

(1952) 07 RAJ CK 0005
In the Rajasthan High Court
Case No : First Appeal No. 43 of 1951

Ajit Singh and Another

APPELLANT

Vs

Yamuna Devi and Another

RESPONDENT

Date of Decision : 24-07-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 43 Rule 1

Citation : AIR 1953 Raj 121 : (1952) RLW 384

Hon'ble Judges : Wanchoo, C.J.; Dave, J

Bench : Division Bench

Advocate : B.B. Sharma, for the Appellant; C.L. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—This is an appeal by Ajit Singh and Abhaya Singh against the order of the Additional District Judge of Jaipur. This order has been passed in a pending suit for partition brought by Yamuna Devi, plaintiff-respondent, against the appellants and their brother Amar Singh. The plaintiff-respondent claims that she is entitled to half the property, while the other half belongs to the three brothers, and wants her share to be partitioned by metes and bounds. During the pendency of the suit a receiver was appointed by the Court with the consent of all the parties in April, 1951, The receiver realised Rs. 10,000/- from the Public Works Department. Thereafter the parties applied to the Court that the receiver may be directed to pay them certain amounts by way of subsistence allowance. The Additional District Judge, by his order under appeal, directed the receiver to keep Rs. 5,000/- in reserve, and to pay Rs. 2,500/- to the plaintiff-respondent and Rs. 2,500/- to the defendants-appellants and their brother Amar Singh. The present appeal has been filed against that part of the order by which the plaintiff-respondent has been given an equal amount with the defendants-appellants and their brother, and it has also been suggested that the defendants-appellants and their brother should have been given a larger amount.

2. A preliminary objection has been raised that no appeal lies against the order

in question. Learned counsel for the appellants, however, urges that the order is appealable under Order 43, Rule 1 (s) read with Order 40, Rule 1 (d), Civil P. C. Order 43, Rule 1 (1) provides for appeal from an order under Rule 1 or Rule 4 of Order 40. We are not concerned here with Order 40, Rule 4. Order 40, Rule 1 (d) on which reliance has been placed reads as follows: :

"Where it appears to the Court to be just and convenient the Court may by order--

* * * * (d) confer upon the receiver all such powers as to bringing and defending suits and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits; and the execution of documents as the owner, himself has, or such of those powers as the Court thinks fit."

Learned counsel contends that the order in question is covered by the words "confer upon receiver all such powers for the application and disposal of such rents and profits". He has relied on a number of authorities in this connection.

3. Before we examine the authorities, we may analyse the words of this rule itself. Obviously Rule 1, Clause (d), comes into operation after a receiver has been appointed under Clause (a). Clause (a) deals merely with the appointment of the receiver, while Clause (d) deals with conferment of powers on him. It is of course not necessary that the Court should confer all the powers which are specified in Clause (d) on the date on which the order appointing the receiver is made. It is open to a Court, for example, to confer some powers at the time of appointment and confer other powers later on. But the main point which it is necessary to stress is that under Clause (d) the Court confers powers on the receiver to do certain acts. Conferment of such powers, in our opinion, implies that the receiver is left with the discretion to decide himself whether he would exercise those powers in a particular set of circumstances. But where the Court merely passes an order or gives a direction on which the receiver is bound to comply with, it cannot be said that any power is being conferred on the receiver within the meaning of Clause (d) of this Rule. In most of the cases, cited on behalf of the appellants, it has been assumed that an order directing the receiver to pay a certain sum of money out of the money in his possession to a certain person is a conferment of power on him to dispose of the money in his hand. But with all due respect to the learned Judges who have come to that conclusion, we must say that there is no power left in the receiver when he receives such an order. All that he has to do is to comply with the order or direction of the Court. We may also respectfully point out that there is apparently no reasoning in those cases in support of the assumption which we have mentioned above.

4. The first case is -- "Kamalathammal v. C. V. Shrinivasachariar" 14 Ind Cas 277 (Mad). In that case a Division Bench of the Madras High Court held that an order

directing a receiver appointed in a suit to make certain payments to a party pending the disposal of the suit, was appealable by the combined operation of Order 40, Rule 1 (d) and Order 43, Rule 1 Clause (s), Civil P. C. It seems that the learned Judges felt that there could be no conferment of power without some discretion being left in the receiver; but they said that it did not make any difference at all. We may quote the following in this connection:

"The effect of the order under appeal is to authorize the receiver to make certain payments to defendant 1 in the suit. No doubt, it has also the further effect that the receiver is bound to carry out the order; but we think that this cannot make any difference as far as the present question is concerned."

5. The next case is -- "Eastern Mortgage and Agency Co. Ltd. v. Fakuruddin Mohomed" 17 Ind Cas 849 (Cal). In that case the receiver was ordered by the Court to pay certain sums of money to the parties to the suit, and the question arose whether such an order was appealable. It was held that it was appealable under Order 43, Rule 1 (s), read with Order 40, Rule 1 (d). The argument in that case, which appears to have been pressed, was that whatever power had to be conferred on the receiver should have been conferred on the date of his appointment, and that no further power could be conferred later on, and this argument is repelled by the learned Judges in these words:

"The learned counsel has suggested that this order must be one passed at the time of the appointment of the receiver so as to give a right to appeal under Order 43, Rule 1. This contention is, in our opinion, manifestly unsound; for, no Court could possibly pass orders at the time of the appointment of the Receiver so as to cover the application and disposal of the rents and profits which might be collected subsequently."

We must, however, point out, with due respect, that the learned Judges do not seem to have attached full importance to the words "confer all such powers", and seem to have taken every direction to a receiver with respect to money in his hand as amounting to conferment of powers on him. We feel that this cannot be so. Certain directions that can be given to a receiver with respect to money in his hand may amount to conferment of power, if some discretion is left in the receiver as to the application and disposal of the money; but if there is no discretion left in the receiver, and he has merely to carry out the order of the Court, it cannot be said that any power was being conferred on the receiver within the meaning of Clause (d).

6. The next case is -- Lachminarayan Modi Vs. H. Naik and Co. and Others, This case gives no reasoning of its own, and merely follows the Calcutta ease mentioned above 17 Ind Cas 849 (Cal).

7. The last case is -- "Vellayan Chettiar v. Receivers, Shri O. A. Narayanaswami Iyer" AIR 1948 Mad 452. It is obvious from what the learned Judges have said in this case that they were themselves not sure whether such an order to the receiver could amount to conferment of powers on him. Certain moneys were

lying with the receiver, and the Court gave certain directions as to how they should be disposed of. The learned Judges said that

"the Court must have jurisdiction to decide on the destination of the properties in the hands of its receiver. This may be under Order 40, Rule 1 (d), but if that provision is not applicable, the Court can give the necessary directions in the exercise of its inherent power."

The last words show that the learned Judges themselves doubted if such an order can amount to conferment of powers under Clause (d).

8. As against these cases, we may refer to one case on the other side, namely, -- "Fateh Chand v. Amar Nath" AIR 1933 Lah 216. In that case the receiver asked for directions with respect to certain properties and he was directed by the Court to restore certain properties to a certain person. There was then an appeal in the Lahore High Court, and the question arose whether an appeal lay from this order. The argument on behalf of the appellant was that the appeal lay under Order 43, Rule 1(s), read with Order 40, Rule 1(d). The learned Judge, however, pointed out that Order 40, Rule 1(d) dealt with the powers to be conferred on a receiver, and that in the case before him the Court did not purport to confer any power on the receiver. An order like the one before him, in which the Court merely directed the receiver to take particular action, did not amount to conferment of power on the receiver, and was, therefore, held not appealable.

9. We are of opinion that the view taken by the Lahore case is the sounder one, and is supported by the language of the rule. In this view of the matter, the preliminary objection prevails, and the appeal must be dismissed.

10. Learned counsel for the appellants points out to us that his case is that the plaintiff-respondent is only entitled to maintenance. He also points out that she is not possessed of any immovable property other than the property in suit, and that if she loses the suit, and in the meantime takes away as much as given to the appellants, they may be put to unnecessary loss. We feel that in future the learned Judge, while dealing with such applications for money by these parties, would keep this aspect in mind in coming to his decision in the matter.

11. We dismiss the appeal with costs to the plaintiff-respondent.