Feb. 22, 1911

Present : Hutchinson C.J. and Middleton J.

FERNANDO *v.* FERNANDO *et al.*

30—*D. C. Kegalla,* 3,027.

Receiver—An officer of Court—Not entitled to sue parties to the action for remuneration—Must look to Court for payment.

There is no implied contract between a receiver appointed by Court and the parties to the action in which he was appointed to remunerate the receiver. In the absence of an express agreement, the receiver is not entitled to sue either party to the suit for his remuneration. He is an officer of the Court, and must look for payment to the Court in the action in which he is appointed ; the Court must on due application ascertain what is due to the receiver, and order it to be recovered and paid to him, if necessary by sale of a portion of the property, the rents and profits of which he was duly appointed the receiver.

THE facts are set out in the judgment of Hutchinson C.J.

Bawa, for defendants, appellants.—The plaintiff should have applied to the Court in the action in which he was appointed receiver for his remuneration. He has no cause of action against the defendants.

H. A. Jayewardene, for the plaintiff, respondent.—The plaintiff is entitled to sue on a *quantum meruit* for services rendered. The action may be treated as an action on a *quantum meruit*.

There is here, moreover, an express contract between the parties to remunerate the plaintiff.

Even in the absence of an express contract the law would imply a contract.

Cur. adv. vult.

February 22, 1911. HUTCHINSON C.J.—

The plaintiff was by an order of the District Court of Kegalla, made on July 16, 1908, in action No. 2,359 in that Court, appointed receiver of the plumbago got from some mines which were the subject of that action. He alleges that the defendants agreed on that day that they would jointly and severally pay him a half share of his salary as receiver, and it is for that he brings this action.

The order appointing a receiver was made in pursuance of a consent order made by the Supreme Court that a receiver should be appointed. The record in 2,359 shows that on July 16, 1908, it was agreed that P. C. Fernando (the present plaintiff) was a suitable person to be appointed at a remuneration of Rs. 250 per mensem, and that each side should deposit Rs. 750 for the expenses of the next six months ; and the Court thereupon appointed him receiver, the order saying nothing about the remuneration ; and the District Judge wrote to him on July 30, 1908, informing him that he had been appointed receiver, saying nothing about his remuneration.

The plaintiff's counsel said that the parties agreed to pay his remuneration, and that that means that each party agreed with him to pay the whole of it, and that as one of them has paid half, he can sue the defendants for the other half. No doubt the parties agreed that his remuneration should be so much. But they did not agree with him, but only with each other ; their agreement was recorded by the Court, and the Court can enforce it in that action. But they made no agreement with him. An agreement between A and B that one of them shall do something for the benefit of C gives no right of action to C (subject to some well-defined exceptions, such as in the case of agents and trustees). In the absence of any special agreement by a party with a receiver, the latter has to look for his remuneration to the property which he receives, or to the Court in the action in which he is appointed. In the same way, an arbitrator has to keep his award until his fee is paid, unless he has an agreement with some one to pay him, or unless he can get payment from the Court which appointed him.

The decree of the District Court should be set aside and the action dismissed with costs in both Courts.

Feb. 22, 1911 MIDDLETON J.—

Fernando v. Fernando

This was an appeal from a judgment in an action brought by a receiver appointed by the Court in D. C. Kegalla, 2,359, against the defendants here, who were the defendants in that action, to recover the salary apportioned by the Court for the discharge of the duties of receiver for two years, less certain sums admitted to have been received on account. The ground of the appeal was that no action would lie at the suit of a receiver appointed by the Court in an action against either of the parties to the action for the recovery of his reward as a receiver, but that the receiver as an officer of the Court must obtain his remuneration through the Court's order made on application. For the respondent it was contended that here there was an express or implied contract that each party would pay the receiver's remuneration, on which the receiver was entitled to sue, and had sued, the defendants.

No case was cited to us in which a receiver had sued a party to the action in which he was appointed by the Court, and I think it is clear that here there is no implied contract with the receiver by either of the parties to the action to remunerate the receiver, nor in this instance was there an express one by either party. A receiver duly appointed by the Court is from the date of his appointment an officer and representative of the Court (*Aston v. Heron*,[1] *Owen v. Homan*[2]), and he is not entitled to litigate for the profits of the receivership (*ex parte Cooper*[3]).

In my opinion it was not the right course for the District Judge here to direct the receiver to sue either of the parties for his remuneration, but on due application to ascertain, if necessary, what was due to him, and to order it to be recovered and paid to him, if necessary by sale of a portion of the property, the rents and profits of which he was duly appointed the receiver. In my opinion the plaintiff has no cause of action against the defendants, and I would allow the appeal and dismiss the action, with costs in both Courts.

Appeal allowed.

[1] *(1834) 2 M. & K. 391.* [2] *(1853) 1 H. L. 1032.*
[3] *(1877) 6 Ch. Div. 255.*