
(1952) 07 MP CK 0006

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 6 of 2005

Madhu Lal

APPELLANT

Vs

Ramji Das Chironji Lal and Others

RESPONDENT

Date of Decision : 31-07-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
Civil Procedure Code, 1966 — Section 447, 451

Citation : (1952) 07 MP CK 0006

Hon'ble Judges : Dixit, J;Chaturvedi, J

Bench : Division Bench

Advocate : Bhagwandas Gupta, for the Appellant; Mungre, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, J.—This is an appeal by the Plaintiff from an order of the District Judge, Shivpuri refusing to appoint a receiver of the Defendant-Respondent's properties in the Plaintiff's suit for the recovery of Rs. 13,527/11/6 on the basis of an account stated. The Defendant is resisting the suit inter alia on the ground that it is incompetent for the reason that there was a composition between him and his creditors including the Plaintiff-Appellant about their debts; that the debt which the Plaintiff seeks to recover was included in the composition under which the Plaintiff and the other creditors of the Defendant had the right to sell the Defendant's properties and realise their debt and that therefore the Plaintiff was (SIC) entitled to file this suit on the original ca(SIC) of action. After the institution of the suit the Plaintiff presented on 26-3-46 a consolidated application Under Sections 433, 447, 451, Gwalior CPC Samvat 1966 for an attachment before judgment of the Defendant's properties and in the alternative for the appointment of a receiver for the collection of the rents and profits of the Defendant's properties. Before the District Judge, the Plaintiff did not press the application in so far as it related to an order of attachment before judgment. He however, pressed for the appointment of a receiver on the ground that the

Defendant-Respondent had first agreed to hand over his properties to his creditors for the realisation of their debts but later on he resiled from the agreement; that the Plaintiff had therefore an equitable interest in these properties, that the Defendant was heavily indebted and was putting obstacles in the Plaintiff's suit by raising all sorts of objections and thus delaying the proceedings; that in the meantime he was appropriating the rents and profits and paying nothing to the Plaintiff and that if a receiver was appointed for the collection of the rents and profits, there would be some assets for the satisfaction of any decree that the Plaintiff might obtain against the Defendant. The learned District Judge rejected the application on the short ground that u/s 451, Gwalior Code of Civil Procedure, a receiver could be appointed of any property only if it was the subject-matter of the suit.

2. In this appeal learned Counsel for the Appellant contended that if in the present case no receiver could be appointed u/s 451, Gwalior Code of Civil Procedure, the trial Judge should have considered the question of the appointment of a receiver in the exercise of its inherent powers and that in any case Under Order 40 Rule 1, Code of Civil Procedure, 1908, which is now in force in the State, the appointment of a receiver in the present case would be just and convenient in view of all the, circumstances of the case. On behalf of the Respondent Mr. Mungre does not dispute that the matter is now governed by Order 40 Rule 1 of the Code. But he says that in this suit of the Plaintiff which is a suit for money and in which the Plaintiff does not claim any right to be paid out of any particular property of the Defendant, there is no equity at all in favour of the Plaintiff" and no receiver can, therefore, be appointed.

3. In my view, the contention of the learned Counsel for the Respondent is well-founded and must be accepted. The terms of Order 40 Rule 1 of the Code of 1908 are wider than Section 451, Gwalior CPC and do not limit the appointment of a receiver of the property only to those cases where the property is the subject-matter of the suit. Under this Rule, a Court has the power to appoint a receiver of any property "where it appears to the Court to be just and convenient." This rule confers a discretion on the Court in the matter of the appointment of a receiver and; the only restriction this discretionary power of the Court is that put by the words "just and convenient." In "Edwards and Co. v. Picard (1909) 2 KB 903, the words "just and convenient" have been construed as meaning that "it is practicable and the interests of justice require it."

4. The question, therefore, in the present case is whether the appointment of a receiver (SIC) necessary for the protection of some rights of Plaintiff-Appellant. The Plaintiff's suit is for the recovery of moneys on an account stated. Learned Counsel for the Appellant admits that in this suit, the Plaintiff does not claim a specific charge on any property in respect of his debt. He does not claim any right to be paid out of any particular property. It is true that the Respondent has pleaded that the Plaintiff should have sued on the basis of a composition which gave to the Plaintiff a right to realise his debt, from certain properties of the

Defendant and that the Plaintiff's suit on the original cause of action is not maintainable. But because of this pleading of the Defendant, the Plaintiff-Appellant cannot be said to have a right in the present suit of realising his debt from any particular property. If the Appellant had a right to be paid out of a particular fund or property, he could in equity obtain protection to prevent that property or fund from being dissipated so as to defeat his rights. But there can be no such equity in favour of the Plaintiff-Appellant, when in the present suit he does not rely on any agreement between him and the Defendant that he should be paid out of a particular fund or property. The appointment of a receiver Under Order 40 Ruel 1 is essentially on equitable grounds and if a simple contract creditor fails to establish a special equity in favour of the appointment of a receiver, there can be no justification for the Court to appoint a receiver.

5. In "Owen v. Homan (1853) 4 HLC 997 affirming 20 LJ Ch 314 the Lord Chancellor observed:

The Plaintiffs here do not claim as specific appointees of any part of the Defendant's separate estate. They are merely in the nature of general creditor seeking to obtain payment by a sort of equitable action of assumpsit or debt. In such a case it is a strong exercise of authority to deprive the Defendant, on motion, of property of which the Plaintiffs have no specific claim in order that if they establish their claim as creditors there may be assets wherewith to satisfy them. I do not mean to say that such a course may not be taken, though I have not discovered any authority for it. Perhaps the anomalous nature of the right, where a Plaintiff is claiming as a general creditor of a married woman and is seeking payment out of her separate estate, and the inability of the Court to govern the proceedings in equity in such a case by rules strictly conformable to those which regulate an action at law, may warrant the interim interference by a receiver. But a chance of doing a wrong to the Defendant in such a case is certainly much greater and much more apparent, than were a right against some specific fund or estate. "It is the almost universal rule", says Pomeroy in his Equity Jurisprudence 4th Volume 1533, "that a creditor's bill whether to set aside a fraudulent transfer or to reach equitable assets will not lie on behalf of mere general creditors who have not prosecuted their claim to judgment nor, in any other manner, acquired a lien upon the debtor's property. The slowness and inadequacy of the legal, remedies open to such creditors are not considerations that can move a Court of Equity in the absence of statutory authority, to intervene in their behalf with the instrumentality of a Receiver to preserve the debtor's property.

6. The Calcutta High Court has also following the English case "Owen v. Homan (1853) 4 HLC 997 affirming 20 LJ Ch 314) held in Dharendra Krishna Deb and Others Vs. Surendra Krishna Nandi and Others, that a simple contract creditor who has no specified charge or no right to be paid out of a specified fund cannot in general ask for the appointment of a receiver. Learned Counsel for the Appellant was not able to refer us to any decision of any High Court in India in

which a contrary view has been taken. On the other hand in the passages read out to us by the learned Counsel from Woodroffe's "Law of Receivers", it has been observed

the great weight of authority supports the rule that in the absence of statutory provisions to the contrary a general contract creditor before judgment is not entitled to an injunction or a receiver against his debtor upon whose property he has acquired no lien.

7. In the instant case, the Appellant has clearly acquired no lien upon any property of the Defendant. That being so, a receiver cannot be appointed simply because the Defendant is delaying the proceedings of the suit by raising all sorts of objections and in the meantime appropriating the rents and profits of the property.

8. For the above reasons, I am of the opinion that this appeal must be dismissed with costs.

Chaturvedi, J.

9. I agree.