

(1982) 04 SIK CK 0001
In the Sikkim High Court
Case No : Civil Revision No. 2 of 1981

Dilman Rai

APPELLANT

Vs

Srinarayan Sharma and Another

RESPONDENT

Date of Decision : 10-04-1982

Acts Referred:

Citation : AIR 1983 Sikk 11

Hon'ble Judges : Man Mohan Singh Gujral, C.J; Anandamoy Bhattacharjee, J

Bench : Division Bench

Advocate : N.K.P. Sharaf, for the Appellant; B.C. Sharma and R.K. Aggarwal, for the Respondent

Judgement

A.M. Bhattacharjee, J.—Having heard the learned advocates for the parties and having gone through the records ourselves, we are satisfied that the impugned order passed by the learned Civil Judge. Gangtok appointing a receiver pendente lite in respect of the disputed lands, must be set aside.

2. The suit now pending before the Civil Judge, in which the impugned order has been passed, has been filed by the plaintiff/respondent No. 1 for declaration of title, mesne profits and other consequential reliefs on the allegation that he has purchased the disputed land through a sale deed from the defendant No. 2/respondent No. 2, who is the brother of the present petitioner/respondent No. 1. The allegation further is that when the sale deed was presented for registration the petitioner-defendant No. 1 in collusion with his brother the defendant No. 2, preferred objection to the registration as a result whereof the registration was stopped and the District Officer directed the petitioner/defendant No. 1 to have the disputes adjudicated by the Civil Court. A civil suit was accordingly filed by the defendants which was however, dismissed and the decree of dismissal was also upheld by this Court on appeal. But in spite of such dismissal the defendant No. 1, who has all along been in possession and enjoyment of the disputed lands, has not vacated the same and has thereby compelled the plaintiff-respondent No. 1 to file the present suit for declaration of title and other reliefs and also for

compulsory registration of the sale deed through Court, the same not having been registered as yet. The plaintiff has also filed an application for the appointment of a receiver pendente lite and the learned Civil Judge has by the impugned order, appointed a receiver in respect of the disputed lands and on appeal having been preferred against that order to the Court of the District Judge by the petitioner/defendant No. 1, the learned District Judge has upheld the impugned order. Hence this revisional application by the defendant No. 1.

3. It appears from the impugned order that the learned Civil Judge has appointed a receiver pendente lite long after the defendants have entered their appearance and filed written statements. But even then the learned Judge has heard the application ex parte, appointed receiver as prayed for without issuing notice to the defendants at any point of time to show cause against the order. It is true that a Court can if the circumstances so warrant, pass an ex parte interim order appointing a receiver while at the same time issuing notice to the party affected thereby to show cause against the order passed. But a final order appointing a receiver, as has been passed in this case, without any notice to the party affected and without giving him any opportunity to show cause against the order can never be justified. Now that it is a settled law (vide: *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, at 1272) that "even an administrative order which involved civil consequences must be made consistently with the rules of natural justice", a judicial order must a fortiori comply with such rules unless the relevant law governing the matter rules out such rules expressly or by irresistible implication.

4. The learned District Judge, while upholding the impugned order, has observed, and Mr. B.C. Sharma appearing for the respondent, while supporting the order, has urged that Order 40 dealing with the appointment of receiver does not provide for issuance of notice to the opposite party, as is provided in Rule 3 of Order 39 in cases of temporary injunction. It is true that while Order 39 in Rule 3 provides for issuance of notice before granting temporary injunction and again in Rule 4 provides for opportunity to the aggrieved party for getting an order of temporary injunction discharged, varied or set aside. Order 40 does not make any such express provisions. But we have no doubt that to read the provisions of Order 40 to mean that no notice need be issued to show cause against an order appointing or proposing to appoint a receiver, is to misread the Order. As observed by Vivian Bose, J., in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, , which observations have become locus classicus by now, "there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which required that men should not be condemned unheard, that decisions should not be reached behind their back, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them." It was observed further that "there must be exceptions and where they are clearly defined, they must be given effect to", but otherwise "taken by and large and subject to that proviso our laws of procedure should be construed, wherever that

is reasonably possible, in the light of that principle." The rules of natural justice, one of the most important of which is enshrined in the maxim *audi alteram partem*, must, therefore, be taken to have supplemented all our laws of procedure, unless the relevant provisions unmistakably demonstrate their incompatibility with such rules. There should be no doubt that Rule 1 of Order 40, providing that the Court may appoint a receiver "where it appears to the Court to be just and convenient, far from ruling out the applicability of that elementary rule of natural justice of hearing the affected party, embraces that concept within the expression "just", as an order, unless expressly provided to the contrary, cannot be said to have been justly made without affording the party affected or likely to be affected by the order a reasonable opportunity of being heard. The appointment of receiver *pendente lite* having been recognised by all the authorities as one of the harshest remedies available under the law relating to Civil Procedure, such a law cannot be construed to have overruled the application of the rules of natural justice, in the absence of any express declaration or clearest implication to that effect. No such declaration of implication is to be found anywhere in Order 40.

5. The learned District Judge has referred to and relied on the decision of the Lahore High Court in *Ishri v. Shib Ram* AIR 1923 Lah 238 (2) and of the Calcutta High Court in *Asadali Chowdhury v. Mahammad Hossain Chowdhury* AIR 1916 Cal 427 for the view that in a given case a receiver may be appointed without notice to the opposite party. We have already indicated that if in a case not only the circumstances are such that it is just and convenient to appoint a receiver, but that any delay likely to be caused by issuing a notice to the opposite party would defeat the very purpose of appointment, a receiver can be appointed, as injunction can be granted, before issuing notice. But none of these decisions has laid down that in such cases even final order appointing receiver can also be passed without giving any notice to the party affected and without giving him any opportunity to show-cause against the order. This being the position in law, we must conclude, which we hereby do, that the learned Civil Judge, in making the impugned order, has exercised his jurisdiction with material irregularity within the meaning of Section 115(c), Civil P.C., justifying our intervention in revision. We, therefore, set aside the impugned order.

6. But since we are holding that the Civil Judge has acted with material irregularity in making the impugned order without giving the party affected any notice and opportunity to show cause and are setting aside the order on that ground, should we send the case back to the Civil Judge to dispose of the receiver matter afresh and according to law after giving the petitioner full opportunity to show cause against the appointment of receiver? We might have done so if we were not satisfied that the same would be an idle parade of forensic procedure as, in our view, there were no legal materials before the learned Civil Judge to justify an appointment of a receiver *pendente lite*. If there were some materials, as distinguished from no materials, on the basis of which the learned Civil Judge could be regarded to have passed the order, it might not

have been competent for us, sitting in revision, to interfere with the order, even if we thought that the learned Civil Judge was wrong in making proper appreciation of the materials. But if there are no materials on which the impugned order could be passed, it would be our plainest duty to intervene.

7. The law as to when and under what circumstances receiver pendente lite is to be appointed has become well-settled as a result of multitudinous decisions during these hundred years since the preceding Civil P.C. 1882. Though no citation should be necessary, yet reference may be made to the two decisions of Ramaswami, J. (as his Lordship then was. subsequently elevated to the Supreme Court) in T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others, and in Muniammal Vs. P.M. Ranganatha Nayagar and Another, , wherein, his Lordship, on a review of the relevant authorities, formulated and summarised the governing principles. One such principle is that "an order appointing a receiver will not be made where it has the effect of depriving the defendant of a "de facto" possession since that might cause irreparable wrong." The appointment of receiver pendente lite is a harsh, drastic and peremptory measure, its effect being to deprive, at least temporarily, a defendant of his possession, before final judgment or decree is reached on evidence at the trial. Another principle is that "the Court will not act on possible danger only", and "remote or part damage will not suffice as a ground", "but there must be a well-grounded apprehension of immediate injury" and "danger of suffering irreparable loss". Yet another principle is that the charges must be specific, "specific acts capable of being tested should be alleged", for "violently stated vague allegations constitute no substitute for vacuum of facts". And above all, the general and almost overriding principle is that an application for the appointment of the receiver should always be promptly made and delay in making it is a circumstance unfavourable to such an appointment. These being the principles which should govern the matter at hand, let us look at the allegations made in the application for the appointment of receiver pendente lite.

8. The application is unsworn and not supported by any affidavit. Not that it is the law that no affidavit, no receiver; but if there are no other materials on record, a bare application containing some allegations unsupported by any oath cannot ordinarily be made a basis for such harsh and drastic action to dispossess a de facto possessor from the properties in his possession, But that apart, in the application for the appointment of receiver, there are only two or three allegations which can, if at all, be regarded to be somewhat specific and they are that the disputed land has been left uncultivated and an "irrigation Kulo was damaged last year" and "the defendants are trying to cut down all the trees big and small". As already pointed out hereinbefore, "remote or past damage" like damaging irrigation Kulo last year cannot in law be a ground for an interim receiver pendente lite, and as already noted, an application for receiver pendente lite must also be made promptly. And the allegation that "the defendants are trying, to, cut down all the trees big and small" is a vague apprehension of "possible danger" and not a "well-grounded apprehension of immediate injury",

which can justify a conclusion that the plaintiff is in "danger of suffering irreparable loss". The observation of the learned Civil Judge that "O.Ps. have been cutting down all trees indiscriminately" is, to say the least, a palpable misreading of the application of the plaintiff, where, as already noted, the allegation is that "the defendants are trying to cut down" trees. The suit, be it noted, is also for menses profits and, therefore, if the defendants are not cultivating the disputed lands or are utilizing the trees standing thereon, they would have to, if the plaintiff succeeds, pay menses profits, which, according to its definition in Section 2(12) of Civil P.C. would include all "those profits which the person in wrongful possession of such "property actually received or might with ordinary diligence have received therefore together with interest on such profits." Therefore, the plaintiff, even assuming the allegation to be true cannot be said to be "in danger of suffering irreparable loss" which is necessary to warrant an appointment of receiver pendente lite and under these circumstances we do not think that any useful propose would be served in sending the case back for rehearing after notice to the defendants.

9. In the result, we accept the revision and quash the impugned order passed by the learned Civil Judge appointing a receiver pendente lite. We, however, make no order as to costs.

M.M. Singh Gujral, C.J.

10. I agree.