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JETHABHAI NARSEY v. CHAPSEY COOVERJI.

jurisdiction to do what justice requires for the parties before it. That plea cannot be urged in order to extend the jurisdiction of the Court, but to meet the objection often raised that in matters within the jurisdiction the Court can only exercise such powers as are expressly given by the legislature and no others.

On the foregoing grounds, then, and with very sincere respect for the learned trying Judge and his exhaustive treatment of the suit as it was presented to him, we have felt compelled to adopt a different view as to the rights of the parties in this case.

We reverse the decree under appeal, and order that the suit be dismissed with costs throughout.

Decree reversed.

Attorneys for the appellant: Messrs. *Wadia, Gandhy & Co.*

Attorneys for the respondent: Messrs. *Matubhai, Jamietram and Madan.*

K. McI. K.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

1909. *August* 28

A. HAJI ISMAIL & Co., PLAINTIFFS, *v.* RABIABAI AND ANOTHER, DEFENDANTS.*

Practice—Dissolution of partnership—Assets in hands of receiver—Judgment creditor—Charging order—Solicitors' lien for costs.

The rule at common law that a solicitor is entitled to a lien for his costs on property recovered or preserved by his exertions has always been followed by this Court; and, where there are assets of a partnership in the hands of a receiver appointed in a partnership suit, the solicitors engaged in that suit are entitled to ask for a charge on those assets in priority to the creditors of the partnership.

Ridd v. *Thorne* (1), followed.

Where a plaintiff has obtained a decree against a partnership firm, the available assets of which are in the hands of a receiver appointed in a previous

* Original Suit No. 523 of 1907.

(1) (1902) 2 Ch. 344.

partnership suit, his proper course is not to issue execution against those assets, but to ask the Court for a charging order, and to undertake to deal with the charge according to the order of the Court.

Kewney v. *Attrill* (1), followed.

PROCEEDINGS in chambers on a garnishee notice. The facts appear sufficiently from the judgment.

Captain, of Messrs. *Captain and Vaidya*, for the plaintiffs.

Thakordas A. Gandhi for first defendant.

MACLEOD, J.—The two defendants in this suit were partners and in a suit No. 96 of 1907 filed by the first defendant against the second defendant for dissolution of partnership, a receiver was appointed to get in the assets. The receiver has now in his hands a sum of about Rs. 1,698 as assets and it is not considered likely that he will recover anything more.

The plaintiffs in this suit having obtained a decree against the defendants were granted leave to issue execution against the assets of the partnership in the hands of the receiver and a prohibitory order was issued on the 19th June 1908. They have now taken out a garnishee notice against the receiver to pay to the plaintiffs the money in his hands. I am told that no other claims have been made against these assets but a question arises whether they are not subject to the lien of the solicitors in the partnership suit for their costs.

The rule at common law that a solicitor is entitled to a lien for his costs on property recovered or preserved by his exertions has always been followed by this Court and the case of *Ridd* v. *Thorne* (2) is a direct authority for holding that where there are assets of a partnership in the hands of a receiver appointed in a partnership suit, the solicitors engaged in that suit are entitled to ask for a charge on those assets in priority to the creditors of the partnership.

Apart from that the procedure adopted by the plaintiffs in this suit is, in my opinion, wrong. They should not have issued execution against the assets in the hands of the receiver. The proper course was to ask the Court for a charging order in the

(1) (1886) 34 Ch. D. 345. (2) (1902) 2 Ch. 344.

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form granted by Kay, J., in *Kewney* v. *Attrill*[1]. The assets of the partnership can then be dealt with by the Court by giving directions to the receiver and it is desirable that this procedure should be followed in future.

I discharge the prohibitory order and garnishee notice and give the plaintiffs a charge on the moneys which are in the hands of or which may be taken possession of by the receiver and they must undertake to deal with the charge according to the order of the Court. The charge will be for the judgment debt and costs and interest and the costs of this order. The lien of the solicitors for their costs in the partnership suit will take priority over this charging order.

K. McI. K.

(1) (1886) 34 Ch. D. 345.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

1909.
September 6.

IN THE MATTER OF LAND ACQUISITION ACT. IN THE MATTER OF GOVERNMENT AND SUKHANAND GURUMUKHRAI AND ANOTHER.*

Land Acquisition Act (I of 1894)—Compensation—Valuation of residential property—Elements to be considered—Evidence before Acquisition Officer—Practice.

The income of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation, but it is a mistake to think that it is the only element to be taken into consideration.

In the case of residential property to endeavour to arrive at the market value solely on the basis of an hypothetical rent may work grave injustice to the owner. There are commodities which may possess a value in the market not for the return they give on capital invested but for the advantages and enjoyment which accrue from their possession. Residential property—in the sense of property which a purchaser wishes to acquire for his own residence—is such a commodity.

The first question to determine is whether there is a demand, and if there is a demand the original cost is the most important element for consideration.

* Reference No. 40 of 1908.