

*Judgment on the Petition of Mohesh Chandra Dhal in the Matter of an Appeal of Mohesh Chandra Dhal v. Satrugan Dhal and Others, from the High Court of Judicature at Fort William in Bengal; delivered the 8th July 1899.*

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Present at the Hearing :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The object of this application is the protection of property pending an appeal. The petitioner is suing to establish his title to land as heir of one Ramchandra Dhal. His suit has been dismissed by the Subordinate Judge on the ground that Satrugan Dhal, a Respondent, is the preferential heir, and that decree has been affirmed by the High Court. Special leave to appeal against the decree of the High Court was granted on the 18th July 1898.

The Appellant now states that the estate of Ramchandra has been in the possession of a manager under the Encumbered Estates Act, and that the debts have been cleared off, and that a balance of Rs. 30,000 is in the manager's hands. He further states that Satrugan Dhal is a man of no means. He applied to the High Court to order that the manager should remain

in possession, which they refused on the broad ground that the Code gives them no jurisdiction over the subject-matter pending an appeal not certified by themselves.

The petition asks the Queen in Council to reverse the order of the High Court, or to direct the High Court to deal with the case, or to give other relief.

Their Lordships cannot direct the High Court to act where they have no jurisdiction, and they are not prepared to differ from the High Court on the question whether or no they have jurisdiction, without hearing full argument on the point. They are at present disposed to agree that the jurisdiction does not exist; and though it may be very anomalous that property should be left without the possibility of interim protection pending an appeal granted by special leave, the case is one of great rarity, and not unlikely to have escaped the notice of the framers of the Code.

It is clearly quite impracticable, nor does the petition ask, that the Queen in Council should directly interfere to continue the Manager, or to appoint a Receiver. Interference has been effected here in cases where the Courts below had jurisdiction over the subject-matter and an intimation to them would be effective; or where, the Appellant being in possession, a stay of proceedings would keep the position of things intact. At the bar Mr. Mayne asked for a stay of proceedings in this case; and their Lordships are disposed to accede to his suggestion, because it is highly inconvenient that there should not be any interim protection at all pending such an appeal as this, and because, while such a stay of proceedings can hardly be productive of injury to absent parties, the Petitioner's Counsel is sanguine that it may afford the requisite protection.

Their Lordships will humbly advise Her Majesty to grant an order staying proceedings, but the Petitioner must be answerable in damages, and any aggrieved Respondent must have leave to move for discharge of the order.

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