(1998) 07 CAL CK 0044

In the Calcutta High Court

Case No : C.O. No. 512 of 1996

Lakshmi Das (Smt.) APPELLANT

Vs

Kanailal Das RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54, Order 40 Rule 4, 36

Citation : (2000) 1 ILR (Cal) 224

Hon'ble Judges : P.K. Samanta, J

Bench : Single Bench

Advocate : Bhaskar Ghosh and Jyotirmoy Bhattacharjee, for the Appellant;Ashok Banerjee, Debangshu Basak and Siddeswar Chanda for Opposite Parties Nos. 1 and 2 and Jiban Ratan Chatterjee and Biswajit Sau for Added Opposite Party, for the Respondent

Judgement

P.K. Samanta, J.—The facts relevant for this revisional application may be shortly stated as follows:

2. One Kanailal Das, predecessor-in-interest of the opposite parties filed Title Suit No. 1 of 1982 in the Court of 10th Assistant District Judge, Alipore for petition. In the said suit said Kanailal Das was appointed receiver by a judgment and order dated September 21, 1984 made in appeal arising out of an order passed by the 10th Assistant District Judge at Alipore on an application under Order 40 Rule 4 of the Code of Civil Procedure. The aforesaid partition suit was decreed in preliminary form by a judgment and decree dated February 9, 1986 declaring 3/8th share of said Kanailal Das. Said preliminary decree was also affirmed by this Court. In the said appeal before this Court on an application for direction, this Court by an order dated February 5, 1992 directed the Land Acquisition Collector concerned to pay a sum of Rs. 43,61,405.44p. along with interest if any accrued being the consideration of the premises No. 22, Raja Monindra Road, Calcutta to the receiver, Kanailal Das appointed by this Court. It was further directed that the receiver after receiving the said money shall invest

the same in short term fixed deposit in a Nationalised Bank and no money shall be withdrawn without leave of the Court and shall be disbursed by the receiver as per direction of the Court below. However, liberty was given to pray for necessary orders before the Court below. On June 15, 1992 the said receiver filed an application before the trial court sating that a sum of Rs. 42,45,039.65p. was received by him from Land Acquisition Collector. Thereafter by an order dated September 9, 1992 passed by the Assistant District Judge, 10th Court, Alipore the said receiver was permitted to disburse in his favour as Plaintiff the 3/8th share of the aforesaid amount with further observation that he may also disburse the balance as per the shares of other co-sharers according to law provided the other co-sharers have no objection to such disbursement. It further appeals from the receiver''s report dated April 3, 1994 that the receiver collected a total sum of Rs. 42,45,039.65p. from the office of Land Acquisition Collector, 24-Parganas, and thereafter in terms of the said order dated September 9, 1992 a sum of Rs. 15,91,889.85p. was shown disbursed in his favour according to his 3/8th share as per the said preliminary decree. A further sum of Rs. 98,994.14p. was also shown disbursed in his favour on account of interest in terms of an order passed by this Court on September 25, 1992. It was admitted by the said receiver in his report dated January 24, 1994 filed in Court below that the balance amount after the aforesaid disbursements was lying in his hands particularly in the banks such as Rs. 5,00,000.00 in Central Bank of India, Prince Anwar Shaw Road Branch, Rs. 15,000.00 in Syndicate Bank, Maniktala Branch and Rs. 8,21,312.37p. in State Bank of Patiala, Burra Bazar Branch. It is not disputed that on the application filed by the Defendant Nos. 1 to 4 series a second preliminary decree was passed in the aforesaid partition suit whereby Plaintiff''s 3/8th share was not altered and it was declared that the Defendant No. 1 series jointly have 1/20th share and each of the Defendant 1 series i.e., Defendant No. 1(a) to 1(e) have 17100th share, the Defendant No. 2 series jointly have 17 20th share each of the Defendants No. 2 series i.e., Defendant No. 2(a) to 2(e) have 1/100th share, the Defendant No. 3 has 1/20th share, the Defendant No. 4 series jointly have 1720th i.e., each of the Defendants No. 4(a) to 4(d) have 1/80th share, the Defendant No. 5 has 1/20th share and Smt. Bhagabati Das as trustee to the estate of Bhagabati has undivided 3/8th share in the suit properties. Thereafter the receiver further by submitting a report dated August 26, 1994 confirmed that an amount of Rs. 5,00,000.00 was lying in fixed deposit with the Central Bank of India, Prince Anwar Shaw Road Branch under fixed deposit receipt No. 17/78, an amount of Rs. 15,000.00 was lying in deposit with the Syndicate Bank, Maniktala Branch under fixed deposit receipt Nos. 1286, 1287, 1288, 1289 and 1290 of Rs. 3,000.00 each and also an amount of Rs. 8,20,300.12 was lying in deposit with State Bank of Patiala, Burrabazar Branch under fixed deposit receipt No. TDR A/c. No. 183. By an order dated September 19, 1994 the Assistant District Judge 10th Court, Alipore accepted the said report of the receiver and further directed the receiver to disburse the said money to the parties according to their respective shares as above after making necessary payments of electricity bills. Inspite of the aforesaid order the receiver did not disburse the said amount which was lying in his hands to the Defendants according to their shares and unfortunately the said receiver died on September 28, 1994 leaving behind the opposite parties No. 1a to 1B who are his widow and adopted son.

3. In these circumstances, Defendants 1 series namely Defendant No. t(a)-to 1(e), Defendant No. 1 series namely Defendant No. 4(a) to 4(d), Defendant Nos. 5 and 6 filed an application u/s 36 of the CPC for execution of the aforesaid order dated September 19, 1994 passed in the said partition suit whereby the receiver was directed to disburse the money as above lying in the different banks as per his report to the Defendants according to their respective shares. On the basis of the said application Title Execution Case No. 2 of 1995 was started by the Learned 10th Assistant District Judge, Alipore. In the said execution case the said Defendants/Petitioners made an application for attachment and sale of the properties of the opposite parties No. 1(a) and 1(b) namely the widow and adopted son of the receiver which having been dismissed by the impugned order dated February 14, 1995 the present revisional application arises.

4. It is needless to mention that in the petition filed by the Defendants/ Petitioners for attachment and sale of the properties of the opposite parties it was stated that after the death of the receiver the Petitioners came to know of the following facts.

A. The receiver deposited Rs. 5,000,00.00 (five lacs) Central Bank, Prince Anwar Shaw Road Branch, in his own name and in his own capacity. The said receiver took loan of 75 % of the said deposited money on 27.6.94 and after adjusting the said loan the receiver closed the said A/e. on 18.9.94. This amount was misappropriated by the receiver.

B. The receiver deposited Rs. 8,21,312.37p. in the State Bank of Patiala, Burrabazar Branch in his own name and in his personal capacity. The said receiver had taken loan of Rs. 6,00,000/- (six lacs) on 14.6.93 again the said deposited amount and no payment has been repaid so far. Thus the said deposits amount of Rs. 8,21,312.37p. has also been misappropriated by the receiver.

C. The receiver had deposited Rs. 15,00.000,00 in the Syndicate Bank, Maniktala Branch in the joint name of Sri Kanailal Das and another person whose name has not been disclosed to the Petitioners. The said amount not being deposited in the name of the receiver also appears to have been misappropriated by the receiver.

5. In the said petition the immovable joint properties were shown in schedule ''A'' and 3/8th share of the Plaintiff/receiver in the said immovable joint properties which the present opposite parties inherited along with one other movable property namely a Maruti Van bearing No. WB-02C-4378 and the fixed deposits as disclosed by the said receiver himself were shown in schedule ''B'' to the said petition.

6. The said application for attachment was rejected by the learned court below as

he was of the view that Section 36 of the CPC relates to the execution of decree so the same cannot be made applicable for execution of an order dated September 19, 1994 and therefore the provisions for attachment of immovable properties in an execution proceeding as contained in Order 21 Rule 54 are not attracted and that too the Plaintiff/receiver having got a decree in his favour in respect of his 3/8th share in his suit properties he cannot be termed as a judgment debtor whose properties along could be attached in the execution proceeding. Thus the learned Judge further placing his reliance in a decision of Madan Mohan Missir and Others Vs. Pt. Girdharan Prasad Missir and Others, held that since it was laid down that scrutiny of the accounts submitted by the receiver cannot be made in a summery proceeding against the heirs and legal representatives of the receiver on his death so also for the purpose of distribution of proportionate shares to the parties the remedy should be by way of a separate suit when the receiver is dead.

7. Upon bare perusal of Section 36 of the CPC it is clear that the said provision of the code relating to the execution of decrees is also applicable to the execution of orders including payment under an order. It is not in dispute that this Hon''ble Court observed that the award money so collected by the receiver from the Land Acquisition Collector should be disbursed as per direction of the Trial Court and pursuant to such direction the Trial Court by an order dated September 19, 1994 accepted the report of the receiver that a several amounts were lying in fixed deposits as above with several banks namely Central Bank, Prince Anwar Shaw Road Branch, Syndicate Bank, Maniktala Branch and State Bank of Patiala, Burrabazar Branch and consequently directed the receiver to disburse the same to the parties according to their respective shares as lastly determined on the application of the Defendant Nos. 1 to 4 series. Therefore, the said order dated September 19, 1994 is clearly an order for payment to the Defendants which squarely come within the stop of Section 36 of the Code of Civil Procedure. Besides as above the application for execution of an order by the Court for payment cannot be disputed as the Court has always the inherent power to have its order carried out by way of execution. This is more so and can get support from the following paragraph from Kerr on Receivers and Administrators (17th Edn.) at page 210.

All money which comes to the hands of a receiver by virtue of an order of the court entitling him to receive it, in a sense belongs to the Court, and the receiver can only discharge himself by applying it in accordance with an order.

Such an application therefore for execution of an order for payment will therefore partake the character of an execution proceeding and the provisions of Section 36 in its term will apply in full force.

8. Order 21 of the CPC contains a detailed procedure relation to the execution of decrees. Since Section 36 is made applicable to the execution of orders made for payment so all the provisions of Order 21 are thus made applicable to the execution of all orders which could be executed like decrees. Therefore, Order 21

Rule 54 of CPC is thus clearly applicable in the facts and circumstances of the present case and the learned Judge failed to exercise, his jurisdiction under Order 21 Rule 54 of the Code.

9. That again the decision of Madan Mohan Misir v. Pt. Girdhran Prasad Misir Supra that if a receiver is dead the account submitted by him cannot be scrutinised in summery proceeding under Order 40 Rule 4 of the CPC and must be done only by filing a separate suit has no application in the facts and circumstances of this case as no question for scrutinisation of the accounts submitted by the then receiver arose for consideration by the Court, in as much as the same was clearly accepted by the Court itself by its Order dated September 19, 1994. In this connection, it may be noted that a Division Bench of our Court in a decision in Chaparaddi alias Saparaddi Gazi v. Kabil Moua AIR 1943 Cal. 24 held that though the heirs and legal representatives of a receiver cannot be made liable personally for any loss that has been occasioned to the estate which was in possession of the receiver by reason of any misconduct or negligence on his part, but there is nothing in law which prevents a proceeding against the property of the receiver in the hands of his heirs. It was also held therein that even in a proceeding under Order 40 Rule 4 of the Code where the receiver had died pending the proceeding an order for attachment can certainly be directed against the property of the receiver in possession of his legal representatives.

10. In the instant case the proceeding initiated by the Petitioner is for execution of the order for payment and therefore the principle as laid down in the above case in a proceeding under Order 40 Rule 4 of the Code which enjoins upon the; Court the power to scrutinise the accounts submitted by a receiver and to determine the question as to whether the receiver had occasioned loss to the estate in his hands by his willful default and negligence or any amount was payable by him as a result of the scrutiny of the accounts submitted by him, is clearly applicable.

11. For all these reasons the impugned order, rejecting the application of the Petitioners for attachment of the properties of the receiver in the hands of his heirs and legal representatives, was made as the learned Judge failed to exercise his jurisdiction vested in him in law. The impugned order is accordingly set aside.

12. Pending disposal of this revisional application, the Petitioners further made an application in this Court for direction upon the opposite parties to deposit the amounts further received by them in the meantime in respect of compensation award with the Court in which the aforesaid execution proceeding is pening. Since all money coming in the hands of the receiver because of the order of the Court can be applied for payment in accordance with the order of the Court so the amounts further received by the opposite parties in the share of the receiver should also be similarly applied. The Petitioners are therefore entitled to an order for attachment of the share of the receiver in the award of compensation further published in the meantime or may have come in the hands of his legal

representatives or to any other appropriate order or orders for securing payment of their respective shares in the award money as per the order of the Court.

13. This revisional application and the application as above filed by the Petitioners are thus disposed of with direction upon the Court below to pass appropriate order for attachment of the properties of the receiver in the hands of the opposite parties including the share of the amount of compensation further published and/or received by the opposite parties in the meantime and/or for any other appropriate order so far as the further amount of compensation is concerned, provided the Petitioners apply therefor, upon hearing the parties peremptorily within fortnight from the date of communication of this order. This order be communicated to the Court below forthwith by a special messenger at the cost of the Petitioners which should be put incourse of tomorrow.

14. A copy of the application for addition of party be kept on record and be treated as the original therefor.

15. If urgent xerox certified copy of this order is applied for by the parties, the same will be given within a period of seven days from the date of making of this application.

