(1995) 12 AP CK 0005

In the Andhra Pradesh High Court

Case No : C.M.A. No. 441 of 1994

Bhupathiraju Venkata Ramaraju APPELLANT

Vs

Bhupathiraju Ramakrishnamraju and Others RESPONDENT

Date of Decision : 11-12-1995

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

Citation : (1996) 3 ALT 702

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : V.V.L.N. Sarma, for the Appellant; C. Ramachandra Raju, for Respondent Nos. 1 and 2 and Immaneni Mamu Vani, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Nasir, J.—The learned Subordinate Judge, Bhimavaram, rejected the appellant''s petition for appointment of a Receiver for taking possession of the plaint schedule properties and to manage the same and to deposit the yield in the Court, in I.A.No. 237 of 1993 in O.S.No. 81 of 1990, by an order passed on 5-1-1994, which is challenged in this appeal.

2. The appellant''s petition for appointment of a Receiver contained an allegation that the respondents had been misusing the schedule properties which were in their possession, and had been committing acts of waste in order to cause wrongful loss to the appellant. The respondents were digging pits and had been interfering with the boundary bunds. It is further alleged that the respondents had been pocketing the yield realised from the suit schedule properties. It is further alleged that the 3rd respondent was a close associate and friend of respondent Nos. 1 and 2 and that he had been encouraging them to misuse the possession of the property. Further, according to the appellant, it was no longer safe to allow the property to remain in the possession of the respondents, and therefore it was necessary, according to the appellant, in the interest of justice to appoint a Receiver to take possession of the suit schedule properties and to

manage the same until the disposal of the suit.

3. The respondent No. 1 filed a counter, which was adopted by respondent Nos. 1 and 2, and stated that the plaint schedule properties which originally belonged to respondent. No. 1 and his wife were sold away to respondent No. 3 under a registered sale deed in March, 1990 for a valuable consideration, by virtue of which item Nos. 1 and 2 of the plaint schedule properties had been in the possession and enjoyment of respondent No. 3 since then. It is further stated that the respondent No. 1 did not acquire any movable or immovable property by way of ancestral property. Item No. 3 of the plaint schedule properties was the self-acquired property of respondent No. 1, which was also sold to respondent No. 3.

4. It is further contended by respondent No. 1 that he purchased Ac.3-89 cents of land in revenue Survey Nos. 114 and 115 of Kolamuru, and got the same registered in the name of the appellant. The appellant was only 20 years old at that time and was just attending to agricultural operations. The appellant had no means to purchase the said property out of his own earnings. However, the appellant started enjoying the usufruct of the said property exclusively.

5. Further according to the respondents, it was not true that the plaint schedule properties yielded 30 bags of paddy per acre per crop. The land was of average fertility and the farmers were not getting proper remuneration since 1986 and they were sustaining losses, and therefore, according to the respondents there was no cause for appointing a Receiver for the purpose, stated by the appellant.

6. Order 40, Rule 1 of the CPC provides for appointment of Receivers. Under Rule 1 of Order 40, the Court may by order-

(a) appoint a receiver of any property, whether before or after decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, reservation 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.

7. The learned trial Judge took into consideration the decision of the Division Bench of this High Court rendered in the case of Chelikam Rajamma Vs. Padileti Venkataswami Reddy and Others, , in which three principles were laid down in paragraph 11, which are as under:

"From an analysis of Order 40 Rule (1) of the CPC in the light of the case law in relation to partition suits the following propositions may be deduced:

(1) The appointment of Receiver cannot be resorted to lightly without considering the entire facts and circumstances.

(2) The party seeking the appointment of Receiver must make out a case that he or she was not only kept out of possession of the properties unauthoritatively, but the party in possession is indulging in acts of waste leading to the inference of incompetence.

(3) If, prima facie, the plaintiff had excellent chances of succeeding in the suit, there being no denial with regard to his or her share in the plaint schedule properties, the conduct of the opposite party in keeping the plaintiff out of possession will be a relevant consideration for directing the opposite party to deposit a sum of money approximately representing the value of the yield pertaining to the share of the plaintiff pending disposal of the suit. Even in such circumstances, a Receiver should not be appointed to oust the possession of the opposite party from the joint family properties. The protection of the properties and safeguarding of the rights of the parties shall be the twin objectives impelling the appointment of a Receiver."

7. With the above propositions of facts and law in view, the question whether prima facie case is in favour of the appellant or not is of utmost importance. The allegation made by the appellant that the suit schedule properties were joint family properties and mat he was entitled to a share in such properties is not accepted by the 1st respondent (appellant''s father) and the 2nd respondent (appellant''s brother). According to the respondents, it was the self-acquired property of respondent No. 1, and therefore, the appellant had no vested right to claim any share in that property. Having regard to the said denial, the existence of prima facie case in favour of the appellant could not be inferred at this interlocutory stage, so long as this question is not conclusively determined at the trial. It is also pertinent to note that the appellant made application for appointment of Receiver in 1993, three years after the institution of the suit for partition, which also cools down the necessity and urgency of appointment of a Receiver.

8. It is further contended by the respondents that Item Nos. 1 and 2 of the plaint schedule properties originally belonged to respondent No. 1 and his wife and the same were sold away under registered sale deed to respondent No. 3 in the months of March, 1990 for a sum of Rs. 29,100/- per acre for the purpose of discharging debts, etc., and that the respondent No. 3 had been in possession and enjoyment of the same since, then. Item No. 3 of the plaint schedule property was also the self-acquired property of respondent No. 1 which was also sold to respondent No. 3 by a registered sale deed.''

9. Further according to respondent No. 1, he purchased an extent of Ac-3-89 cents in R.S.Nos. 114 and 115 of Kolamuru and got it registered in the name of his son, the appellant herein. The entire sale consideration paid by him (the 1st respondent) to the vendors from out of his self-earnings, and at that time the

appellant was hardly 20 years old and had no capacity to purchase the said property from his own funds. However, according to the appellant, he had purchased the property with the help of the funds obtained from his in-laws after he got married in the year 1980. This question also, therefore, assumes a debatable character, which will have to be resolved at the trial. There is no dispute about the fact that the appellant was in possession of the said property even on the date when he made the application for appointment of a Receiver. In that view of the matter therefore, there was precisely no question of any necessity for making a provision for the livelihood of the appellant, which could justify the appointment of a Receiver in respect of the suit schedule properties.

10. It is true that the burden is upon the respondent Nos. 1 and 2 to establish that the suit schedule properties were the self-acquired properties of respondent No. 1 and that the transfer of the said properties to respondent No. 3 was a bona fide transfer for valuable consideration. But in view of the fact that the transfers were evidenced by registered sale deeds, the prima facie case cannot be presumed to be existing in favour of the appellant that respondent Nos. 1 and 2 were in possession of the said properties and that they were indulging into letting the property to be wasted or that they were causing the usufruct of the property to be frittered away. In fact, the appellant has not come out with any clear case as to how the suit schedule properties were subjected to waste and how the usufruct was frittered away. In any cafe, the absence of these two factors also disentitle the appellant to plead a strong prima facie case in his favour.

11. The learned counsel for the appellant submitted that it was necessary to impose a condition on the respondent Nos. 1 and 2 to deposit in Court adequate amount from the usufruct of the property every year, which according to the Court was found to be reasonable as the share of the appellant in the usufruct, if at all the Court came to the conclusion that appointment of a Receiver was not warranted. However, I believe that it would not be in order, even to give any such direction to respondent Nos. 1 and 2 having regard to the observations made above that a strong prima facie case, which was the requirement of Order 40 Rule 1 of the Code of Civil Procedure, did not exist in favour of the appellant which disentitled him even to claim any share in the usufruct of the property at this stage; more particularly, in view of the fact that the appellant had not been found to be in dire necessity of any provision to be made for his livelihood on the ground that he did not possess sufficient means of earning. In the absence of any material on record, which could justifiably warrant such provision to be made in favour of the appellant, a serious prejudice is likely to be caused to respondent Nos. 1 and 2 if direction is given to deposit in Court any part of the usufruct of the suit schedule properties, if at all such properties were found to be still in possession of respondent Nos. 1 and 2 and if they were found to be enjoying the usufruct of the property.

12. Considering all the above facts and circumstances, I agree with the

observations made by the learned trial Judge in paragraph 19 of his order that the equities were not in favour of making the appointment of a Receiver. Therefore, I do not find any cause to interfere with the conclusions arrived at and the findings recorded by the learned trial Judge. Hence this appeal is dismissed with no order as to costs.

