties are Janki Pershad Singh and Ram Rachhiya Singh, judgment-debtors, under the decree obtained by the applicants against them. The applicants complain that the effect of the Judge's order is to take over the management of the property under no law or procedure whatever, and to put the state of these gentlemen entirely beyond their power, when they wish to execute their decree against them.

4. The appellants at the same time have made an application to this Court under Section 622, Civil Procedure Code, to the same effect, in case it should be held that no appeal lies; and by an order, dated the 19th April, 1900, it was directed that this application should be brought up for hearing along with the appeal.

5. We think there can be no doubt that the proceedings of the District Judge are entirely without jurisdiction. The learned pleader for the judgment-debtors, Janki Pershad Singh and Ram Rachhiya Singh, cannot show us any law, or any authority whatever, upon which the proceedings of the District Judge can be justified. The learned Judge seems to have acted entirely upon what he supposed to be his inherent powers, and has taken over the management of the debtor's property in a way which places their property entirely beyond the reach of the

judgment-creditors. The only answer which the learned pleader for the respondents can give in this case is that the judgment-creditors have no locus standi here. It may be that no regular appeal lies to this Court from the orders of the District Judge for the very good reason that the legislature contemplated no such proceedings as those of the District Judge. But we think that the appellants have a locus standi under Section 622, Civil Procedure Code, and, even if they have no such locus standi under the terms of the section, we can deal with the case ourselves without there being any application before us. And we are confirmed in this view by the decision in the case of *Golam Mahammad v. Saroda Mohan Maitra* (1900) 4 C.W.N. 695.

7. In these circumstances we feel bound to set aside the whole of the orders of the District Judge. The learned Judge had no authority whatever to take over the property of the judgment-debtors in this case, even with the consent of the parties, and he must release these properties, set aside all orders appointing any person to take the management of them, and leave the judgment-debtors to manage their own affairs as they think best, or may be advised.

8. We accordingly dismiss the appeal and allow the application under Section 622, with costs.