

(1955) 11 KL CK 0010
In the High Court Of Kerala
Case No : C.M.A. No. 61 of 1955

K.P. Thampy

APPELLANT

Vs

Ram Kurup Narayana Kurup

RESPONDENT

Date of Decision : 22-11-1955

Acts Referred:

Citation : (1955) 11 KL CK 0010

Hon'ble Judges : T.K. Joseph, J; Nandana Menon, J

Bench : Division Bench

Advocate : S. Easwara Iyer, for the Appellant; G. Viswanatha Iyer, for the Respondent

Judgement

Nandana Menon, J.—This appeal preferred by the Defendant is directed against the order of the District Judge of Trivandrum in an application for appointment of a receiver in O.S. No. 55 of 1955. The suit property consisted of a three storeyed building which according to the Plaintiff had been rented to the Defendant on a monthly rent of Rs. 110 from 1-2-1953.

Contending that the rent was not being regularly paid, the Plaintiff filed the suit for recovery of the building with arrears of rent and sought the appointment of a receiver pending the same. The Defendant contended that no arrears are due as the rent payable was set off against the amount spent by him for repairs of the building. The lower Court passed an order directing the Defendant to deposit Rs. 1,500 towards the past arrears without prejudice and Rs. 110 every month towards the future rent.

The Plaintiff was provisionally allowed to withdraw Rs. 80 out of the monthly rent directed to be deposited. It was also ordered that if the conditions were not fulfilled the prayer for the appointment of a receiver will stand allowed and the property be placed in the possession of the receiver. The appeal is directed against the said order.

2. On behalf of the Plaintiff a preliminary objection was raised regarding the

maintainability of the appeal, it being urged that the order appealed against is not a final order as contemplated under Order 40, Rule 1 being the relevant provision, As per Order 43, Rule 1(s) only orders under Rule 1 and Rule 4 are appealable. In the present case as per the lower Court's order if the Defendant defaults in carrying out the directions the property will pass to the possession of the Court as the order appointing a receiver comes into effect on such default. Only further order that the Court is to pass is the one nominating the receiver who is to keep possession on behalf of the Court.

The decisions of the Indian High Courts on the question as to whether such an order is appealable or not are not uniform. The Bombay High Court in *Narbadashankar Mugatram Vyas Vs. Kevaldas Raghunathdas*, has held that such an order is not appealable and the same has been followed in *Anr. decision* cited on behalf of the Plaintiff by the Allahabad High Court in *S. Mohammad Askari Vs. Qazi Syed Nisar Husain alias Munee and Others*, These decisions are referred to and follow in AIR 1934 64 (Nagpur) where Pollock, J. observed as follows:

I respectfully agree with the view expressed by the majority of the High Courts that a decision that it is just and convenient to appoint a receiver does not amount to an order appointing a receiver, and I do not see why any inconvenience should be caused if the party objecting to this order has to wait during the short interval that must elapse between such an order and the appointment of a receiver.

3. In the present case, the inconvenience to the party is plain. If he waits for the appointment of a receiver by committing default in carrying out the direction of the lower Court that default may stand in his way if it is ultimately held by the appellate Court that a receivership is proper.

In a Full Bench of the Madras High Court cited on behalf of the Appellant in *Palaniappy Chetty v. Palaniappa Chetty* AIR 1918 Mad 1146 (V 5) (D) it was held by a majority that an order that a receiver is to be appointed is appealable though nomination has not been made. It has been followed in *Gobind Ram v. Ganesh Ram* AIR 1922 Pat 577 (V 9) (E) and *Firm Raghbir Singh Jaswant v. Narijan Singh* AIR 1923 Lah 48 (V 10) (F) relied upon on behalf of the Appellant. There is a degree of finality in the order appeal against in the present case which we hold is enough to bring it under the category of appealable orders contemplated under Order 43, Rule 1(s). Hence the preliminary objection is overruled.

4. Coming to the merits of the appeal, prima facie large arrears of rent have accrued due. The contention of the Defendant that he has spent a substantial amount to repair the building and that he has got a right to set off the same towards the arrears are matters to be gone into and decided in the suit. So the lower Court's conclusion that a case for an appointment of a receiver has been made out by the Plaintiff cannot be challenged. Then the only question is whether the terms now stipulated are proper.

What is urged on behalf of the Appellant is that there is no justification at all in directing the Defendant to deposit Rs. 1500 tentatively towards the past arrears, it being pointed out that the appointment of a receiver is for the purpose of conserving the income only. The rent stipulated is only Rs. 110 being the amount directed to be deposited every month in addition to the lump sum of Rs. 1,500.

Though the Plaintiff has a case that a rent of Rs. 175 can be obtained, at this stage it is not possible to hold that the building will fetch the same. By appointing a receiver it may not be possible to realise any amount apart from the current rent, towards the past arrears. Under such circumstances we do not see sufficient justification to force the Defendant to deposit Rs. 1,500 as has been now directed.

So we modify the lower Court's order by deleting the said condition and direction the Defendant to deposit all arrears, at the rate of Rs. 110 per month from the date of the first hearing of the suit viz. 16-8-1955, when he failed to appear and was declared ex parte though the ex parte decree subsequently passed was set aside and the suit restored, till the date of this order within one month and Rs. 110 every month as directed by the lower Court. On default, the receivership shall come into force as ordered by the lower Court. The appeal is allowed to the said extent. The parties will bear their own costs.