Dharendra Krishna Deb and ors. Vs. Surendra Krishna Nandi and ors.

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Court : Kolkata

Decided On : Dec-18-1929

Reported in : AIR1930Cal610,129Ind.Cas.609

Appellant : Dharendra Krishna Deb and ors.

Respondent : Surendra Krishna Nandi and ors.

Judgement :

1. This appeal has been preferred from an order refusing to appoint a receiver.

2. The suit in connexion with which the application for appointment of a receiver was made was one for recovery of arrears of rent and cesses with a prayer for ejectment under Section 66, Clause (2), Ben. Ten. Act. The claim was for the years 1333 and 1334 B. S., on the basis of an ijara patta granted to defendant 1 in July 1927 for a period of six years from 1333 to 1338 B.S. The rent stipulated for in the ijara patta was Rs. 29,000 odd. The suit was instituted en 14th May 1928. The claim was laid at Rs. 50,000 odd after giving the defendants credit for Rs. 20,000 which they had paid.

3. Defendant 1 alleged that he was not liable for the entire amount as he was hampered in making collections on account of the fact that the plaintiffs themselves had not got their patta from the Official Receiver before 3rd January 1928 and within a few months thereof they instituted the suit. In opposing the application for appointment of receiver he further alleged that he had hypothecated

as security for the ijara rent properties to the value of Rs. 45,000 and shares in zamindaris to the value of Rs. 5,000.

4. The value of the security is disputed on the side of the plaintiffs-appellants and they rely a good deal upon the fact which they alleged and was not controverted on the side of the defendants that the latter had made collections to the extent of Rs. 3,400 and had kept the money to themselves. The plains tiffs further say that rents for subsequent years have also remained unpaid and that they themselves have got to pay a very large sum of money to the Official Receiver every year.

5. Now there is an initial difficulty in the appellants way. There is some doubt as to whether Section 66, Clause (2), Ben. Ten. Act, will be applicable to the case. But then assuming that it would have applied their pleader appears to have stated in the Court below that the prayer for khas possession was not being pressed by them. We have been asked to read this admission as being limited to the forfeiture clause in the lease and not to the prayer for khas possession under Section 66, Clause (2), Ben. Ten. Act, made in the plaint. But as the admission referred to the first ground in the plaintiffs' affidavit filed on 8th May 1928, we are extremely doubtful as to whether this limited meaning can be given to the admission. If there is still a prayer under Section 66, Clause (2), Ben. Ten. Act, the Court would be competent to entertain an application for the appointment of a receiver on the analogy of the decision in the case of Kartic Nath Panday v. Padmanund Singh [1885] 11 Cal. 496. If however that prayer has really been given up an application for a receiver will scarcely lie. The words 'just and convenient' have been taken from the Judicature Act, 1873 where the words are 'just or convenient.' The latter expression has been held to mean 'just and convenient' and it has been held that they do not mean that the Court is to appoint a receiver simply because the Court thinks it convenient, but that they mean that the Court should make the appointment for protection of rights or prevention or injury according to legal principles. A simple contract creditor who has no specified charge or no right to be paid out of a specified fund cannot in general ask for the appointment of a receiver. In Owen v. Heman [1853] 4 H.L.C. 997, at p. 1036, the Lord Chancellor observed:

The plaintiffs here do not claim as specific appointees of any part of the defendants separate estate. They are merely in the naturee of general creditors seeking to obtain payment by a sort of equitable action of assumpsit or debt. In such a case it is a strong exercise of authority to deprive the defendant, on motion, of property on which the plaintiffs have no specific claim in order that if they establish their claim as creditors there may be assets wherewith to satisfy them.

6. It has been also said:

that slowness or inadequacy of the legal re-medies open to general creditors who have no lien on the defendants property are not considerations that can move a Court of equity, in the absence of statutory authority, to inter-vane in their behalf, with the instrumentality of a receiver, to preserve the debtors' property : Pomeroy's Equity Jurisprudence, Vol. 4, para. 1533.

7. There is thus a preponderance of authority so far as decisions of English and American Courts are concerned in support of the view that in the absence of statutory provisions to the contrary a general contract creditor before judgment is not entitled to a receiver against his debtor upon whose property he has acquired no lien. Under Order 40, Rule 1, Civil P.C., also the same view appears to have been taken, and it was only when an appointment was validly made on the ground that the property was the subject-matter of the suit that it was allowed by the appellate Court to continue as a means of realizing the amount decreed against the judgment-debtor personally : Ramasami Naik v. Ramasami Chetty [1907] 30 Mad. 255.

8. We have also considered the merits and we find ourselves in agreement with the Court below in its view that a proper case for the appointment of a receiver has not been made out, the more especially as the defence to the claim does not appear to be so frivolous as to require no investigation and as the default of the defendant for the period subsequent to the suit has no very great bearing on the question. On the materials before us, we are not satisfied that circumstances exist in this case creating an equity on which alone the jurisdiction to appoint a receiver arises. The appeal is dismissed with costs three gold mohurs. The application is dismissed.