

Privy Council Appeal No. 49 of 1927.

Bengal Appeals Nos. 2 and 3 of 1926.

Benoy Krishna Mukherjee and others - - - - *Appellants*

v.

Satish Chandra Giri and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 15TH DECEMBER, 1927.

Present at the Hearing :

VISCOUNT SUMNER.

LORD ATKINSON.

LORD SINHA.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* VISCOUNT SUMNER.]

This is an appeal from three consolidated orders of the High Court, Calcutta, which varied orders of the District Judge of Hooghly by discharging so much of them as ordered a receiver to be appointed *pendente lite* of certain properties in dispute included in "Class C." The suit had been brought against the Mohunt of the Temple of Tarakeswar, alleging his unfitness for his office, and praying for his removal, and for a declaration that certain lands, claimed to be his as *nij* lands, were truly debottar lands belonging to the Temple, with other relief. The District Judge made interlocutory orders for a receiver of three classes of property. Those as to which his receivership order was discharged had been in the Mohunt's possession and enjoyment for a considerable number of years, and were alleged by him in some cases to have passed to him under the will of his predecessor, who had acquired them as his *nij* property, and in others to have been purchased by himself out of personal offerings made to him by pilgrims and

others in recognition of acts of service to them. The suit, so far as their Lordships have been informed, though its prosecution has been unaccountably delayed, is still awaiting trial.

On an interim application for a receivership such as this, the Court has to consider whether special interference with the possession of a defendant is required, there being a well-founded fear that the property in question will be dissipated, or that other irreparable mischief may be done unless the Court gives its protection. Such an order is discretionary, and the discretion is, in the first instance, that of the Court in which the suit itself is pending. When, as in this case, the order of that Court is altered on appeal it becomes necessary to consider whether the Court below had before it the evidence required to support such an order and considered it in accordance with the principles on which judicial discretion must be exercised. If the Court of review rightly concludes that proper discretion was not used below, it is free to exercise its own discretion in the matter.

There were undoubtedly in this case allegations, supported to some extent by the evidence which was given before the Trial Judge, that in various ways there was danger of loss or injury to the properties in question, if they remained in the unrestricted control of the Mohunt. He was alleged to have abandoned his office, leaving the Temple and the properties in question without proper direction and management; to have exposed the lands to sale by neglecting to pay the rents when due, and to have entered into an improper bargain, by which the claims made against him in the action were to be compromised. On all these subjects a denial of the charges was given on his side and was supported by evidence.

It is obviously undesirable that their Lordships should say anything at this stage, which could be quoted hereafter so as to prejudice either side at the trial in any way, and as it is impossible to discuss in detail the evidence which was given on these interlocutory applications, or to criticise closely the inferences and the observations of the Trial Judge, without running some risk of a misapplication hereafter of what may be said now, which would be contrary to their Lordships' meaning and desire, they think it best merely to say that, after fully considering the materials to be found in the record, they agree with the High Court's conclusions. They think that in some respects the learned Trial Judge failed to observe points in the evidence which assisted the Mohunt, and that generally he was disposed to take a more severe view of the Mohunt's past and present conduct and of the prospect that in the future he might dissipate the property than was warranted by the materials before him. There had been a good deal of popular excitement and some disturbance of order in connection with state of the Temple worship, and this led to absences of the Mohunt from active performance of his functions and to the attempted compromise, which came to nothing because, being conditional on the approval of the Court, it failed to secure that

approval. In the result the learned Trial Judge made the order appointing a receiver over all the properties, which in the case of the "C class" was not altogether within the principles of a judicial exercise of discretion. The High Court, in their Lordships' opinion, rightly exercised their functions in refusing to affirm the order made as to this class, and in discharging the receivership accordingly. This appeal must therefore fail.

Their Lordships remark that it was with some doubt in the mind of at least one of the judges of the High Court that leave to appeal to His Majesty in Council was given in this case, and they think it right to add that, as a general rule and in the absence of special circumstances or some unusual occasion for its exercise, the power of making interlocutory orders is one which is not a suitable subject for review. Not only are the practice of the Court and the manner in which experience has shown that it is wise to apply it, better known to the High Courts in India than they can be to their Lordships, but the delay occasioned by taking this additional appeal adds gravely to the procrastination, which is already the bane of Indian litigation.

Their Lordships will therefore humbly advise His Majesty that this appeal ought to be dismissed with costs.

In the Privy Council.

BENOY KRISHNA MUKHERJEE AND OTHERS

vs.

SATISH CHANDRA GIRI AND OTHERS.

DELIVERED BY VISCOUNT SUMNER.

Printed by

Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1927.