
(1968) 09 KAR CK 0014
In the Karnataka High Court
Case No : Civil Petition No. 837 of 1968

Bhimappa Timmappa Kividi	Vs	APPELLANT
Gireppa Laxmappa Kivadi		RESPONDENT

Date of Decision : 02-09-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 3

Citation : AIR 1969 Kar 173

Hon'ble Judges : B. Venkataswami, J

Bench : Single Bench

Judgement

1. This petition is directed against an order made by the learned Munsiff at Mudhol, in Misc. Application No. 7 of 1967 on 17-6 1968.

2. This application came to be presented by the plaintiff in C. S. No. 31 of 1965. This suit, it may be mentioned, was disposed of with a direction that the plaint be returned on account of want of pecuniary jurisdiction in that Court to entertain it. It would appear that subsequent to such return the suit was represented or re-filed in the Court of the Civil Judge at Bagalkot. The said suit is Spl. C. S. No. 22/67. While the suit was pending in the Court of the Munsiff at Mudhol, an order of temporary injunction was made, against which an appeal was preferred. In the course of the hearing of that appeal the parties appear to have come to terms and agreed for the appointment of a receiver to be nominated by the trial Court. It was further agreed that out of the realisation, by way of rent or otherwise, from the suit lands, the plaintiff was to take 1/3rd and the balance 2/3rds to be drawn by the defendants. There was an order in terms of the above agreement. After the suit was remanded to the Court of the Munsif, a receiver was nominated and he took possession of the properties. It is stated that about Rs. 3,700/- was deposited as proceeds realised by the receiver from the suit properties. It is not in dispute that the defendants had drawn 2/3rds of the said money after furnishing the security.

3. Sri H. F. M. Reddy, the learned counsel appearing on behalf of the petitioner,

however submits that his client has not withdrawn the money in terms of the above agreement. In so far as the next year or years in question are concerned, one of the parties approached the learned Civil Judge before whom the refiled suit was pending. the learned Civil Judge disposed of the application virtually directing the parties to approach the Court which appointed the receiver. It was thus that the defendants were compelled to approach the Court of the Munsiff at Mudhol, although there was no suit as such pending before it. It may be relevant to mention that even before approaching the learned Civil Judge for the relief, the Court of the learned Munsiff at Mudhol had been moved for an appropriate Order. That Court had rejected the said application, being of the view that it was the Court of the Civil Judge which was the appropriate forum for making an order in that regard. In these circumstances, the plaintiff filed Misc. Application No. 7 of 1967 and secured the order impugned herein.

4. Sri H. F. M. Reddy, the learned counsel appearing on behalf of the petitioner submits that the learned Munsiff was not competent to make the order as no suit in regard to the property under receivership was pending before him. He further submits that in the absence of an order for the continuance or for the fresh appointment of a receiver made by the learned Civil Judge, no direction could be issued by a Court which had no seisin of the original dispute. He proceeds to argue that a receiver being an officer of the Court will have to seek directions every now and then with regard to various matters relating to the management of the properties. Hence the more appropriate court would be the Court which has seisin of the original dispute. It is also his contention that the original agreement regarding the appointment of a receiver was entered into to the prejudice of the minor plaintiff. According to him, the appointment was agreed upon by some counsel acting for and on behalf of the counsel for the minor plaintiff. His argument is, at any rate, this compromise should not be held binding on the minor plaintiff in view of all these circumstances.

5. Taking the last of his contentions first, relating to the prejudicial nature of the compromise, suffice it to say that his remedy is to have the receivership determined or at any rate to have the terms of the compromise annulled, substituting them by an order of the Court having regard to all the facts and circumstances which have a bearing on the equities of the case. It is therefore, unnecessary to deal with the aspect of the matter further.

6. The next contention of Sri Reddy is that the Court which appointed the receiver, namely the Court of the Munsiff, Mudhol, was not competent to make this direction, which according to him is one made under Rule 3 of Order 40 C.P.C. It, therefore, follows according to his submission that it is the Civil Judge's Court that is competent to make the direction. To this extent Sri Reddy concedes the position. It will be seen from the submission of Sri Reddy that the primary contention is that the Court of the Munsiff ceases to exercise jurisdiction over the receiver even in the absence of the pendency of a suit relating to the subject matter of the receivership in that Court.

7. On this contention, Sri T. J. Chouta, the learned counsel appearing on behalf of the respondent, invited attention of the court to a decision of the Supreme Court reported in *Hiralal Patni Vs. Loonkaram Sethiya and Others*, . The passage in question runs thus:

"Held that the receiver continued by the preliminary decree was entitled to function till he was discharged. The legal position with regard to the continuance of receivers is that: (i) if a receiver is appointed in a suit until judgment, the appointment is brought to an end by the judgment in the suit; (ii) if a receiver is appointed in a suit without his tenure being expressly defined, he will continue till he is discharged; (iii) even after the final disposal of the suit, though as between the parties his functions are usually terminated, the receiver continues to be answerable to the Court till he is finally discharged, and (iv) the Court has ample power to continue the receiver even after the final decree if the exigencies of the case so require. The final decree in the present case did not finally dispose of the suit and did not bring the appointment of the receiver to an end."

8. While referring to this enunciation, Sri Reddy concedes that the receiver continues to be in possession of the property and submits that it is not open to the court to give further directions to the receiver once the suit comes to an end. If by this statement Sri Reddy means that a receiver is not answerable to the Court which appointed him. It is clear from the above enunciation that he continues to be answerable to the Court. That, however, does not dispose of the other contentions about the competence of the Court to issue the direction.

9. Adverting to the enunciation extracted above, it is clear therefrom that even if the suit comes to an end, in the absence of fixation of his term of office in express terms, he will continue till he is discharged. It is also clear that he is answerable to the Court till he is finally discharged by a specific order to be made by the Court. It is further clear that even after the decree in a suit, the Court has ample power to continue the receiver if the exigencies of the case call for such continuance. It, therefore, follows that the Court which appointed the receiver would be competent to issue directions with regard to the discharge of the functions of his office as a receiver. It is true that in the present case, the suit came to an end the moment the order was made directing the return of the plaint to the plaintiff for further action either by way of re-presentation or re-filing of the plaint in a Court having jurisdiction to deal with it. It is also obvious from the circumstances obtaining in this case that the receiver has not been discharged. In this view, so long as he is answerable to the Court, which appointed him that Court will continue to exercise jurisdiction over him in regard to every matter pertaining to the subject-matter of the dispute.

10. It is however, pointed out by Sri H. F. M. Reddy, that if a suit is pending in one court and the receiver is answerable to another, it might lead to some anomalous situations. In my opinion, that by itself is not a ground to hold that the receiver shall not be answerable to the Court which appointed him until he is properly discharged in accordance with law. It is conceivable that certain

situations might arise which require giving directions to the receiver in the light of the proceedings in the original suit. In such an eventuality, the Court which has seisin of the original suit is not powerless to give appropriate directions by providing for the continuance of the receiver thus making him responsible to itself. It is not also difficult for either party to move the Court which appointed the receiver in the first instance to put an end to the receivership thus leaving the parties free to move the Court before which the matter is pending for such orders as the exigencies may require. It follows from this discussion that either party is at liberty to approach the Court of the learned Munsiff for the termination of the receivership. It is not disputed that the suit did come to an end the moment the plaint was returned to the plaintiff for further action.

11. In the light of the discussions, the petition deserves to fail and is dismissed.
12. In the circumstances of the case, I make no order as to costs.
13. Petition dismissed.