
(1958) 02 MAD CK 0024
In the Madras High Court

Rajalakshmi Ammal

APPELLANT

Vs

Muthuswami gounder and Another

RESPONDENT

Date of Decision : 03-02-1958

Acts Referred:

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

Citation : AIR 1958 Mad 411 : (1958) 71 LW 403 : (1958) 2 MLJ 146

Hon'ble Judges : Panchapakesa Ayyar, J;Panchapakesa Aiyar, J

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—This is an appeal by one Rajalakshmi Ammal the plaintiff in O.S. No. 11 of 1957 on the file of the Sub-Court,

Coimbatore, against the judgment of our learned brother Ganapatia Pillai, J., in G.M.A. No. 116 of 1957, allowing that C.M.A. and setting aside

the trial Court's order appointing a Receiver, in respect of leased out properties, in a simple money suit brought by the appellant for recovery of

the arrears of the lease amount, amounting to Rs. 5,000" and odd from her lessee, Muthuswami Gounder on the ground that the trial Court had no

jurisdiction to pass an order appointing a Receiver of property when that property was not the subject-matter of the suit.. The learned Judge did

not go into the merits of the case as he held the legal position enunciated by him to be conclusive.

2. We have perused the records, and heard learned Counsel on both sides. Mr. R. Gopalaswami Ayyangar, for the appellant, urged that the

learned Judge was wrong in holding that a Receiver could be appointed by a Court only regarding property forming the subject-matter of the suit,

and that it had no jurisdiction whatever to pass an order appointing a Receiver regarding property which was not the subject-matter of the suit. He

relied on the rulings in *Nedungai Bank, Ltd. v. Official Assignee, Madras* (1928) 56 M.L.J. 95 : ILR Mad. 938, *Ethirajulu Chetti v.*

Rajagopalachariar (1928) 56 M.L.J. 115 : ILR Mad. 979, and *M. Paramasivan Pillai Vs. A.V.R.M.S.P.S. Ramasami Chettiar*, , approving the

latter decision, and on the ruling in *A.R.A.R.A.L. Chettiar Firm v. U.Sin* AIR 1935 Rang. 398. The first three decisions relied on by him related to

appointment of Receivers in respect of properties covered by simple mortgages when danger to and deterioration of the properties in question and

the loss of the mortgage amount were apprehended. Those rulings will no doubt show that a Court has in suitable cases jurisdiction to appoint

Receivers regarding properties not the subject-matter of the suit. But mortgage suits have been treated on a different footing from simple money

suits. So, those decisions cannot help the appellant in this case which is a simple money suit. No doubt, the position is somewhat different regarding

the Rangoon decision. There, paddy standing on land was directed to be harvested and an interim Receiver was appointed to take charge of such

harvested paddy. The learned Judge who decided the case observed regarding Order 40, Rule 1, Civil Procedure Code and the wide powers

conferred on Courts thereunder:

The rule does not say that a Receiver can be appointed only of property which is the subject-matter of a pending suit. What it says is that if it is

found just and convenient, a Court can appoint a Receiver of any property provided the plaintiff or the defendant has a right thereto. It would not,

of course, and in fact cannot, appoint a receiver to take charge of property which is in the possession of a third party, when that party claims to

be in possession thereof in his own right. This order and the two preceding orders, namely, Order 38 and Order 39 have been designedly framed

by the legislature in order to secure the plaintiff against any attempt on the part of the defendant to defeat the execution of any decree that may be

passed against him

Relying on this passage, and the wide scope of Order 40, Rule 1, Civil Procedure Code, Mr. Gopalaswami Ayyangar wanted to urge that in every

money suit of any kind the Court has jurisdiction to appoint a Receiver, though whether it will appoint a Receiver will depend on its own discretion

and its opinion as to whether it is just and convenient to do so. So, he urged that,

even in this case, the appointment of a Receiver by the trial Court was justified, as it was convenient, and that the cancellation of that appointment by Ganapatia Pillai, J., without even discussing the merits, was not justified. We agree with Mr. Gopalaswami Ayyangar about the wide powers given to Courts under Order 40, Rule 1, CPC and also agree that in very extraordinary cases the Court will have jurisdiction to appoint a Receiver even in a simple money suit, before decree, and not merely in execution u/s 51(2), Civil Procedure Code. Thus, if a man has leased out his valuable mango tope or extensive paddy fields to another for Rs. 10,000, a year, and the crop is on the ground, but the lessee defaults and when sued for the rent, flees to some foreign country leaving the mango tope or paddy crops unattended and uncared for making a decree in the suit when got against him for the lease amount worthless as he has no other property we are of opinion that the lessor plaintiff would have a right to invoke the extraordinary jurisdiction of the Court for the appointment of a Receiver for the mango tope or paddy crops so that the crops may not be destroyed and he left remediless as the lessee has no other property. Mr. T.K. Subramania Pillai, for the respondent, does not dispute this. The Court will, of course, even then consider whether it is just and convenient to appoint a Receiver. Mere convenience will not do. It must also be just. But such extraordinary jurisdiction will not show that a Court trying a money suit has ordinary jurisdiction to appoint a Receiver while the suit is pending, and before a decree is got, especially when other remedies, like attachment before judgment, are open to the plaintiff and are in fact the normal remedies he is expected to pursue. It is something like the extraordinary original jurisdiction of this Court.

3. In this case, there was no such extraordinary circumstances alleged, and the trial Court had therefore no jurisdiction to entertain or order the petition for the appointment of a Receiver. The law will not allow a party to abuse the powers of a Court and to make what is intended to be a medicine the daily food. The appellant could have asked for attachment before judgment, if justified. Mr. Gopalaswami Ayyangar urged that then he would have to prove several difficult things. That is always so. No man can sue for a debt when he has no debt to recover; nor can he ask for attachment before judgment unless he proves the existence of circumstances

which would justify such an application.

4. So, we are of opinion that while the judgment of Ganapatia Pillai, J., was not wholly correct, as the Court has in some cases power to appoint a

Receiver regarding property not forming the subject-matter of the suit even in pending simple money suits and as it did not mention the presence of

extraordinary jurisdiction in the Court to appoint a Receiver even in a pending money suit, the facts of this case were such that the extraordinary

jurisdiction could not have been invoked. So, we confirm the allowing of the appeal and the discharge of the Receiver in this case by Ganapatia

Pillai, J., and dismiss this appeal; but, in the circumstances, without costs. The money already deposited by the lessee respondent will, however,

remain in Court till the suit is disposed of. We also direct the Sub-Court, Coimbatore, to dispose of the suit, O.S. No. II of 1957, before the end

of April, 1958.