
(1916) 11 MAD CK 0011
In the Madras High Court

P.L.S. Palaniappa Chetty alias Shanmugam Chetty	APPELLANT
Vs	
P.L.P.P.L. Palaniappa Chetty and Others	RESPONDENT

Date of Decision : 15-11-1916

Acts Referred:

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

Citation : (1917) ILR (Mad) 18 : (1917) 5 LW 776 : (1917) 32 MLJ 304

Hon'ble Judges : Srinivasa Aiyangar, J; Spencer, J; Abdur Rahim, J

Bench : Full Bench

Judgement

Srinivasa Aiyangar, J.—The substantial question referred to us for determination is whether an order determining that it is just and convenient

to appoint a receiver, i.e., an order for the appointment of a receiver, and before a particular person is selected and appointed as such receiver, is

appealable.

2. The right of appeal is conferred by Clause S of Order XLIII which provides inter alia that an appeal shall lie from an order under Rule 1 of

Order XL; and that rule, omitting the portions not material for the present purpose, is in these terms ""where it appears to the Court to be just and

convenient the Court may by order (a) appoint a receiver."" The question is whether the order referred to above is an order under this rule.

3. When an application is made for the appointment of a receiver, the most important question for determination is whether it is just and convenient

to appoint a receiver in the circumstances, and if the Court comes to the conclusion, that it is not shewn to be just and convenient to appoint a

receiver, it must dismiss the application. This determination is made under rule I, and there can be no doubt that that order is appealable. It was so

decided in Venkatasami v. Stridevamma ILR (1887) Mad. 179 on the construction of the corresponding provision of the old code and as pointed

out in Cursetji Dinshaw Bolton Vs. Gangaram Limbaji Gaikwad, , the same construction must be placed on the similar provision in the New Code.

The same view has been adopted in Allahabad in the recent case of Muni Lal v. Jagan Nath (1916) 33 I.C. 735, But these decisions do not throw

much light on the present question for it can easily be contended that orders declining to appoint a receiver and orders appointing a receiver are

exhaustive of the category of orders contemplated by Rule 1, as the discretionary power to appoint a receiver, conferred by that rule, includes the

power to reject an application for such appointment and nothing more. This was apparently the view taken by the learned judges of the Bombay

High Court in Cursetji Dinshaw Bolton Vs. Gangaram Limbaji Gaikwad, . The above rulings however emphasize the fact that the right of the

appeal is not restricted to any particular kind of order under Rule 1 and an appeal lies against all orders under that rule.

4. That an order determining, that it is just and convenient to appoint a receiver, is an order, can I think scarcely admit of doubt; and the practice of

the English Courts by which first an order is made for the appointment of a receiver in Court leaving the selection of the person to be appointed to

be settled in chambers, is conclusive of the question. The determination is I think more than "a mere interlocutory statement" if that phrase means,

an expression of opinion, for there can be no doubt that the Court which determined that it was necessary to appoint a receiver cannot change it of

its own accord without a review or other proper proceeding. I also think that the Subordinate Judge in this case on his", "determination that a

receiver should be appointed was entitled to issue an order. In Nothard v. Proctor (1875) L.R. 1 Ch. D. p. 4, the order appealed against appears

to be an order for the appointment of a receiver and not an order appointing a particular person as receiver and no question was raised that it was

not a judgment or order. If it is an order, the order is certainly one under Order 40, Rule 1 as the Court determines the question of the necessity

for the appointment of a receiver under this order. Reference was made to Section 94 of the Code as conferring the power to appoint a receiver,

but it is to be observed that that power can be exercised only if rules provide for such exercise and in accordance with those rules.

5. Even if I am wrong in this, and if the orders under Order 40, Rule 1, can only be of 2 classes, one rejecting applications for receivers, and the

other, orders appointing receivers, I agree with the contention of the learned Advocate General that an order for the appointment of a receiver is as

much an order "appointing a receiver," as an order naming a particular person as receiver. In England an appeal is allowed without leave from an

order appointing a receiver and I can find no restriction of the right, in the decided cases, to cases where a receiver is named in the order of the

Court, or to orders passed in chambers appointing a particular person. In a majority of cases, the appeal will be directed against the determination

that it is necessary to appoint a receiver rather than against the particular person appointed, as the person to be appointed is very often a matter of

agreement between the parties. This construction may no doubt lead to a multiplicity of appeals as was pointed out in *Narbadashankar Mugatram*

Vyas Vs. Kevaldas Raghunathdas, , but I do not see how that can be avoided in any view; for instance one man may be appointed receiver, and

after appeal filed, he may resign and another appointed. In fact the learned pleader who argued that the order was not appealable said that if after

an appeal, the person appointed as receiver resigned or ceased to be receiver, the appeal abated, though the grounds of appeal may have been

solely directed to challenging the necessity for the appointment of any receiver. On the other hand I do not see any purpose in compelling a party

to wait till the receiver is appointed and if as held in *Srinivas Prosad Singh v. Kesho Prosad Singh* that the appointment is not complete till the

receiver has completed the security, till such completion. If the order of appointment is discharged by the Appellate Court all the expense incurred

in giving security will be thrown away. In *Perry v. Oriental Hotels Co.* (1870) L.R. 5 App. Ch. 420, where there was first an order by the Vice

Chancellor ordering the appointment of a receiver and an order in chambers appointing a particular person, L.J. Gifford in appeal, though he

discharged the order appointing the particular person directed the successful appellant to pay the costs of the recognizances, remarking that the

appellant should have come to the court of appeal before the recognizances were entered into.

6. There may again be a difficulty in ascertaining the date of appointment of a receiver and the date may become important for calculating the

period of limitation, for appeal. The order appointing a named person as receiver may appoint him receiver and direct him to give security within a

limited time, or may make the appointment conditional on giving security (Seton Form No. 5, page 727, No. 1, p. 657). In the former case if the

person appointed does not give the security he may cease to be receiver and any appeal presented in the meantime would become useless. In the

latter case on security being completed no further order may be passed, except the issuing of a warrant of appointment. The English practice

appears to be, not to pass or enter the order till the security is completed *Ridout v. Fowler* (1904) 1 Ch. 662 but under the procedure code in the

Mofussil there is no such practice. In such a case what is the date of the order appointing a receiver? In some cases and for some purposes on the

completion of the security, the appointment relates back to the date when it was made. *Kerr on Receivers* p. 163.

7. From the forms printed in Seton, it will be seen that an order appointing a receiver" includes an order directing that a proper person be

appointed receiver, as well as an order appointing a named person (cf. Form Nos. 13 and 19 with Nos. 16, 20, 21, Section 1, Ch. XXXII). It is

not therefore improper to speak of an order for the appointment of a receiver" as an order "appointing a receiver" within the meaning of Order 40,

Rule 1.

8. It has been the practice of this Court to allow appeals from these orders and I see no sufficient reason to hold that on the construction of the

relevant rules and orders this practice is illegal.

9. A different view has been taken in Calcutta first by Chitty and Richardson, JJ. in *Mathuria Debi v. Shib Dyal* (1909) 3 I.C. 430, where the

learned Judges purported to follow the decision in *Birajan Koer v. Ramchurn Lall Mahta* ILR (1881) Cal. 719 which was an appeal against an

order or expression of opinion by a Subordinate Judge submitting the name of a person to be appointed as receiver u/s 505 of the Old Code. The

order appointing a receiver had to be made u/s 503 and u/s 588 an appeal was allowed only against orders u/s 503.

10. Section 505 of the Old Code is now repealed and with all respect, the order appealed against in *Birajan v. Ram Churn* ILR (1881) Cal. 719,

has nothing in common with the order in the present case. In *Upendra Nath v.*

Bupendra Nath (1913) 13 C.L.J. 157, Mookerjee and Teunon, JJ.

held that an order not appointing a named person as receiver is not appealable and the learned Judges came to that conclusion on the ground that

an appeal lies only from a final order appointing a receiver; and in the later case of Srinivas Prosad v. Kesho Prosad (1911) 14 C.L.J. 489

Mookerjee, J. delivering the judgment of the Court explained that there is no final or appealable order in cases where security is required from the

receiver, before the completion of the security. With all respect I am unable to accept this interpretation of the rule, for the reasons which I have

already given. In Bombay the view of the Calcutta High Court has been adopted, Narbadashankar Mugatram Vyas Vs. Kevaldas Raghunathdas, .

Though the learned Judges came to the conclusion that an order for the appointment of a receiver is a order and also an order under Order XL,

Rule 1, yet for the purpose of appeal, only an order appointing a particular person is an order under Rule 1. As an order rejecting an application

for receiver would also be appealable as an order under Rule 1, the Bombay High Court as I have already said apparently holds that only 2 kinds

of orders fall within the category of orders under Order XL, Rule 1, I am not sure this is right and in any event I am not able to adopt the

construction placed on the words "order appointing a receiver."

11. In Ramji v. Koman Das (1914) 13 A.L.J. p. 79, Chamier and Piggott, JJ. appear to take the same view, though as pointed out in the

judgment, the order under appeal there was peculiarly worded.

12. In the face of such weighty authority against my construction of the section, I venture to express my opinion with great diffidence; but having

come to a clear conclusion in the matter, and seeing that the question involved is really a question of practice which can be changed if necessary by

the High Courts by rules, I would answer the questions referred to us as follows:

(a) The pronouncement of the Subordinate Judge that a Receiver should be appointed is an order under Order 40, Rule 1 and

(b) is appealable under Order 43, Clause S.

Abdur Rahim,.

13. I agree in the conclusion arrived at by Srinivasa Aiyangar, J.

Spencer, J.

14. I am of opinion that an appeal is premature if preferred before a receiver has been appointed by name, for the reason that until that is done the order is merely interlocutory and does not completely dispose of the petition to appoint. At first sight it would appear impossible to contend that when a Court decides that a Receiver should be appointed but does not appoint, the order of the Court is one appointing a Receiver. It is however argued that if an order refusing to appoint which is passed without naming a person is appealable, an order directing a Receiver to be appointed without naming any one for the appointment must also be appealable. I cannot see that this is a logical consequence. The difficulty seems to have arisen out of the rulings which have decided that a refusal to appoint is appealable as an Order made under Order XL Rule (1)(a). This declares where it appears to the Court to be just and convenient the Court may by order appoint a Receiver of any property whether before or after decree." When a Court altogether refuses to appoint a Receiver, there is no question of the person to be selected as Receiver and the proceedings have reached a further stage of finality than they have when a pronouncement is made that a Receiver must be appointed without appointing any one. A refusal to appoint necessarily disposes of the application to appoint but the other order does not do so, this may be seen from the instance out of which this reference has arisen. The Subordinate Judge after recording his opinion that a Receiver should be appointed adjourned the petition for a week to consider the questions (1) who should be appointed Receiver and (2) what instructions ought to be given him. It is easily conceivable that in certain circumstances there might be no objection to the appointment of a Receiver and yet there might be strong objections to the particular person selected for the office as when one of the parties to the suit is made a Receiver. In other cases the opposing party may be indifferent to the personality of the nominee and may take his stand entirely on the question whether the occasion is a fit one for taking the control of the property out of the hands of the person in possession. I doubt whether it can have been the intention of the Legislature to allow two appeals, one from the first decision as to the need of a receiver and another from the final order appointing a definite person by name to the office. It seems to me that such a procedure would involve a multiplicity of proceedings, a result which it is always desirable to avoid where possible. No one who

wishes to appeal can complain of having to wait till a Receiver is actually selected, as the interval between the decision to appoint and the selection

of an individual is unlikely to be long and in practice the Courts should generally be able to make them both simultaneous. If there is an interval,

nobody's interests are prejudiced by waiting, as possession of property cannot be transferred until it is known who is to take it over

15. An order that a Receiver should be appointed is in fact not an order that can be put into operation until someone is actually appointed.

16. I should therefore hesitate before attributing to the Legislature an intention to provide rights of appeal against incomplete and ineffective orders,

even if the literal wording of the Code were not also against such a construction.

17. I am not much impressed by the next argument which is based on the tentative character that an order of appointment bears until security is

actually furnished by the person appointed.

18. Whatever may be the practice in English Courts, the practice in India is to appoint a Receiver subject to his giving security to the satisfaction of

the Court. Not only is there nothing forbidding this practice but the form of the warrant prescribed in Appendix F, Form 6 of the CPC shows the

practice to be correct. This warrant cannot be issued until an individual has been selected as it is to be addressed by name to the person appointed

in these words : ""you are hereby (subject to your giving security to the satisfaction of the Court) appointed Receiver"" etc.

19. Of necessity the order of appointment must precede the giving of security, for till then it is not known who must give it and what is its extent.

But an order is not the less a final order because it is conditional. Of course if a person appointed does not furnish security as directed, it may be

necessary for the party applying for a Receivership order to put in a fresh petition nominating another person. The Court will not act in the matter

without being moved. On the fresh application being admitted, the Court will consider it and pass orders, and this will naturally give rise to a fresh

right of appeal. The costs incurred in giving security will usually be trifling in this country in the mofussil and at any rate they are incidental to the

proceedings.

20. I am thus of opinion that the matter of furnishing security. has no bearing on the questions before us, and with due respect I consider that the

case of Srinivas Singh Prosad v. Kesho Prosad Singh (1911) 14 C.L.J. 489 which decided that the order of appointment of a Receiver must date,

from the date of the person appointed giving the required security is not good law under the present Code of Civil Procedure. If the date of

appointing a Receiver by name subject to his giving security be taken as the date from which to calculate the time for preferring an appeal under

Order XLIII Rule 1(s), then there will be no difficulty in ascertaining the date, as my learned brother Srinivasa Aiyangar, J., apprehends, for such

appointments are made in open Court by the Courts in India and are dated on their pronouncement.

21. I may also observe that the Code contains another indication that such matters are intended to be subsidiary to the main order, in that no

appeal is provided against directions under Order XL, Rules 2 and 3 relative to the remuneration to be paid to and the security to be furnished by

a Receiver appointed under Rule 1 of the same order.

22. I will now proceed to consider the reported cases. On the point we have to decide, they are all one way. In this High Court alone there is

hitherto no reported case directly on the point.

23. It has been decided in Upendra Nath Nag Chowdry v. Bhupendra Nath Nag Chowdhry (1910) 13 Cal. L.J. 157 and in Mathuria Debi v.

Shib Dyal Singh Hazari (1909) 3 I.C. 430 that the making of a Receivership order without nominating the Receiver is an interlocutory order and

not appealable.

24. In Bombay and Allahabad the same conclusion has been reached in Narbadashankar Mugatram Vyas Vs. Kevaldas Raghunathdas, and Ramji

v. Koman Das (1914) 13 All. L.J. 79

25. The cases in Venkatasami v. Stridavamma ILR (1887) M. 179 which overruled Subramanya Chetti v. Appasami ILR (1883) M. 355 and in

Sangappa v. Shibasawa ILR (1900) B. p. 38 and in Cursetji Dinshaw Bolton Vs. Gangaram Limbaji Gaikwad, deal with a different, question viz.,

whether an order refusing to appoint a Receiver is appealable. The learned Judges considered the effect of a decision come to by a Subordinate

Court u/s 505 of the Old Code which finds no place in the present Code. So far as they involve the principle that a mere determination to appoint

a Receiver is not appealable, these cases support the view taken by me.

26. As regards the non-appealable nature of interlocutory orders *Srinivas Prasad Singh v. Kesho Prosad Singh* (1911) 14 C.L.J. 489 is also to the

same effect, but as already observed, it goes too far in treating conditional appointments as inoperative and therefore not final orders.

27. As the practice in England of first making an order in Court for the appointment of a receiver and afterwards settling in Chambers who is to be

appointed differs from the practice of Indian Courts of appointing Receivers by name in open Court, we cannot get much assistance from English

Cases or from English books of reference. In India in matters of procedure Courts are governed by the Code. The answer to the reference must

therefore simply depend on the interpretation to be placed on the language of the order in the Code of Civil Procedure.

28. Instances have been cited in which this Court has heard appeals in cases where no Receiver had at the time of appeal been appointed by

name; but when no objection was raised to the maintainability of the appeal, these can be no guide as to what the law is on the subject.

29. I agree with the opinion expressed by the two learned Judges who made the reference and with the decisions of the Calcutta, Allahabad and

Bombay High Courts, and I would answer both questions referred to us in the negative.