
(1990) 11 MAD CK 0029
In the Madras High Court

Saradha and Another

APPELLANT

Vs

Swarnambiga Finance Corporation

RESPONDENT

Date of Decision : 01-11-1990

Acts Referred:

Citation : (1991) 387 MLJ 1

Hon'ble Judges : Mishra, J

Bench : Division Bench

Judgement

Mishra, J.—Heard learned Counsel for the appellants and learned Counsel for the caveator/respondent.

2. Under the impugned order, P.K. Sethurman, J. has ordered for the appointment of a receiver to take charge of the property in dispute, collect

rent from the tenants, who were respondents 10 to 18 before him as also from respondents 1 to 7 in the suit C.S. No. 490 of 1989-and deposit

the same into court, with a further direction to submit accounts once in three months in respect of the collection of rents. It is not in dispute that the

first defendant in the suit, Devaki Ammal, was the owner and in possession and enjoyment of the suit property until she created mortgages in the

year 1987. The mortgagees pressed for repayment and threatened to bring the property for sale. The first defendant approached one Bhairavi

Finance Corporation for a loan of Rs. 4 lakhs on the security of the property, and accordingly, on 26.2.1987, the first defendant along with

defendants 2 to 7 executed a simple mortgage in favour of Bhairavi Finance Corporation, and received a loan of Rs. 4 lakhs allegedly for

discharging the earlier two mortgages in a sum of Rs. 2,93,725, and the balance paid by cheque to the first defendant. The first defendant defaulted

in payment of interest and principal. As a result, the property was brought to sale by public auction on 25.4.1988. Defendants 8 and 9, who are daughters of the first defendant, filed C.S. No. 407 of 1988 and prayed for injunction. As interim injunction was granted at the first instance against auction sale. The same was, however, vacated on 29.8.1988. The auction was thereafter held on 22.9.1988. The plaintiff/respondents are the auction purchaser.

3. The suit C.S. No. 407 of 1988 filed on behalf of defendants 8 and 9 was for alleged partition of their half share as daughters of the first defendant Devaki Ammal. When, however, the order of injunction was vacated on 29.8.1988, they preferred an appeal which appeal was also dismissed on 3.10.1988. The mortgagee thus executed a sale deed on 7.10.1988 in favour of the plaintiffs.

4. After the purchase, the plaintiffs issued notices to all other defendants demanding possession. Defendants 10 to 18, who were tenants in occupation of the suit premises and who were also made parties in C.S. No. 407 of 1988 returned the notices saying that they refused to accept the notices from the plaintiffs. The plaintiff accordingly instituted the suit claiming that they were entitled to rent and other mesne profits from the date of purchase. They also claimed by a petition that an Advocate Receiver should be appointed as tenants were, on account of the transfer of property, liable to pay rent to them, but they were not doing so and the other defendants, particularly, the daughters of the first defendant were preventing the plaintiff from inspecting the property and enjoying the same as the owner, and in any case, they were no better than trespassers.

5. The defence on behalf of the other persons, however, is not relevant for the instant case. Defendants 8, and 9, however, contested saying that their share could not be alienated by the first defendant and that their possession was legal and could not be interfered with by the plaintiff on the basis of the sale deed executed in their favour by the first defendant.

6. P.K. Sethuraman, J., has held that it is a case in which it was established that though the property had been purchased under a sale deed dated 7.10.1988, the plaintiffs were deprived of taking possession of the property and realising the rental income and were even being prevented from inspecting the property by defendants 10 to 18, and concluded:

Having regard to the fact that the property had been purchased it cannot be contended that the applicant/plaintiff has no present right to the suit

property. It has been prayed in the application to appoint an advocate-Receiver to take charge of the property and collect rents....On a careful

consideration of the entire facts and circumstances of the case, I find it is just and convenient to appoint a Receiver in this case. Accordingly, Thiru

S. Bairavan (Advocate/Retired District Judge) is appointed Receiver to take charge of the property, collect rents from the tenants, who are

respondents 10 to 18 and also from respondents 1 to 7 and deposit the same into court. The receiver is directed to submit accounts once in three

months in respect of collection of rents. The applicant/plaintiff is directed to pay initially a sum of Rs. 1500 to the Receiver for necessary expenses.

The Receiver is directed to claim remuneration after a period of three months after collecting rents and depositing the same into court and filing

accounts.

7. Learned Counsel for the appellants has raised two contentions and submitted that the impugned order appointing a Receiver is bad in law.

According to learned Counsel, it is not a case in which the plaintiffs title has not been disputed. Once the plaintiffs title is in dispute, this Court has

invariably ruled that no receiver should be appointed.

8. He has next contended that the order has got the effect of immediate dispossession of the appellants, who admittedly are in possession of the

property, a course which should not be adopted in a case of this nature, where the plaintiffs right is yet to be established. The sheet-anchor,

however, of learned Counsel's contention is a Bench decision of this Court in M.O.H. Aslum and Another Vs. M.O.H. Uduman and Others, . In

the said judgment, after making a consideration of the principles under which a Receiver is appointed and referring to ""Kerr on Receivers"" (fifteenth

Edition) at page 79, and the case law in Greville v. Fleming 1845) 2 J. & L. 335 it is observed:

There cannot be any dispute that the court can appoint a Receiver in an interlocutory application to protect the properties which are the subject-

matter of the suit if there is any apprehension that the properties will be damaged, wasted or misappropriated. But a Receiver can be appointed

only in case where the plaintiffs make out a prima facie case as regards title to

the property. In a case where the plaintiffs title to the property is in dispute, there cannot be any appointment of a Receiver in respect of that property the title to which the plaintiff has to establish at the trial.

9. The above, in fact, is a reiteration of what is stated in ""Kerr on Receivers"", that:

As a general rule, where one person was in possession of rents and profits of an estate claiming to be the holder by a legal title, and another

person, also claimed to hold by a legal title, the former could not be ousted in the court of Chancery until the true ownership of the legal title had

been finally determined at law.

The effect of the above observation is that where there is a bona fide dispute as to title, the court shall refrain and postpone the appointment of a

Receiver by an interim order until the dispute as to title is finally adjudicated.

10. One of the learned Judges of this court, Ramaswami, J., in the case of T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others, , made

a comprehensive study of the law on the subject and took notice of almost every relevant case on the point decided until then to pronounce as to

when and in what circumstances a court should decide to appoint a Receiver. Since the study in the said judgment, in our view, is exhaustive, it is

not necessary to refer to the leading Judgments on the point which have been referred to including the cases decided by this Court in Vythilinga

Pandara Sannadhi v. Thiagarajaswami Devasthanam 61 M.L.J. 904 : AIR 1932 Mad. 193 and R.E. Muhammad Qasim Ravuther Vs. R.G.

Nagaraja Moopanar and Others, . The learned Judge has observed that:

To sum up as stated in Crawford v. Ross 39 Ga. 44. The high prerogative act of taking property out of the hands of one and putting it in pound

under the order of the Judge ought not to be taken except to prevent manifest wrong imminently impending.

In Dozier v. Logan 101 Ga. 173 Atkinson J. said,

The appointment of a receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable

only in extreme cases and in circumstances where the interest of the creditors is exposed to manifest peril.

Therefore, this exceedingly delicate and responsible duty will be discharged with the utmost caution and only when the "panch sadachar" or five

requirements embodied in the words just and Convenient (Order 40, Rule 1) are fulfilled by the facts of the case Under consideration--

Ramachandrayya v. Nethi Iswarayya AIR 1952 Hyd. 139 and also laid down the five principles, which can be described as the "panch sadachar

of the Courts exercising equity jurisdiction, thus:

(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute, it is a

sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of permitting the ends of justice and

protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate

remedy or means of accomplishing the desired objects of the Judicial proceeding:

Mathusri v. Mathusri ILR 19 Mad. 120 (PC) : 23 I.A. 28 Sivagnanathammal v. Aninachalam Pillai 21 M.L.J. 821Habibullah v. Abtiakallah AIR

1918 Cal. 882 Tirth Singh v. Shromani Gumdware Prabandhak Committee AIR 1931 Lah. 688 Ghanasham v. Miraba ILR 18 Bom. 474Jagat

Tarini Dasi v. Mabagopal Chaki ILR 34 Cal. 305 Sivaji Raja Sahib v. Aiswariya Mandaji 29 M.L.J. 206 : AIR 1915 Mad. 926, Prasanna Moyi

Devi v. Rani Madhab Rai ILR 5 AIL 556 Sidheswari Dabi v. Abhayeswari Dabi ILR 15 Cal. 818, Shiromani Guntldhwara Prabandhak

Committee, Amritsar v. Dharam Das AIR 1925 Lah. 349 Bhupendra Nath Mookerjee Vs. Monohar Mukherjee, ,

(2) The Court should not appoint a receiver except-upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the

suit - Dhumi Nawab Sajjad Ali Khan, In re., AIR 1923 Lah. 628 Firm of Raghubi Singh Jaiswant v. Narinjan Singh AIR 1923 Lah. 48 Siaram

Das v. Mohabir Das ILR 27 Cal. 279 R.E. Muhammad Qasim Ravuther Vs. R.G. Nagaraja Moopnar and Others, , Banwarilal Chowdhury v.

Motilal AIR 1922 Pat. 493.

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss

demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important

consideration. A court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly

said that a court will never appoint a receiver merely on the ground that it will do no harm - Manganmal Tarachand v. Mikan Bai AIR 1933 Sin

231; Bidurramji v. Kesharamji AIR 1939 Oudh 61; Sheoambar Ban v. Mohan Ban AIR 1941 Oudh 328.

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a "de facto" possession since that might

cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver but if the property is exposed to

danger and loss and the person in possession has obtained it through fraud or force the Court will interpose by receiver for the security of the

property. It would be different where the property, is shown to be in media", that is to say, in the enjoyment of no one, as the Court can hardly do

wrong in taking possession; it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in

actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may

prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less "in medio" is

sufficient to vest a Court with jurisdiction to appoint a receiver - Mikambar Das v. Sabal Bihari AIR 1927 Pat. 220, Alkama Bibi and Others Vs.

Syed Istak Hossain and Others, , Mathuria Dabya v. Shibdayal Singh 14 C.W.N. 252, Bhubaneshwar Prasad Narain Sinha Vs. Rajeshwar

Prasad Narain Sinha and Others, . Otherwise a receiver should not be appointed in supersession of a bona fide possessor of property in

controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere

unless his conduct has been free from blame. He must come to Court with clean hands and should not have disintitiled himself to the equitable relief

by laches, delay, acquiescence etc.,

11. In the instant case, a mere glance at the facts reveals that there can be no blame whatsoever to the title of the plaintiffs unless the auction

purchase by them is invalidated. Their title to the property, until the auction purchase is invalidated, is perfect. Defendants 8 and 9 appellants who

claim to be the daughters of the first defendant Devaki Ammal appear to suggest that they get a share in the property in the lifetime of Devaki

Ammal. But such a share cannot be granted to them unless it is held that Devaki Ammal was a co-owner of the property with them. It is not their

case that it was a property inherited by them along with Devaki Ammal from some one or a property to which they succeeded along with Devaki

Ammal. To a pointed question put to him learned Counsel for the appellants stated that although purchased after the death of the husband of

Devaki Ammal and the father of the appellants, by Devaki Ammal, it was purchased out of the money which their father and husband of Devaki

Ammal had left in the hands of Devaki Ammal, and thus it was purchased for the benefit not of Devaki Ammal alone, but for all the heirs and legal

representatives of the husband of Devaki Ammal and the father of the appellants. How far such a plea will succeed can be anybody's guess, but

we do not propose to make any observation on the merit of the said plea, as any observation by us may cause some prejudice in the trial of the

case. We see, however, that prima facie this Court has not accepted any such plea on their behalf to give to them any title to the property to the

extent of the shares claimed by them in the suit for partition filed on their behalf, that is to say, C.S. No. 407 of 1988. This Court has already found

that they are not entitled to any injunction against any auction sale, in which auction sale finally the instant plaintiff/respondents successfully

purchased the property, and accordingly the mortgagee executed a sale deed in plaintiffs favour on 7.10.1988. Since this issue has already been

prima facie adjudicated in the suit in which an attempt was made by the appellants to avoid the auction sale, it will be proper to accept for the

purpose of the interlocutory application in the instant suit that the appellants/defendants 8 and 9 do not have a prima facie case on the question of

title. It is a case, in our view, closer to the type in which the property is not in the enjoyment of a person who is legally entitled to the property, as,

as a consequence of the auction purchase, the plaintiff/respondents have become entitled to such an enjoyment. It is thus not a case in which

somebody's de facto and legal possession is likely to be affected. Had this been a case of bona fide dispute of title, we would have been reluctant

in accepting the case of the plaintiff/respondent and followed the rule indicated above. We find it difficult, however, on the facts of this case not to

recognise the rule that no property should be allowed to be "in medio" more so, in the hands of a person who is not lawfully entitled to it.

Defendants 8 and 9 appellants, are yet to establish the title to the property, and until they succeed in establishing their title, they cannot have any

lawful claim for the property. The order of P.K. Sethuraman, J., does not, in any manner, disentitle the appellants, in the event of their establishing

their title, of the benefits of the enjoyment of the property. If they succeed in establishing their title, they would automatically become entitled to

receive all that is collected by the Receiver, and thus kept in the hands of the Court or custodia legis. While, on the one hand, it is clear from what

had been ordered that there would be no irreparable injury to the appellants/defendants 8 and 9, in the event of no order made in respect of the

collection of rent by a Receiver and to be kept in the custody of the Court until final adjudication on the question of title, the plaintiffs would be

forced to seek a further relief, and institute a fresh claim with respect to the injury caused to them. The high prerogative of "taking the property out

of the hands of one and putting it in pound" has rightly been exercised in the instant case by P.K. Sethuraman, J. In view of the consideration

aforementioned, we find no merit in the appeal. The appeal is accordingly dismissed. There will be no order as to costs.