

Privy Council Appeal No. 5 of 1923.

Patna Appeal No. 20 of 1921.

Maharajadhiraj Sir Rameshwar Singh Bahadur - - - *Appellant*

v.

Hitendra Singh and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 26TH JUNE, 1924.

Present at the Hearing :

LORD SHAW.

LORD BLANESBURGH.

MR. AMEER ALL.

[*Delivered by* LORD SHAW.]

This is an appeal from a judgment and decree of the High Court of Judicature at Patna, dated the 19th November, 1920. It reversed a judgment and order of the Subordinate Judge of Darbhanga dated 16th June, 1919. Their Lordships refer to the judgment of the Board just announced in the case between the same parties, namely the Maharaja as judgment creditor, and the Receiver of the property and the judgment debtors.

A Receiver was appointed in 1910 as a Receiver upon the entire estate of the judgment debtors. It is not disputed that this estate included, and still includes, the mortgaged property of Jai Nagar which is in question in this case. Jai Nagar was expressly and by name included in the scheduled properties falling within the order for receivership. Under transactions, upon which it is not necessary to enter, the appellant possessed the property, under an arrangement that he should be debited with the sum of 1,600 rupees per annum in respect thereof. The

arrangement appears for a period of years to have been not to the disadvantage of the estate. Of late years, however, the rental of the property has exceeded the 1,600 rupees and, in or about the year 1918-1919, amounted to over 2,700 rupees per annum.

In these circumstances the Receiver brought his suit before the Subordinate Judge of Darbhanga, claiming :—

“ 1. That the decree-holder may be directed to render an account of all his collections of the said mauza from the date of the decree to the present date.

“ 2. That the decree-holder may be directed to give up and make over possession of the said mauza to the Receiver with such amount as the decree-holder may be liable to pay to the judgment debtors with interest at 12 per cent. per annum.”

The question of accounts will be afterwards dealt with. The immediate question is whether the appellant “do make over to the Receiver khas possession of the judgment debtor’s share of Mauza Jai Nagore.” The case has been carefully considered by the High Court and their Lordships see no reason to differ from these paragraphs of the judgment :—

“ The decree which he (*i.e.*, Appellant decree-holder) got was the usual mortgage decree contemplated by Order XXXIV, Rule 4, and whatever rights he may have had under the transaction he must be deemed to have given up these rights, once he asked for and obtained a decree for sale in respect of the property in question. That being so, have the judgment debtors a present right to remove the decree-holder from the possession of the property in question? In my view they have, because there is a prior order passed by a Court of competent jurisdiction appointing a Receiver and asking the Receiver to take charge of all the properties comprised in the mortgage. That order was final between the parties, and it was not open to the learned Subordinate Judge to ignore or disregard that order. . . .

“ No doubt there was an arrangement by which the decree-holder remained in possession of the properties and applied the income towards part satisfaction of the debt due to him. Subsequently a Receiver was appointed, who is a person to guard the interest of all the parties concerned, and that Receiver was specifically directed to take charge of all the properties. In my view there cannot be any doubt whatever that the Receiver ought to be directed to take charge of the property in question, especially as it is suggested by Mr. K. B. Dutt, on behalf of the judgment debtors, that property has an income of Rs. 2,711-15-0.”

The result will be that the Receiver will in future administer and manage this mauza as part of the estate under his charge. And it may be that, looking *inter alia* to the prolonged difficulty with the appellant the respondent may in the circumstances exercise his power of sale of this mauza—such a power resting with him in accordance with the judgment just pronounced in the other appeal.

With regard to the accounting, in respect of the returns from the mauza, the learned Counsel for the Receiver stated to the Board on behalf of the Receiver that he was willing that the years prior to the institution of the suit during which the appellant was in possession under an arrangement for an annual debit of 1,600 rupees—

those years should not be gone back upon. It was further explained that a statement made by the appellant in his petition of objection of 14th December, 1918, was correct :—“ 4. Although previously orders for the deduction of 1600 rupees from the decretal money were passed by this Court in suit No. 62 of 1911, and No. 67 of 1914, it was due to an oversight as the decision of the Subordinate Judge of Muzaffarpur was lost sight of. The petitioners cannot take advantage of that mistake and this petitioner, the opposite party (that is to say the present appellant), has no objection to the deduction of Rs. 1471-3-5. It is, therefore, prayed that the petition filed by the petitioners for an annual deduction of 1600 rupees be disallowed and that Rs. 1471-3-5 only be ordered to be set off annually (against the decretal money).” In their Lordships’ view it is proper that this correction should be given effect to.

In the matter of accounting it may be sufficient to satisfy the justice of the case that accounts be ordered upon the footing, first that the Receiver do obtain khas possession of this mauza from the appellant, and in the accounts he be credited by the appellant with Rs. 1471-3-5 per annum as due for the appellant’s possession up to 19th November, 1920, being the date of the decree of the High Court. Thereafter the accounts will embrace the entire receipts.

With this variation their Lordships will humbly advise His Majesty that that decree be affirmed with costs.

In the Privy Council.

MAHARAJADHIRAJ SIR RAMESHWAR
SINGH BAHADUR

o.

HITENDRA SINGH AND OTHERS.

DELIVERED BY LORD SHAW.

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