

CALCUTTA HIGH COURT

Krista Chandra Ghose

Vs

Krista Sakha Ghose

(Woodroffe, J.)

22.06.1908

ORDER

Woodroffe, J.

1. The Advocate General appears on behalf of the lessee Rajah Benoy Krista Deb, to whom the Receiver has leased the property, the subject of this application, and takes a preliminary objection that this application cannot be entertained and that the lease having been already executed, no summary order can be passed such as is asked for here. On the other hand, reliance is placed upon cases, in which the parties were allowed to appear pro interesse suo; but these cases do not apply, because there the question arose on the application of third parties aggrieved by the Court's action through its Receiver, and the Court grants such an application by reason of the control it necessarily has over its Receiver's action. This is not a case of that kind. I am not asked in this matter to control the action of the Receiver, because Receiver has already done that which is complained of and has conveyed the property into the hands of the lessee, a third party, to whom the Receiver, under the order giving him authority to do so, granted a lease, which has been completed and under which possession has been given. Admittedly, in this case, the lessee is also a party to the suit; but though he is subject to the jurisdiction of the Court as a party, he is not subject to its jurisdiction as lessee. This is not a case in which the matter rests on an agreement, which has not been carried out, and in which the Court may interfere to prevent its Receiver giving effect to the proposed agreement. This is a case, in which the matter has passed out of the stage of agreement, and has resulted in a conveyance of the property to the lessee. As long as that lease stands, the property must be taken to be in the lessee, and I do not think that I can, on this application, set aside that lease.

2. The course open to the applicant appears to me to be by proceeding by suit against the Receiver, and also, if it is alleged that the lease was granted and obtained by collusion, against the lessee. In the case cited, Surendro Keshub Roy v. Doorgasoondery Dossee 15 C. 253 the Court was asked to control the action of the Receiver and to enforce the applicant's right to have a lease, for which a contract had been entered into; and in the English cases therein cited, the matter still rested on contract and an order was made directing enquiry as to damages against the lessee, who had repudiated the contract, and in the other case, the Receiver had parted with

money without the authority of the Court and so the Court's money was ordered to be paid back. But here, unless the lease is set aside, the interest is not that of the Court, or of the parties, but of the lessee.

3. Under these circumstances, the application appears to me to be not entertainable and must be dismissed.

4. I need only add, had the preliminary point not prevailed, I should have been disposed to grant the adjournment asked for by Mr. Chaudhuri and by Mr. Chakravarti in order to put in further affidavits.

5. The second part of the application was heard on June 22, 1908.

Judgment

6. This is a part of an application, which I dealt with on the 8th June 1908. On that date I dealt with the question then raised, as to whether the lease granted by the Receiver to Raja Benoy Krista Deb Bahadur should not be set aside, which I then decided in the negative. Another part of the application asks that the Receiver may be directed to realise all sums due for interest from the lessee or he do personally make good the losses sustained by the estate. As regards this application, a distinction must be drawn between the present and the last lease. As regards the present lease, it is clear, if the parties insist on it or any of them, that the terms of the lease must be strictly enforced, and, if the rent is in arrears, the lessee must pay interest; but on the other hand, the lessee is not bound to pay anything under the lease before it is due. Then the question arises as to the late lease, whether an order can be made as to the interest on the arrears of rent, which it is said amounts to a large sum of money, nearly Rs. 9,000, and which should, it is said, have been recovered by the Receiver from the lessee. There appear to me to be two objections to this part of the application. No order can be made against the lessee on the present application. If it can, it is said, the lessee holds a discharge from the Receiver for all the rent under the late lease. However that may be, it is sufficient to say, no order can be made against the Rajah on this application. Then, if the applicant has any remedy against the Receiver in respect of these moneys, the matter cannot be gone into on this application. It is a matter touching the Receiver's accounts. In so far as the Receiver's accounts have been passed, the matter may be taken to be concluded. So far as the accounts have not been passed, it is open to the parties to raise the question on the passing of the accounts. The answer of the Receiver as to the payment of interest on arrears of rent not being insisted on is given in the 4th paragraph of his affidavit sworn on the 11th June 1908, in which he states that the parties agreed to waive interest on arrears of rent, because the lessees agreed to pay a monthly allowance of Rs. 3,000 in advance and Rs. 3,000 before the closing of the Court offices for the pujahs and this agreement was in consideration of the interest in respect of each instalment of rent not being insisted upon. As I have said, I desire to express no opinion on the merits of these contentions, because, in so far as they are against the lessee, they cannot be gone into in these proceedings; and as against the Receiver, they must be raised (if at all) on the passing of the Receiver's accounts and the Court can then determine, whether the matter can then be gone into or whether it is one, as to which the parties must file a suit against the Receiver. I express no opinion on the merits. The result is the application is dismissed with costs.

