
(1993) 03 AP CK 0005

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 410 of 1992 and C.M.A. No. 1465 of 1992

Chelikam Rajamma

APPELLANT

Vs

Padileti Venkataswami Reddy and Others

RESPONDENT

Date of Decision : 01-03-1993

Acts Referred:

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

Citation : (1993) 2 ALT 154 : (1993) 1 APLJ 230

Hon'ble Judges : P. Ramakrishnam Raju, J;M.N. Rao, J

Bench : Division Bench

Advocate : C. Jayashree Sarathy, in LPA and E. Manohar, in CMA, for the Appellant; E. Manohar in LPA and C. Jayashree Sarathy in CMA, for the Respondent

Judgement

P. Ramakrishnam Raju, J.—Although this Letter Patent Appeal is from an interlocutory order passed by a learned single Judge granting interim stay of appointment of receiver made in I. A.No. 182 of 1990 in O.S.No. 49 of 1990 on the file of the Subordinate Judge's Court, Gudur subject to the condition of defendants 1 to 3 depositing a sum of Rs. 10,000/- per annum from the date of filing of the said LA. till the disposal of C.M.A.No. 1465 of 1992 preferred by the defendants, the learned counsel for both sides agreed to argue the main C.M.A, itself. Accordingly, we have heard the learned counsel for both sides and this judgment will dispose of the C.M. A. itself. The parties in this appeal are referred to as they are arrayed in the suit O.S.No. 49 of 1990.

2. Chelikam Rajamma, the plaintiff (respondent in the C.M.A.,) instituted the suit OS. No. 3 of 1990 for partition of the plaint schedule property into four shares and for allotment of one share to her and for*future profits.

3. The first defendant is the Manger of the joint family properties, the second defendant is the wife of the first defendant, and the third defendant is the sister of the second defendant. The plaint schedule properties consist of three items. Item No. 1 comprises Ac.20.37 cents of dry land and Ac.32.18 cents of wet land.

Item No. 2 comprises Ac.3.49 of dry land and Ac.2.01 cents of wet land. Item No. 3 is a well and Item No. 4 is a residential house.

4. The case of the plaintiff, in brief, is that Penchal Reddy, the father of the first defendant, and her maternal grand-father, Yerrappa Reddy were brothers and in the half share of the property that belonged to Yerrappa Reddy, her mother's share was to the extent of 1/4 and due to the death of certain other co-sharers, her mother's share was enlarged to half of Yerrappa Reddy's branch; her claim was therefore, to the extent of 1 /4th of the plaint schedule properties. The suit was preceded by a lawyer's notice and in the reply sent by the first defendant to that notice, the stand taken was that Pitchamma, the mother of the plaintiff, relinquished her rights in the joint family properties in favour of the first defendant by taking Rs. 10,000/- to perform the marriage of the plaintiff's daughter. The plaintiff was herself out of the family fold; she was married in 1950-51 and since then, she has been living in a separate village with her husband. Along with the suit, I. A.No. 182 of 1990 was filed for appointment of receiver. In that application for appointment of receiver, it was pleaded that the respondents (defendants) have been squatting over the plaint schedule property and are bent upon depriving the plaintiff of her share of income and so, in order to avoid future complications in regard to the quantum of yield from the properties and to avoid waste and damage, a receiver should be appointed. Resisting that application, the defendants pleaded that the grounds mentioned therein would not afford any justification for appointment of receiver. We must also mention in this context that the first defendant filed I.A.No. 237 of 1990 in the trial court averring that on 24-5-1990, a written agreement was executed between the first defendant and the plaintiff for adjudication of the dispute by the village elders and, therefore, he sought stay of the proceedings in the suit and for reference of the matter to the village elders for arbitration in accordance with the said agreement.

5. Both the interlocutory applications, we are told, are to be listed together for hearing, but on 7-9-1992, I.A.No. 182 of 1990 concerning appointment of receiver alone was disposed of and the other application is still pending. The learned Judge allowed the plea of the plaintiff for appointment of receiver on the ground that admittedly, the plaintiff is not enjoying the income derived from the properties and that the defendants are admittedly in possession of the properties. Expressing the view that the plaintiff is deprived of her right of share in the plaint schedule property, the learned Judge concluded "therefore, prima facie, the petitioner has established the case in her favour." On that view, a receiver was appointed to take possession of the plaint schedule properties, to manage, preserve, protect, lease them out, collect the rent and deposit the same to the credit of the suit.

6. Sri. Manohar, the learned counsel for the appellants in the C.M.A., has submitted that the grounds on which the receiver was appointed are totally untenable. In the absence of any allegation as to threat to the properties or the

competence of the defendants to maintain and protect the properties or the possibility of the rights of the plaintiff being prejudicially affected, there is no warrant to direct appointment of receiver to manage the plaint schedule properties.

7. In opposition to the above, it is contended by Smt. Jayashree Sarathy that the very fact that the plaintiff was kept out of possession for a number of years itself is a sufficient ground for appointment of receiver.

8. Under Order 40, Rule 1 of the Code of Civil Procedure, where it appears to the Court to be just and convenient, it may order the appointment of receiver, whether before or after decree to perform the functions specified therein. Once a receiver is appointed, the Court is empowered to confer upon such receiver, the powers incorporated in Clause (d) of Rule 1, Order 40. Under what circumstances a receiver can be appointed, there cannot be any hard and fast rule.

9. In *Govind v. Vallabh Rao* AIR 1920 Bom 321, while considering the question as to when a receiver could be appointed in a partition suit, a Division Bench of Bombay High Court expresses the view:

".... special circumstances will have to be proved before the Court will be entitled to appoint a receiver. Generally speaking, when an application is made to the court to take the property into its hands by appointing a receiver, the plaintiff must prove that *prima facie*, he has a very excellent chance of succeeding in establishing the case made out in his plaint, and in the next place, he must satisfy the court that the property in possession of the opposite party is in danger of being wasted."

While holding that both the tests-the excellent chance of the plaintiff succeeding and the satisfaction of the court that the property in the hands of the opposite party is in danger of being wasted-must be cumulatively satisfied, the Division Bench also observed that the share of the defendant itself would be ample security for any claim which the plaintiff would be able to substantiate in the case for damages or under any other cause of action against the defendant. This view was followed by *Kalappatti Eravamannattil Ithamma Maruvalamma's son Krishnan and Another Vs. Thankurisai Puliyankalath Koma Maruvalamma's daughter Wani Maruvalamma and Others*, . The learned Chief Justice expressed the view that in a partition suit, a receiver should not be appointed without proof of waste or mis-management or apprehended fear of the same. After an exhaustive review of the case law bearing on the subject-both Indian and American-Ramaswami, J. of the Madras High Court in *T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others*, has observed that five requirements should be satisfied under Order 40, Rule 1 of the CPC for the appointment of receiver. Even though the case in which Ramaswami, J laid down the five requirements did not arise out of a partition suit, the principles enunciated by the learned Judge are very useful guidelines in the exercise of discretion for appointment of receivers. They are:

- (1) The appointment of receiver is a matter in the discretion of the court and the discretion shall not be exercised in an arbitrary or unsound manner;
- (2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has got excellent chance of succeeding in the suit;
- (3) The plaintiff must show some emergency or danger or loss demanding immediate action and he should be clear about his right;
- (4) The receiver should not be appointed if such appointment has the effect of depriving a defendant of a "de facto" possession since that might cause irreparable wrong. If the property is "in medio", that is to say, in the enjoyment of no one, the court can appoint a receiver; and
- (5) If the conduct of the party seeking appointment of receiver is not free from blame, the court shall not appoint a receiver.

10. A Division Bench of this court in Chavali Venkataswami Vs. Chavali Kotayyas and Others, has an occasion to consider the scope of Order 40, Rule 1 of the Code of Civil Procedure. The Division Bench held that a receiver can be appointed even on the application of a defendant if the circumstances warrant to safeguard the interests of both the parties and to protect the properties. Explaining the scope of the words "just and convenient" occurring in Order 40, Rule 1 Code of Civil Procedure, it was held:

"What is required is that the court should not merely exercise the power vested in it under this rule in an arbitrary or unregulated manner but according to legal principles after a consideration of the whole of circumstances of the case and the Court has a complete discretion in this matter."

The object of the rule relating to appointment of receiver is to ensure protection of the interests of the parties in regard to any property whether before or after decree.

11. 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 put a case that he or she was not only kept out of possession of the properties unauthorisedly, but the party in possession is indulging in acts of waste leading to the inference of incompetence.
- (3) If, prima facie, the plaintiff has excellent chance of succeeding in the suit, there being no denial with regard to his or her share in the plaintiff's scheduled 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 receiver.

12. Our attention is invited to the judgment of a learned single Judge of this Court in *Chundru Srinivas Rao v. Chundru Venkata Rao* 1992 (2) A.P.L.J. 212 in which it was observed:

"Whenever major part of the landed property has been in possession of one person only then whether there is good crop or there is no crop ultimately the losers are the persons who are not in possession of any property at all. Besides, while the person who is not in possession of any of the properties suffers from lack of anything for maintenance there is every possibility of the person holding the property either misusing the amounts or screening the income that would be derived. Under these circumstances, this Court feels that appointment of a receiver also is one of the considerations that has to be taken into account and the courts should not be carried away by the general principle enunciated in the old cases that in case of partition, there cannot be appointment of a receiver."

13. Having regard to the settled legal position, we are of the view that the proposition of law was stated too widely by the learned Judge. From the mere fact that the plaintiff is not in possession of the joint family properties, no inference shall follow that there is every possibility of the opposite party misusing the amounts or screening the income from the properties. We, therefore, do not approve of the view taken by the learned Judge.

14. Applying the settled legal principles, we are satisfied that the plaintiff has not made out any case for appointment of receiver. The possession of the properties by the defendants and avoidance of future complications in regard to the quantum of yield, the two grounds upon which the application for appointment of receiver was founded, are totally untenable. The claim of the plaintiff for a definite share in the joint family properties was already in dispute as could be seen from the reply notice issued by the defendants. The plaintiff having been married into a different family and living in a far off village for nearly 35 years, cannot ask for appointment of receiver by merely filing the suit for partition especially when at no point of time in the past either she or her deceased mother has ever laid any claim to any part of the joint family properties. Without considering these relevant aspects, the learned trial Judge has passed the impugned order in a routine manner without proper assessment of the fact situation.

15. Although the share of the plaintiff is disputed in the reply notice, no written statement has yet been filed. The relationship of the plaintiff with the defendants is not in controversy. We find it difficult to hold that prima facie, the plaintiff does not have a fair chance to succeed in the suit although it cannot be predicated

what would be her precise share in the joint family properties. Taking all these facts and circumstances into consideration, we are of the view that the following direction would be just and proper in the circumstances of the case:

During the pendency of the suit, the defendants shall deposit every year a sum of Rs. 12,000/-with effect from the date of filing of I.A.No. 182 of 1990 and continue to deposit the same amount every year pending disposal of the suit. The trial court shall keep the amount so deposited in fixed deposits in any nationalised bank. Within one month from the date of receipt of this order, the arrears shall be deposited. The amount pertaining to the year 1993 shall be deposited on or before 31st January, 1994 and for future years, the deposit shall be on or before 31st January of the succeeding year.

16. With the aforesaid directions, both the Letters Patent Appeal and the C.M.A. are disposed of. No Costs.