

(2009) 06 MAD CK 0270

In the Madras High Court

Case No : C.R.P. (P.D.) No. 678 of 2009 and M.P. No. 1 of 2009

R. Shanmugam and 5 others

APPELLANT

Vs

M. Ganesa Mudaliar and 5 others

RESPONDENT

Date of Decision : 10-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2009) 6 CTC 371

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : G. Jermiah, for the Appellant; T.P. Prabakaran, for the Respondent

Judgement

S. Palanivelu, J.—The following are the allegations found in the affidavit: The suit property is a Trust property and the Trust was created by one Mallappa Chettiyar who is paternal grandfather of the first plaintiff. The properties belonging to the Trust are being wasted and misused by the respondents/defendants. Proper accounts have not been shown. Certain properties have been trespassed by the tenants who are paying low rent. Further, other third party trespassers are also in the possession of the properties. Hence an Advocate Commissioner has to be appointed for realisation of the rent from the defendants and deposit into the Court after defraying the expenses.

In the counter filed by the second respondent adopted by 1st, 3rd and 4th respondents, it is stated that these respondents have no objection for appointment of Advocate Commissioner and such appointment would enable the administration of the Trust in a smooth manner.

2. In the Counter filed by the 6th respondent adopted by 5th, 7th to 10th defendants, the following are stated:

The petition is not maintainable either in law or facts. It is false to state that there is maladministration in the Trust. 5 to 10 defendants administer the Trust in accordance with the conditions and stipulations contained in the Trust Deed.

There is no trespass as alleged in the affidavit. In fact the second petitioner for his younger brother/third defendant asked these respondents to give possession of a building occupied by one Muthu for which these respondents are not agreeable and hence this suit has been filed with false particulars. Since there could be no issue in the suit with regard to the collection of rent, the prayer for appointment of Commissioner is not sustainable. Hence the petition has to be dismissed.

3. After hearing both sides, the trial Court allowed the application by appointing an Advocate Commissioner fixing his remuneration at Rs. 1,500/-, directing him to file his report on 10.9.2008 after collection of rent and depositing into the Court after defraying expenses. It is this order challenged by the Revision Petitioners before this Court.

4. Mr. G. Jermiah, learned counsel for the petitioner would strenuously contend that the attitude of the trial Court is not lawful for the reason that it has allowed the application in I.A. No. 248 of 2007 filed u/s 92 of C.P.C for grant of leave to institute the suit by the plaintiffs and the present petition in I.A. No. 347 of 2007 for the appointment of Commissioner on the same day on 6.8.2008 and the Order impugned here is non-est in the eye of law.

5. Conversely, Mr. T.P. Prabakaran, learned counsel for the respondents would submit that there is nothing wrong on the part of the court below to allow the applications on the same day and that the appointment of Commissioner is very much essential for the benefit of both the parties.

6. It is the quintessence of the contention of the learned counsel for the petitioner that when the application for grant of leave u/s 92 of C.P.C. is pending, no proceedings much less an application for appointment of Commissioner could be taken up by the court below and only after allowing of the application u/s 92 of C.P.C filing of other petitions would arise.

7. Repelling the contentions, learned counsel for the respondents would garner support for his plea from a decision of this court reported in AIR 1994 Madras 43 = 1993-2-L.W.308 [N. Anandan v. Ayyanna Gounder and others] in which this Court after referring to various decisions of this Court and other High Courts, has categorically observed that an order for appointment of Receiver to protect and preserve the suit trust properties could be made by a Court even pending disposal of the application for leave under S.92 of C.P.C.

8. In view of the said earlier decision of this Court, I am of the considered view that even if a petition is pending under S.92 of C.P.C, there is no legal embargo for the Court to make an Order appointing a Receiver for preservation of a trust property. It is also shown before this Court that the Advocate Commissioner by name Mr. A.G. Selvaraj has issued notice to the defendants in the trust properties and has collected rent in pursuance of the order of the Court and he has also filed an interim report into the Court making a separate lodgment schedule for depositing the rent amount collected by him so far.

9. The allegations in the affidavit to the effect that some of the respondents are trespassing unlawfully into the trust properties and even some third parties have trespassed into same properties and the contra allegations in the counter filed by these petitioners have to be gone through by the trial Court on appreciation of oral evidence on record and this court could not make a roving enquiry on those aspects. Presently, for the question, whether a Commissioner could be appointed in the suit when the petition for granting leave u/s 92 of C.P.C is pending and whether the Court can make orders in both the applications on a same day, the answer would be in affirmative.

10. In the light of the above said observations, this Court finds no legal infirmity in the Order passed by the Court below and the same deserves to be confirmed and accordingly, it is confirmed. The Civil Revision Petition is devoid of merits which suffers dismissal. In fine, the Civil Revision Petition is dismissed. No costs. Connected M.P. is also dismissed.