(1955) 10 MAD CK 0025

In the Madras High Court

Kunjammal APPELLANT

Vs

Malayappa Iyer and Another RESPONDENT

Date of Decision : 05-10-1955

Acts Referred:

Citation : AIR 1956 Mad 409 : (1956) 69 LW 295 : (1956) 2 MLJ 67

Hon'ble Judges : P.V. Rajamannar, C.J

Bench : Single Bench

Judgement

P.V. Rajamannar, C.J.—This is an appeal by the defendant in O.S. No. 49 of 1949 in the Court of the Subordinate Judge of Pudukottai. She is the daughter of Vaithianatha Ayyar, who died on 7th March, 1946. She succeeded to him and is in possession of the estate as a limited owner. The suit was by the two brothers of Vaithianatha Ayyar, as presumptive reversioners, for the appointment of a receiver for the estate of Vaithianatha Ayyar, in the hands of the defendant-appellant. The plaintiffs prayed for the appointment of a receiver on the ground that the appellant was guilty of waste and a fraudulent design to convert and secrete the assets, a greater part of which consisted of outstandings and movables. The defendant-appellant denied having committed any waste or other injurious acts. She also denied any fraudulent design on her part to convert or secrete the assets. The learned Subordinate Judge found on Issue No. 1 that the defendant has not been proved to be guilty of waste or other acts injurious to the reversion, but on Issue No. 2, he held that apart from proof of acts of waste, on the facts of the case, there was sufficient justification for the appointment of a receiver to safeguard the interests of the reversioners.

2. The properties of Vaithianatha Ayyar, which devolved on the defendant, consisted of immovable property described in Schedule A to the plaint, movables, outstandings and deposits in Banks and the stock-in-trade of the business described in Schedule B and a business, which was carried on by Vaithianatha Ayyar and was being continued by the defendant, set out in Schedule C. The plaintiffs did not seriously press their claim to have a receiver appointed for the

immovable properties. But they did press their case as regards outstandings, movables and the business. The learned Judge held that even in respect of these assets, there was no positive proof of any fraudulent conduct on the part of the defendant. Having regard to this finding, the only way to understand the learned Judge''s conclusion that action is definitely called for to protect the interests of the reversion, appears to be founded merely on the fact that a great part of the estate consists of movable property like cash and outstandings, apart from the business. The learned Judge thought that it would be reasonable to appoint the defendant herself as the receiver for the properties in Schedule B, i.e., movables and outstandings, and he appointed one Sundaram Pillai, who was already a paid employee managing the business, as receiver in regard to the business. The learned Judge further directed the defendant to file into Court within two weeks from the date of the decree a statement of account disclosing the outstandings, movables and cash belonging to the estate. Similarly, Sundaram Pillai, as receiver of the business, was directed to file into Court within two weeks from the date of the decree, a report disclosing in full and in detail the stock-in-trade and assets belonging to the business. The defendant appeals against the decree of the learned Subordinate Judge.

3. On the findings arrived at by the learned Subordinate Judge, which were not in any way canvassed before us, it appears to us that an appointment of a receiver was not called for. The learned Judge rightly quotes a relevant passage from Mayne''s Hindu Law, nth Edition, page 305. But apparently he has overlooked the principles stated therein. In that passage we find the following:

Though no specific acts of waste or mismanagement, are proved, yet where the property is movable or cash and her conduct is such as to raise a reasonable apprehension that if she is allowed to have uncontrolled possession of it, she would not administer it in accordance with the powers which the law confers upon her....

It is true that the property in Schedules B and C is movable or cash. That requirement is satisfied. But we have no evidence whatever to prove that the defendant''s conduct was such as to raise a reasonable apprehension that if she were allowed to have uncontrolled possession of it, she would not administer it in accordance with the powers which the law confers upon her. Now there was no proof of any conduct of hers as raising a reasonable apprehension that if she is allowed to have uncontrolled possession of it, she would squander it.

4. There is no authority for the position that wherever the estate, or a large part of it, consists of movable property and cash and the person in possession of the estate is a limited owner, a receiver should be appointed. It is not the law. There must be proof of a further fact, namely, that the conduct of the limited owner has been such as to raise a reasonable apprehension. We are unable to follow the reasoning of the learned Judge on which he finds that though no positive acts of waste or spoliation have been proved, there is room for reasonable apprehension of such waste or fraudulent secretion to the detriment of the reversioners. This

finding is totally inconsistent with his earlier finding that there is no positive proof of any fraud, or waste. If the mere fact that a portion of the estate consists of movables is sufficient to justify the appointment of a receiver in the case of a limited owner, then there will be practically no case in which a receiver need not be appointed. We therefore allow the appeal and set aside the decree in so far as it appoints the defendant and Sundaram Pillai as receivers in respect of the outstandings and the business respectively. We, however, confirm the decree of the Court below in so far as it directs the defendant to file a statement of account disclosing the oustandings, movables and cash belonging to the estate. It is represented to us that the defendant has since the date of the decree filed such a statement of account. The defendant will be directed to submit half-yearly reports about the business. Except for these two comparatively minor conditions imposed on her, the suit deserves to be and is hereby dismissed with costs throughout.