

(1948) 01 MAD CK 0018
In the Madras High Court

Muhammad Abdul Halim Baig

APPELLANT

Vs

Muhammad Ali Hussain and Others

RESPONDENT

Date of Decision : 22-01-1948

Acts Referred:

Citation : AIR 1948 Mad 335 : (1948) 61 LW 281 : (1948) 1 MLJ 264

Hon'ble Judges : Govinda Menon, J

Bench : Division Bench

Judgement

Govinda Menon, J.—By the. order made in C.M.P. No. 2689 of 1947, my learned brother, Shahabuddin, J., appointed the petitioner herein as receiver for the purpose of carrying on quarrying operations in a hillock which formed the subject-matter of the litigation between the parties on a "seignorage" basis. Various directions were given to the receiver and he was ordered to work under the general supervision of the lower Court. Previously, by the order in C.M.P. No. 2424 of 1947, Rajamannar, J., as he then was, had directed, by consent of parties, that the appli-cant, the present petitioner, may be permitted to carry on quarrying on the suit hillock on a " seignorage" basis; and he was also permitted to employ two watchers at a salary not exceeding Rs. 25 each per month. It is admitted that the petitioner has been carrying on the functions of a receiver. The present application by Mr. B. Lakshminarayana is, that the receiver may be allowed some remuneration for his labour in connection with this quarrying. What exactly the receiver is doing is contained in paragraph 7 of the affidavit of the petitioner, which is in the following terms:

As receiver I have been conducting two ejectment suits, O.S. Nos. 132 and 133 of 1946, at Bezwada as third parties have encroached upon the foot of the hillock which is the subject-matter of this appeal; and also one possession case No. 22 of 1947 relating to the same subject on the file of the First Class Magistrate, Bezwada. These matters have already been placed before this Honourable Court in the affidavits filed by the receiver in CMP. No. 2424 of 1947 (and) CM. P. No. 2689 of 1947. I have been discharging all these duties to the best of my abilities.

2. So far as the conduct of suits and other proceedings are concerned, he is entitled to reimburse himself out of the moneys belonging to the estate. I am, however, of opinion that no special scientific skill or any technical knowledge is necessary, for the purpose of acting as receiver. Nothing to this effect has been mentioned in paragraph 7.

3. In these circumstances, what I have to decide is whether the receiver is entitled to any kind of special pay for utilising a portion of his daily time in supervising the quarrying. The law is well settled both in England and in this country that generally where a party is appointed receiver, he is not allowed a salary unless by consent of parties (vide Halsbury's Laws of England, Hailsham edition, volume 28, page 81). No doubt, in England there are exceptions to the general rule, and one of such exceptions is contained in a judgment of the Court of Appeal in *Re Bignell: Bignell v. Chapman* (1892) 1 Ch. 95 where Lindley, L.J., discusses the question and lays down that where a trustee has been functioning as a receiver and where that trustee, had been before becoming a receiver obtaining some remuneration, he is entitled to get the same even after he was appointed receiver. Moreover, Lindley, L.J., says that it was a discretion for the trial Judge, North, J., who thought that certain remuneration was reasonable and allowed it. I do not find any justifying reason why the present petitioner who was appointed as receiver on his own application and after opposition from the other parties, is entitled to any kind of special consideration. The Indian decisions, to which my attention has been drawn are those contained in *Bhudhulal Jagannath Firm v. Hirdagarh Collieries, Ltd.* ILR (1942) Nag. 671 and *Muhammed Kamil v. Hedqye tulla* (1925) 90 I.C.492. Both these decisions lay down the general principle as enunciated in Halsbury's Laws of England and it is also stated that there may be few exceptions to this general rule. The facts set forth in the affidavit of the petitioner cannot be said to constitute any special circumstances which would justify him in asking for a remuneration, for it is conceded that no special, technical or scientific knowledge is necessary for carrying on this quarrying operations; and it is nowhere stated that the petitioner, by utilising his time for supervising this quarrying operations, has, in any way, suffered by the loss of his employment or other occupation during this period. In these circumstances, I do not feel justified in departing from the usual rule by ordering that this party-receiver should be given a special remuneration.

4. The petition is therefore dismissed.