

(1989) 03 KL CK 0054
In the High Court Of Kerala
Case No : C.M.A. No. 96 of 1988

Arun Agencies, Mattancherry

APPELLANT

Vs

St. Antony's Oil Mill and Others

RESPONDENT

Date of Decision : 16-03-1989

Acts Referred:

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

Citation : AIR 1989 Ker 312

Hon'ble Judges : Varghese Kalliat, J; M.M. Pareed Pillai, J

Bench : Division Bench

Advocate : A. Antony, A. Antony Jr. and K. Sreekumar, for the Appellant;
Mathews P. Mathew, K.P. Vijayan, P.K. Alexander and Cyriac Joseph, for the Respondent

Judgement

Varghese Kaluath, J.

This is an appeal by the plaintiff. Plaintiff challenges the order of the trial Court refusing to appoint a receiver. The suit is one for recovery of money. The plaintiff has got a serious case that the 1st and 2nd defendants are liable to pay a total amount of Rs. 2,41,454.94. According to him he is entitled to this amount since the amount is due to him on account of an over payment made by the plaintiff to 1st and 2nd defendants. The 3rd defendant has filed a written statement stating that at the time of transaction he was running the oil mill and that he is the person who is liable to pay the amount and he is willing to pay the amount received by way of over payment.

2. The Court below found that there is no just and proper reason for appointing a receiver, particularly in a money suit.

3. Learned counsel submitted that extraordinary circumstances are existent in this case which would enable proper justification for this Court to appoint a receiver in the case. The plaintiff has attached certain immovable properties and the mill and the articles belonging to the 2nd defendant in the mill. This

circumstance is also taken into account by the Court below.

4. One of the questions is whether the Court has got power under Order 40, Rule 1, C. P. C. to appoint a receiver in a money suit where there is no suit property. This Court feels that the power granted under Order 40, Rule 1, C.P.C. is wide enough to enable this Court in appropriate cases to appoint a receiver. After all the main devoir of the Court is to render justice to the suitors. The procedure prescribed by the Civil P.C. is only for the purpose of enabling the Court to reach the ultimate end; doing justice to suitors in the cause they submit before Court. With this background if we understand the scope and content of Order 40, Rule 1 we are of opinion that in circumstances where it is necessary to render just and meaningful relief the Court can appoint a receiver even in a money suit. This view has been taken by a Division Bench of the Madras High Court in the decision reported in Rajalakshmi Ammal Vs. Muthuswami gounder and Another, Panchapakesa Ayyar, J. considering the power under Order 40, Rule 1 observed thus : --

"Wide powers have been given to Courts under Order 40, Rule 1 and in very extraordinary cases the Court will have jurisdiction to appoint a receiver even in a simple money suit, before decree, and not merely in execution, u/s 51(2). The Court will, of course, even then consider whether it is just and convenient to appoint a receiver. Mere convenience will not do. It must also be just. But such extraordinary jurisdiction will not show that a Court trying a money suit has ordinary jurisdiction to appoint a receiver while the suit is pending, and before a decree is got, especially when other remedies like attachment before judgment, are open to the plaintiff and are in fact the normal remedies he is expected to pursue. It is something like the extraordinary original jurisdiction of the High Court."

But in the above case the Division Bench found that no extraordinary circumstances are proved for the appointment of a receiver in a simple money suit.

5. Of course, there are certain circumstances in this case which have been highlighted by the counsel for the appellant justifying the appointment of a receiver in this case. We are not quite confident that those circumstances are sufficient for considering them as extraordinary circumstances inviting our power under Order 40, Rule 1 to appoint a receiver in a simple money suit. But we feel that some safety provisions have to be made to secure the ends of justice in this case, particularly to see that in case the plaintiff gets a decree it must be a useful fruitful one.

6. In the circumstances we feel that we should pass an order of injunction restraining the defendants in the suit till the disposal of the suit, from removing any of the machineries or articles excluding the stock in trade in the oil mill of the 2nd defendant. Further the 2nd defendant is restrained from putting the mill in the possession of any stranger, but if already, the mill has been leased to one Jose this part of the order will not operate against him. But we make it clear that

hereafter the 2nd defendant should not put the mill in the possession of any other person. We further make it clear that this order will bind any person who is acting under defendants 1 and 3 and the alleged lessee Jose. With these directions the CM. Appeal is disposed of. We also direct that the trial Court should see that the case is disposed of as expeditiously as possible, at any rate on or before 31-8-1989, untrammelled by any of the observations in this judgment as well as in the order impugned in this C.M. Appeal.