

(1948) 07 MAD CK 0022
In the Madras High Court

Alla Subbareddi

APPELLANT

Vs

Lankireddi Narayanaswamireddi and Others

RESPONDENT

Date of Decision : 13-07-1948

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144

Citation : AIR 1949 Mad 283 : (1948) 61 LW 596 : (1948) 2 MLJ 251

Hon'ble Judges : Satyanarayana Rao, J

Bench : Division Bench

Judgement

Satyanarayana Rao, J.—C.M P. No. 3369 of 1948 was filed by plaintiff 2 in O.S. No. 354 of 1947 on the file of the Court of the District

Munsif of Bezwada for transfer of the suit to this Court and for passing interlocutory orders and for retransferring the same. Along with this

application he also filed C.M.P. No. 3370 of 1948 to appoint the Tahsildar of Bezwada or any other proper person as receiver for the properties

involved in the suit O.S. No. 354 of 1947. Those applications were moved before me in the vacation Court and came up for orders on 19th May

1948.

2. Plaintiffs 1 and 2 instituted O.S. No. 354 of 1947 for a permanent injunction restraining defendant 1, the zamindar, from disturbing their

possession of certain lanka lands of the extent of 150 acres. Their case was that these lankas were in their possession for a continuous period of

about 8 years, the last of the leases in their favour expiring by 30th June 1947, and that the zamindar notwithstanding the fact that they had

acquired occupancy rights in the lankas was attempting to lease the properties to others and was seeking to disturb their possession. In the first

instance only the zamindar was impleaded as the sole defendant. They also applied along with the suit, in I.A. No. 1057 of 1947 for an interim injunction against the defendants and an ex parte order was passed on 21st June 1947. Before the order could be served on the zammdar, he died on-24th June 1947, and subsequently his legal representatives were impleaded as defendants 2 and 3. By a further application the injunction was extended to the legal representatives also. Meanwhile, the zamindar seems to have leased the property to defendants 4 and 5 on 4th July 1947, that is, after the institution of the suit by the plaintiffs which was filed on 19th June 1947. As the plaintiffs apprehended disturbance of possession by defendants 4 and 6 they took proceedings u/s 144, Criminal P.C., in M.C. No. 67 of 1947 on the file of the Sub-Divisional Magistrate's Court, Bezwada, and obtained an ex parte order against defendants 4 and 5 which was current for a period of one month. A commissioner was appointed in I.A. No. 1694 of 1947 to inspect and report as to who was in possession of the property, and he submitted a report that the plaintiffs were in possession. When the order u/s 144, Criminal P.C., was about to expire the plaintiffs seem to have moved the Minister for extension of the order, and the Government seems to have directed the District Collector to go into the matter. The District Collector seems to have suggested proceedings u/s 145, Criminal P.C., and the plaintiffs filed M.C. No. 18 of 1948 u/s 145, Criminal P.C., and a preliminary order was passed on 8th March 1948. Pending these proceedings, the Tahsildar of Bezwada was appointed receiver to auction the crops on the lands which were claimed to have been raised by both the parties. On their own application defendants 4 and 5 were impleaded as parties to the suit. On 17th May 1948, while the receiver was in possession of the property defendants 4 and 5 filed Ori. R.C. No. 586 of 1948 before the Vacation Judge to quash the proceedings u/s 145, Criminal P.C. On 18th May 1948, Yahya Ali J. passed the following order in Ori. M.P. No. 1162 of 1948: Further proceedings in M.C. No. 18 of 1948 will be stayed. This does not amount to disturbing the possession of the receiver appointed by the Magistrate. Apprehending that the receiver appointed by the criminal Court would vacate possession of the property plaintiff 2 moved for transfer of the suit to

this Court and for an interim Order As I have already said, these petitions came before me on 19th May. On the transfer petition I ordered notice,

and on the petition for an interim order I passed the following order on that date:

The Tahsildar of Bezwada is to continue as receiver in respect of the suit properties pending further orders in the civil miscellaneous petition. He is

at liberty to lease out the suit properties by public auction.

In pursuance of this order the Tahsildar seems to have auctioned the leasehold right on 25th June 1948, and one Janga Ramireddi became the

highest bidder for the cultivation right of this fasli for a sum of Rs. 7900.

3. Defendant 4 filed C.M.P. No. 3627 of 1948 to vacate the order appointing interim receiver and to set aside the sale held by him on the ground

that there was no notice of the order appointing receiver to him, and that the sale was vitiated by various irregularities. He also alleges that one

Section Basavayya was prepared to bid for Rs. 12,000 provided he was given an opportunity to bid. C.M.P. No. 3691 of 1948 was filed on

behalf of the zamindars, defendants 2 and 3, also for similar relief.

4. When these petitions came up for hearing before Govinda Menon J. he felt some difficulty regarding the power of this Court to pass an interim

order appointing a receiver before notice in the transfer petition was served and the transfer of the suit was ordered. He therefore directed the

petitions to be posted before me.

5. In these petitions the questions that have been raised are, (1) Whether this Court has jurisdiction to appoint an ex parte receiver before the

transfer of the suit was ordered after notice on the petition for transfer was served on the defendants; (2) Has plaintiff 2 made out a case for the

appointment of a receiver, and (3) Whether the sale by the receiver is valid. First as regards the question of the jurisdiction of this Court to appoint

an interim receiver: In Jumna Bai v. Ramanathan Chettiar AIR 1929 Mad. 29 Ramesam J. was of opinion that when a suit was instituted in an

inferior Court in the mofussil and that Court was closed for summer recess the High Court had power to transfer the suit under clause 13, Letters

Patent, and pass interim orders but that such application should be made on the original side of the High Court and should also ask for an

injunction or other interlocutory relief and a further application should be made for re-transferring all the proceedings to the original Court. The

power to pass an interlocutory order either granting injunction or some other relief before the suit was transferred was recognised at p. 55 of the

report. It was however pointed out by the Full Bench in *Krishna v. Sabapathi* AIR 1945 Mad. 69 that if a suit was withdrawn under Clause 13,

Letters Patent, from a mofussil Court to the original side for trial and determination, this Court has no power to retransfer it to the Court from

which it was withdrawn. There is, however, according to the Full Bench such power u/s 24, Civil P.C. It was pointed out that such power of

transfer u/s 24 should be exercised only after notice to the parties and after giving them an opportunity to beheard. The Full Bench, however, does

not deal with the powers of this Court pending the disposal of the application for transfer; nor does it dissent from the View expressed by

Ramesam J. in *Jumna Bai v. Ramanathan Chettiar* AIR 1929 May. 29. Even apart from this, I think that when an application for transfer of a suit

to this Court is ""made u/s 24, Civil P.C., and notice is ordered it is in the nature of an original proceeding within the meaning of Section 141, Civil

P.C., and the procedure provided under the Code in regard to suits becomes applicable. Order 40, Rule 1, therefore, is attracted by Section 141,

Civil P.C, to such proceedings, and the Court would have power to appoint a receiver.

6. In *Asadali Chowdry v. Mahamed Hossain Chowdry* AIR 1916 cal. 427 the Calcutta High Court had to consider the applicability of the

provisions of Order 40 Rule 1 to proceedings for the appointment of a common manager u/s 93, Bengal Tenancy Act. The learned Judges were of

opinion that the proceeding was in the nature of an original proceeding contemplated by Section 141, Civil P.C , that therefore the procedure

under Order 40 Rule 1 was attracted and that in such a case the Court had jurisdiction to appoint a receiver provided a case for the appointment

was made out. It was also pointed out in that case that there is power in the Court to pass even an ex parte order appointing a receiver. At p. 988

it is observed:

Than as regards the question of notice, although an order is generally made by a civil Court upon notice to the parties concerned, there may be

cases in which the issue of notice may so delay the proceedings as to defeat the object of the order made, and the Court has to pass an order

without previous notice in cases of emergency, leaving the party aggrieved to object to it either in Court making the order or by way of appeal to a higher Court.

It has been pointed out in *Nandakishore Singh v. Ram, Gulam Sahu* 40 Cal. 955 that even before an application for special leave to appeal to His

Majesty in Council was filed the High Court had inherent power to stay the execution of its own decree.

7. Mr. Somasundaram, the learned advocate appearing for the zamindar and Mr. Chandra Reddi, the learned advocate appearing for defendant 4

did not seriously contest before me the jurisdiction of this Court to pass an ex parte order appointing a receiver; but as a doubt has been felt by my

learned brother Govinda Menon J., I had to deal with it somewhat fully. I am therefore of opinion that even before a final order transferring the suit

is passed and when the application for transfer is pending disposal the Court has power to pass an interlocutory order either granting an injunction

or appointing a receiver or grant such other relief pending disposal of the transfer petition as the proceeding is an original proceeding within the

meaning of Section 141 and all the powers which the Court possesses for passing interlocutory orders in the case of a suit can be exercised during

the pendency of such proceedings.

8. It is not seriously contested before me that this is not a proper case in which the receiver should continue. There was already a scramble for

possession and the criminal Court thought fit to appoint a receiver for the sale of the crops. Defendants 4 and 5 were restrained by an order u/s

144, Criminal P.C., from interfering with the possession of the property, as the authorities feared that there would be breach of the peace. The

proceedings u/s 146 are pending, and the revision petition for quashing them is also pending in this Court. It is therefore necessary to continue the

receiver and make arrangements for the cultivation of the extensive lands.

9. The only serious objection is as regards the validity of the sale. Various objections have been raised in the counter. affidavit and in the affidavits

on behalf of the zamindar and on behalf of defendant 4, and there is also the report of the Tapsider of Bezvada, who was appointed receiver. I

am, however, not going into that matter, as the only question now before me is whether the order appointing receiver and empowering him to sell

the leasehold right of the property is proper or not, and as I have come to the conclusion that it is proper, the order passed by me in C.M.P. No.

3370 of 1948 has to be confirmed The petition for transfer is ordered, and the suit is retransferred to the District Munsif's Court, Bezwada.

10. I understand that there is already an application filed by defendant 2 raising the question of the validity of the sale. The learned District Munaif will after taking the necessary evidence dispose of that petition at an early date before the cultivation season commences.

11. There will be no order as to costs in these applications in this Court.