

(1978) 08 MAD CK 0024
In the Madras High Court

B.N. Ananthachary and Another

APPELLANT

Vs

Mohan Ram and Others

RESPONDENT

Date of Decision : 10-08-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 94
Court Fees Act, 1870 — Section 7(4)(c)

Citation : (1979) 92 LW 21 : (1979) 1 MLJ 341

Hon'ble Judges : T. Ramaprasada Rao, C.J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, C.J.—Defendants 1 and 2 in O.S. No. 626 of 1972 on the file of the Subordinate Judge, Madurai, are the appellants. The suit property was the absolute property of one Balu G. Perumal Iyer. According to the plaintiff, he executed a deed of settlement Exhibit A-1 dated 27th March, 1969 inter alia in favour of himself, the defendants and 2 others and divested himself, of his title, interest and right in the suit property. There were several recitals in the settlement deed, the main provision of which was that the property has to be sold by all the settlees and out of the sale proceeds, a sum of Rs. 4,000 must be set apart for two religious charities and the discharge of a debt due to one Ramaseshan & Company and that the balance of the sale proceeds were to be equally divided as between the 16 settlees. Perumal Iyer died on 4th December, 1972. The case of the plaintiff is that the defendants did not cooperate with him in carrying out the stipulations in the settlement deed. He, therefore, came to Court with only one prayer, namely the appointment of a Receiver over the suit property, to sell the same and apportion the sale proceeds as between the settlees as provided for in Exhibit A-1. Admittedly, defendants 1 and 2 are in possession of the suit property. Their case is that Perumal Iyer was compelled by the relations on the side of his wife to execute the settlement deed Exhibit A-1 and that the deed is not real and inoperative in the eye of law. They would also claim that Perumal Iyer did not divest himself of his title in the suit properties; nor did he surrender the same in favour of the donees. On the other hand, their

case is that Perumal Iyer executed a registered Will on 30th July, 1972, bequeathing the suit property in their favour and that they are alone entitled to the same. They would claim that they are the legal heirs of Perumal Iyer. They have also set forth in the written statement that they incurred various expenses connected with the funeral of Perumal Iyer and in the above circumstances, they resisted the suit.

2. The case of defendants 3 to 5 was that they are also the legal heirs of Perumal Iyer and questioned the settlement deed. Defendants 6 to 9 remained ex parte. Defendants 10 to 13 joined with the plaintiff.

3. On the above pleadings the following issues were framed. [Issues omitted...Ed]. Though the defendants' case in the written statement was that no Receiver could be appointed, yet no specific issue was framed by the trial Court on that important question. But, the above issues framed by him were on merits which he decided in favour of the plaintiff and against defendants 1 and 2. Hence, the appeal by them.

4. The preliminary objection taken by the appellants is that the suit for bare appointment of a Receiver without that relief being ancillary or incidental to the main relief in a civil action is unknown to law and is not maintainable and therefore, on that ground alone, the judgment of the Court below which appointed a Receiver in the above circumstances has to be set aside.

5. We may at once state that though no issue was framed on this material question which arose for consideration, the learned Judge thought such a bare suit would lie. The question argued before us is whether such a suit with the only relief for the appointment of a Receiver over the suit property lies under the provisions of the civil law and under the Civil Procedure Code. The learned Judge thought that the decision reported in *Karuppanna Tevar Vs. Angammal and Others*, was a useful guide in coming to the conclusion that a suit for a bare appointment of a Receiver would lie. We shall presently consider this decision.

6. The contention of the learned Counsel for the appellants is that such a suit for the appointment of a Receiver is not maintainable without there being a primary suit in which a primary relief is asked for and, therefore he prays that without noticing the merits which were gone into by trial Court, the resultant conclusion of the learned Judge has to be set aside.

7. We are of the view that if we come to the conclusion that a bare suit for the appointment of a Receiver is not maintainable in the eye of law, then it is unnecessary for us to go into the merits. It would have been necessary for us to go into this matter in a little detail but for the decision rendered by us in *Kazimar Periya Pallivasal and Others Vs. K.A.S. Arumugam and Others*, which squarely governs the situation. Therein, the question arose whether a suit for receivership is maintainable. After considering the purport and content of Order 40, Rule 1, CPC and also Section 94, CPC we came to the conclusion that interim relief can be granted only in aid of and as auxiliary to the main relief and that the prayer

for J appointment of a Receiver being invariably an interim or an incidental relief that is asked for in the course of litigations, that cannot be granted without there being a suit for any other main relief which could be asked for in law. On a perusal of the judicial precedent noticed by us, in *Kazimar Periya Pallivasal and Others Vs. K.A.S. Arumugam and Others*, we expressed the view that in order to wrest possession from a party in possession of the suit property, extreme caution must be exercised by Civil Courts, and we have added that a bare suit for the appointment of a Receiver is not maintainable unless such a relief is asked for as an aid to or auxiliary to any other main relief that could be sought by a litigant in the course of litigation.

8. Reliance was placed upon the decision in *Karuppanna Tevar Vs. Angammal and Others*, by the learned Counsel for respondents. We are unable to see how the said decision is apposite for our purpose. That was a suit in which a reversioner sought for the main relief of declaration of invalidity of an alienation made by the widow and incidentally he asked for the appointment of a Receiver on the ground that the widow was still committing acts of waste. It was in those circumstances the question was considered by Venkatasubba Rao, J., who held such an application was maintainable. He was considering the question whether the court-fee paid in that particular case was right and in those circumstances expressed the opinion that the relief for the appointment of a Receiver was not consequential upon the relief sought as to the alienation within the meaning of Section 7(4)(c) of the then Court-fees Act and said that Clause (c) thereof had, therefore no application to the case. He assessed the court-fee in that case. This decision cannot help the respondents because the facts disclosed that there was a suit in which the main relief for setting aside an alienation was there and the request for the appointment of Receiver was auxiliary thereto.

9. Another decision cited before is that reported in *Ramanatha Chettiar and Others Vs. Somasundaram Pillai*, . Therein, Panchapakesa Ayyar, J, while characterising the suit itself as an extraordinary case and commenting upon the valuation made therein as an extraordinary method of valuation adopted the valuation of the plaintiff therein in the peculiar circumstances of that case. The pleadings in that case are not fully before us. The question whether an independent and a bare suit for the appointment of a Receiver could be filed in a civil Court was not considered squarely by the learned Judge. If the learned Judge intended that such a suit would lie, we respectfully disagree with him. But it is unnecessary to express any further views of ours on the said decision as the full pleadings are not before us and the question which has arisen before us did not arise in that state before the learned Judge.

10. Having regard to the Division Bench decision cited already, we are of the view that a suit for appointment of a Receiver is a misconceived one, and, therefore, not maintainable in law. The lower Court ought to have dismissed the suit on that ground, but it considered the merits as well. We expressed our opinion earlier that we are not inclined to go into the merits as at the threshold

the suit ought to have been dismissed. We do not therefore, express our dissent or assent to the findings of fact rendered by the learned Judge. It would not, therefore, constitute resjudicata as between the parties in any future litigation in which they may indulge. With these observations and as the suit itself cannot be maintained, the judgment and decree of the Court below are set aside and the appeal is allowed.

11. The parties at are liberty to take such action as is available to them in law notwithstanding the institution and dismissal of the above suit. There will be no order as to costs.