
(2007) 11 KAR CK 0057

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5602 of 2004

N. Kodandarama Reddy

APPELLANT

Vs

Graphite India Karmikare Sangha

RESPONDENT

Date of Decision : 28-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : (2008) ILR (Kar) 192 : (2008) 1 KarLJ 703 : (2008) 1 KCCR 515

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : V. Srinivasa Raghavan of Indus law, for the Appellant; Kesthur N. Chandrashekhar, for R-1 and S.V. Shastry, Aswathanarayana Reddy, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the Counsel for the parties. This is a defendant's appeal challenging an order allowing an application under Order XL Rule 1 of the Code of Civil Procedure, 1908.

The facts briefly stated are as follows:

The first respondent is the plaintiff in the suit, O.S. 8191/2001. It is a Trade Union which has come into existence on 16.9.2001. The second respondent is yet another registered Trade Union and is the second defendant in the suit. The appellant was the first defendant. He was the president of the second defendant as on the date of the suit. The relief claimed in the suit is for a declaration that the sale of the suit schedule property by the second defendant to the first defendant under a sale deed dated 31.1.2001, is null and void and that the property belongs to the employees of M/s Graphite India Limited represented by the plaintiff.

2. It is the allegation of the plaintiff that the suit property belonged to the second defendant, but, the appellant who was in the management of the second

defendant, by virtue of office, engineered the circumstance to bring the property to sale by public auction and also ensured that there were few other bidders apart from himself and had made the highest bid. Apart from this, there were other irregularities in the conduct of the so-called auction and ultimately, the appellant herein, had got the property conveyed in his favour for a paltry sum of Rs. 14,40,000/-. It is further alleged that the second defendant is no longer a legal entity, as its membership has fallen below the minimum required under the Trade Unions Act, 1926. With the above and other incidental allegations, the plaint was accompanied by the application for appointment of a receiver, as aforesaid, claiming that the suit schedule property comprises of ground floor and first floor and that there are four tenements in each floor. That the appellant was receiving a monthly rent of Rs. 3,200/- in respect of each tenement and the total monthly rent was in excess of Rs. 25,000/- and that he had also received an advance of Rs. 30,000/- from each of the tenants. The plaintiff had contended that a receiver should be appointed for the suit schedule property, as the tenants in occupation are likely to vacate the premises from time to time and new tenants are inducted and that on such induction, the monthly rent is increased alongwith the advance amount payable, by way of security deposit and that the rents so receivable, would rightfully belong to the plaintiff and since the appellant cannot be made accountable, in the present circumstance, the pendency of the suit will be misused by the appellant to his advantage and that the plaintiff would be put to great-difficulty in recovering the rent and advance which the appellant would appropriate and in view of the suit. And that it was also likely that the appellant would allow the property to deteriorate, without timely maintenance, resulting in damage to the property and it was also possible that the appellant was capable of defaulting in payment of property taxes, exposing the schedule property to coercive action by the authorities.

3. The appellant on the other hand opposed the application. The primary contention being that the plaintiff had no locusstandi to challenge the sale as the property belonged to the second defendant and that the plaintiff itself, had come into existence long after the sale. The sale having been preceded by a general body meeting of the second defendant and the sale having been held at a public auction, pursuant to a resolution of the general body and that there were other bidders apart from the appellant, there was a valid and bonafide transaction in favour of the appellant and that he was the owner of the property in possession. The application for appointment of a receiver was, therefore, misconceived as there was no allegation of waste or mismanagement.

4. The Court below after reiterating the pleadings of the parties and listing out the judgments cited by the Counsel during arguments, has allowed the application, holding thus:

The fact that earlier the property was belonging to Union of employees of M/s Graphite India Limited is not in dispute. But the fact of transfer of suit property in favour of the first defendant, by public auction, held by the second defendant

is seriously challenged by the plaintiff, which is a Union of the employees of the said Company. Therefore, in the light of the rulings laid down in the above decisions and also in view of the facts of the present case, I am of the opinion that it is just and proper to appoint a receiver to manage the suit property and also to account for the same, till the disposal of the suit.

It is in this background that the present appeal is filed.

5. The Counsel for the appellant would submit that the order of the Trial Court is apparently capricious. There is no finding recorded by the Court that a special circumstance exists, whereby interference with the possession of the appellant was required. Therefore, the order is opposed to the settled principle of law in this regard. It is also contended that the Trial Court has not arrived at any prima facie finding in favour of the plaintiff and whether the balance of convenience lies in its favour in granting such an extraordinary relief. Nor is there any finding that in the absence of granting such relief, the plaintiff would be put to any injury. The Trial Court ought to have stayed its hand in passing an order for appointment of a receiver, when it is accepted that the appellant was in possession of the suit property, after having paid a sale consideration of a substantial amount of Rs. 14,40,000/-. It is pointed out that the plaintiff-Union having come into being, after the execution of the sale by the second respondent-Union, there could possibly be no dispute as to the ownership by the respective Unions, namely, the plaintiff Union and the second defendant-union.

6. It is contended that it is plain from the pleadings that there is no dispute as to the property belonging to a registered Trade Union in the first instance and hence, the legal presumption does not permit the employees comprising in one or the other Union from claiming ownership thereto, as the Trade Union itself is the legal entity, which was the owner and further, even if the sale in favour of the appellant is to be held to be invalid, the property, at best, would revert to the second respondent herein and not the first respondent. Hence, the plaintiff would have no locusstandi to claim the suit reliefs. It is also contended that the plaintiff has not sought for possession of the suit property and when there is no final relief of possession sought, the question of appointing a receiver would not arise as it would not also be in aid of the main relief. The appellant would also contend that the allegations of malafides and other scheming conduct on the part of the appellant are wild allegations and are not established on the face of it. The appellant, holding the office of the President of the second defendant by itself, would not render the sale void. Hence, there was no semblance of a case made out for the appointment of a receiver, in the case on hand and the Counsel would seek to place reliance on several authorities to urge that the settled principles as regards the appointment of a receiver, are clearly in breach in the Trial Court having allowed I.A.I in favour of the first respondent.

(1) Boregowda and Anr. v. K. Channegowda and Anr. 1965 (2) MYS.L.J. 548

- to urge the contention that it would not be enough to make general averments

of the plaintiff's belief that the property will be wasted and destroyed but, the grounds which lead to such a belief must be asserted and it is only, if there is any reasonable probability, that the plaintiff would ultimately succeed in obtaining the relief in the suit, that such an appointment should be made and further that a special circumstance should be established to take the suit property under the custody of the Court, by the appointment, of a receiver.

(2) Aisamma And Ors. v. Mohammad and Ors. 1967(2) MYS.L.J 586

- to reiterate the principle that the expression "just and convenient" employed under Order XL Rule 1, would mean that the appointment of a receiver is warranted under the protection of rights or prevention of injury and the Court must be satisfied that the property in question will be dissipated or irreparable mischief may be done, unless the Court affords its protection. Any dispute, with respect to quantum of income of the property in a partition suit, for which the parties in occupation are liable to account, is not a ground for appointment of a receiver.

(3) Khatijabi and Ors. v. Zahidabi and Ors. 1981(2) KARLJ 346

- in support of the contention that mere accountability is not enough for the appointment of a receiver in a suit between the co-sharers since the co-sharer in possession would be accountable to all the other sharers.

(4) T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others,

- wherein five principles have been laid down, described by the Court as "Panch Sadaachar" which ought to be borne in mind by the Court, while exercising equity jurisdiction in appointing a receiver and the principles being,

- (i) that the question of appointing a receiver is a matter resting in the discretion of the Court,

- (ii) that a receiver should not be appointed, unless the party has an excellent chance of succeeding in the suit;

- (iii) that plaintiff himself shall show that there was some emergency or danger or loss, that may be caused to the right involved in the suit;

- (iv) that an order appointing a receiver shall not be made, if it has the effect of depriving a defendant of de facto possession; that, however, the position would be different if the property is shown to be "in medio" that is to say, in the enjoyment of no one.

- (v) That the Court should always look into the conduct of the parties who seek for the appointment of a receiver.

(5) S. Saleema Bi Vs. S. Pyari Begum and Another,

- wherein the Supreme Court has held that a receiver could be appointed only if, there occurs a prima facie case in favour of the plaintiff, requiring such an

appointment as an urgent measure and in a case where the defendant was in possession, the appointment of a receiver would not be justified, unless a prima facie case was made out by the plaintiff that such an urgent measure as appointment of a receiver was warranted.

7. The Counsel for the first respondent -plaintiff before the Trial Court would, on the other hand, seek to highlight the facts of the case, particularly, the background to state that prior to the formation of the plaintiff, the appellant herein, completely controlled the second defendant Union and that he was the General Secretary of the said Union for over twenty years and it was in his absolute control and influence and since the employees of the Company, had completely lost confidence in the appellant and the second defendant-Union, the Plaintiff had been brought into being, the second defendant-Union, consisted of a membership of only 32, as on the date of suit, out of a total employee strength of the Company, M/s Graphite India Limited consisting of 470. Hence, since the membership consisted of less than 10% of the total number of employees, the said Union can no longer claim to be a representative Union of the employees and has been derecognised by the Company. For all purposes, it is the plaintiff which represents the employees of M/s Graphite India Limited, is a significant circumstance in the plaintiff seeking to prosecute the suit as against the appellant.

8. It is contended that in the year 1992, the second defendant-Union, had purchased a plot of land measuring about 70 feet and 40 feet and eight tenements were constructed with the contribution made by the employees towards such cost of construction. The management of M/s Graphite India Limited, had also provided financial assistance by way of cash and had provided steel and cement for the construction of the building. The appellant, had, over the years, plotted to acquire the property misusing his office and had engineered the passing of a so-called resolution to bring the property to sale by auction. Though the auction was held on 24.1.2000 and the appellant ensured that his bid was accepted, though the market value of the property as on the date of auction was not less than Rs. 40,00,000/-, when the sale deed was about to be executed, M/s Graphite India Limited, which had advanced substantial sums of money by way of financial assistance, not having been taken into confidence about the sale transaction, had filed a suit in O.S. No. 124/2000 before the Court of the Civil Judge (Senior Division), Bangalore Rural District and had obtained an interim order of injunction directing the parties to maintain status-quo in respect of the suit property, which is also the subject matter of the present suit. However, on 12.1.2001, on a question of territorial jurisdiction, the plaint was ordered to be returned for presentation to a proper Court. The appellant, who had been denied the sale deed by virtue of the interim injunction, had on 15.1.2001, which was the earliest date, on which the plaint could have been presented to the proper Court, the appellant had ensured the execution of the sale deed before the Sub-Registrar. This was to thwart M/s Graphite India Limited from obtaining an order of injunction pursuant to the presentation of the plaint

before the City Civil Court, Bangalore. The Counsel, would, therefore submit that, prima facie, the malafides of the appellant are apparent and it is with recourse to devious means that the appellant has secured possession of the property, while seeking to take advantage of the situation at every single turn. The employees of the Company, to whom the property would actually belong, though acquired through the medium of their Union and had therefore, formed the present plaintiff-Union, have preferred the present suit and it cannot be said that the plaintiff would have no semblance of a right to question the sale transaction in favour of the appellant. The irregularities insofar as the conduct of the auction sale and the sale transaction are many and have been highlighted in the suit. Insofar as the application for appointment of a receiver is concerned, the Trial Court has considered the contentions urged and has come to the firm conclusion that it was "just and convenient" that a receiver be appointed for the suit property till the disposal of the suit. It is significant to note that the appellant had not even filed objections to the said interlocutory application before the Trial Court and had only sought leave, to have the objections filed as against interlocutory application for temporary injunction to be read as objections to the application for appointment of a receiver. Hence, it cannot be said that there was any opposition to the application for appointment of a receiver, as the considerations for grant of reliefs under the respective applications were entirely different. The appellant, no doubt, having acquired the property in the devious fashion, as narrated hereinabove, has inducted tenants, which is not in serious dispute and the fact that he has received huge advances is also not in dispute and since the appellant has not furnished the details of such rents and advances that he has been receiving, was one circumstance which has persuaded the Trial Court to allow the application for appointment of a receiver and would submit that there is no ground made out for interference with the order and that the appeal be dismissed.

9. The Counsel places reliance on the following authorities:

(1) Mallappa v. Paldar Gowda Dongalappa and Three Ors. ILR 1952 Mys 55

- To support the contention that an order under Order XL Rule 1 is one, which is passed in exercise of discretionary power and that the terms "just and convenient" are wide enough to cover cases other than those in which allegations of waste or deterioration are made against the defendant.

(2) Thaniappa v. T. Soorappa and Anr. ILR 1981 KAR. 586

- that the receiver appointed is an officer of the Court and he acts on behalf of the Court. Therefore, the appointment of a receiver to secure the interests of the plaintiff cannot be held to be unjust or inconvenient.

(3) Karnataka Trader Hubli v. Hiren Shamji Karamsey and Anr.

- to support the contention that when the transfer of property in favour of the appellant was illegal, it amounts to the property, held in trust, by a Union of

employees being subjected to injury and damage and amounts to an act of dissipating the property and therefore, the appointment of a receiver would be valid.

10. The Counsel for the appellant, on the other hand, would submit that from the admitted facts and circumstances, notwithstanding the allegations of malafides against the appellant, the fact remains that the appellant is in possession claiming under a registered sale deed, the rents that the suit property generates, which appears to be the only consideration which is sought to be protected by the appointment of a receiver, cannot be a consideration for exercising the extraordinary discretionary relief, at the instance of the plaintiff. It is not also denied that the members of the plaintiff-Union were members of the second defendant-Union in the year 1999 when a resolution of the general body was passed to bring the suit property to sale. Hence, the very plaint averments would be a contradiction in terms.

11. Insofar as the suit filed by the Company is concerned, the interim order having been vacated on 12.1.2001, there was no prohibition in law for the plaintiff to have got the sale deed executed, which was almost one year from the date of auction sale. The proposition that the property belongs to all the employees of the Company is not legally tenable. The Union, being a legal entity, the property stood vested in such a Union and the same having been conveyed under a registered sale deed in favour of the appellant, the plaintiff would have no locus to challenge the same on any ground whatsoever and would also point out that the judgments sought to be pressed into service by the respondent, are wholly irrelevant having regard to the facts and circumstances in which those judgments were rendered and would pray that the appeal be dismissed.

12. In the light of the arguments advanced by the parties and the case law cited, it would not be necessary to express any prima facie finding on the merits of the suit by the plaintiff. The only issue that would arise for consideration in this appeal is whether the Trial Court was justified in passing the order for appointment of a receiver. As rightly pointed out by the Counsel for the appellant, the reasoning of the Trial Court, is not forthcoming. The principles required to be applied while granting the extraordinary relief of appointment of a receiver in respect of any property, are not discussed. A receiver is appointed for preservation of property, pending litigation, by a Court which has to decide the right of the litigant parties. The Court must necessarily exercise a discretion as to whether it will or will not interfere by such an interim order to protect the property. Where admittedly, any property is not in the enjoyment of one or the other party, the Court will certainly be justified in taking possession. It would be in the interest of all concerned. But, if the object of the plaintiff is to assert a right to property of which the defendant is in enjoyment, disputed questions arising between the parties are involved. The Court, by taking possession at the instance of the plaintiff, would be doing wrong to the defendants and in some cases, an irreparable wrong. The above circumstances being a necessary

requirement, which has held the field to this day, was expressed by Lord Cranworth in *Owen v. Homan* 4 HLC 997.

13. Further, the words "just and convenient" employed in Order XL Rule 1 cannot be construed to mean that the Court has to appoint a receiver simply because, the Court thinks it convenient. They mean that the Court should appoint a receiver for the protection of rights or for the prevention of injury according to the legal principles. The order, no doubt, is discretionary, but the discretion must be exercised in accordance with the principles of which judicial discretion is exercised.

14. Keeping the above principles in view, the order of the Trial Court cannot be justified and accordingly, the appeal is allowed. The order of the Trial Court passed on I.A.No.1 is set aside.