

(1994) 08 AP CK 0018

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2950 of 1988

Smt. Ch. Yashoda Devi and Another

APPELLANT

Vs

B. Dayakar Reddy and Another

RESPONDENT

Date of Decision : 31-08-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, 146
Land Acquisition Act, 1894 — Section 3, 30

Citation : (1994) 3 ALT 106 : (1996) 1 APLJ 344 : (1994) 2 APLJ 373

Hon'ble Judges : P.L.N. Sarma, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : C. Poornaiah, M. Narsaiah and M. Balaji Das, for the Appellant; G. Haridatha Reddy, for the Respondent

Judgement

P.L.N. Sarma, J.—This is a revision filed by claimants 2 and 3 challenging the order of the learned Subordinate Judge, Jangaon impleading the Receiver as a party to the proceeding, pending on a reference u/s 30 of the Land Acquisition Act (for short "the Act") in I.A.No. 166 of 1988.

2. To appreciate the point in issue it is necessary to refer to the facts. An extent of Ac. 0.30 guntas out of a total extent of Ac. 4-33 guntas, in Survey No. 461 /4 situate at Jangaon village, Warangal District was acquired for the purpose of establishing a Microwave Station. An award was passed on 19-9-1987 in Award No. A/4897/85 by the Land Acquisition Officer. As some dispute with regard to the apportionment was raised, the same was referred to the Civil Court and the same is pending as O.P.No.29 of 1987 on the file of the Sub-Court, Jangaon. It is stated that one Saleha Fatima claimed the entire property to herself and she was a party to the award proceedings and raised her claim as aforesaid. Since there was a dispute with regard to the same, the matter was referred to as aforesaid and it is pending.

3. Even before the Land Acquisition proceedings were initiated with reference to the property under acquisition, apart from other properties, one Mir Abbas Haider

Kazmi filed O.S.No. 18 of 1963 on the file of the First Additional Chief Judge, City Civil Court, Hyderabad. To the said suit Saleha Fatima was impleaded as the 1st defendant. The 2nd defendant was one Abu Jafer. That suit was filed for administration of properties including the one under acquisition. The suit itself was decreed on 23-11-1963. The clause which is relevant for the present purpose in the decree is as follows:

"That for the administration and the partition of the properties Shri. Ahmed Shariff, Advocate, Jangaon, is appointed as Receiver-cum- Commissioner with the legal powers that he should immediately take possession of the properties set out in the schedule attached from the Tahsildar, Jangaon, District: Warangal and the Tahsildar, Hyderabad West, that the said Commissioner should also collect the income of the properties mentioned in the Schedule lying with the Tahsil Office, Jangaon and that the said Commissioner will be paid a sum of Rs. 2,000/- (Two thousand only) as his remuneration from the estate.

That the said Receiver-cum-Commissioner shall at the first instance sell the properties to the extent of the decretal amount of Rs. 61,324/- at reasonable price (the purchase value of the property shall not be guiding factor in determining the sale price) and pay to the plaintiff if the decree is not executed by that time or the decretal amount is not realised, that after the satisfaction of the decretal amount the rest of the properties will be divided in the shares of three annas and thirteen annas in a rupee or dispose of the entire properties after taking necessary steps and divide the sale proceeds between the plaintiff and the defendant No.1 in the ratio indicated above."

The decree itself clearly mentioned that so far as the amount of money involved is concerned, it is a final decree and in so far as the administration of the properties is concerned, it is a preliminary decree. Subsequently on an application in I. A.No. 1874 of 1982 filed in the said suit, the learned Chief Judge, City Civil Court, Hyderabad by his order dated 22-4-1983 appointed one Sri B. Dayakar Reddy, Advocate, as a Receiver-cum-Commissioner to administer the property while discharging the previous Receiver-cum- Commissioner.

4. Sri. B. Dayakar Reddy, who was appointed as Receiver-cum- Commissioner by the order dated 22-4-1983 filed an application I.A.No. 166 of 1988 in O.P.No. 29 of 1987 on the file of the Sub-Court, Jangaon under Order 1 Rule 10 and Section 151 C.P.C. for impleading him as a party to O.P.No. 29 of 1987. The learned Subordinate Judge, Jangaon allowed the said application and impleaded the Receiver-cum-Commissioner as a party to the proceedings.

5. The said order is assailed in this revision by claimants 2 and 3.

6. The main objection raised on behalf of the petitioners is that Order 1 Rule 10 C.P.C. has no application to the proceedings pending on a reference u/s 30 of the Act. The contention is that the Receiver was not a party to the award proceedings before the Land Acquisition Officer and he never sought for a reference u/s 30 of the Act and therefore, such a person cannot maintain an

application under Order 1 Rule 10 CPC. In support of this contention, the learned Counsel appearing for the petitioners relied upon the judgments of this Court reported in Municipality, Nalgonda Vs. Hakeem Mohiuddin and Others, ., and M/s. Cyrus Investment (P) Ltd., Hyderabad and another Vs. Mohd. Fareeduddin Khan and others, ., Both the decisions dealt with the applicability of Order 1 Rule 10 C.P.C. to a proceeding pending on a reference u/s 30 of the act. Having regard to the cleavage in the judicial pronouncements between different Courts and also having regard to the nature of the question which may arise frequently, we requested Sri C.Poornaiah, learned Senior Counsel to assist the Court. Both the Counsel viz., Sri C. Poornaiah as well as Sri. B. Sudershan Reddy appearing for the Receiver, who is impleaded as a party to the proceedings, placed before us several decisions of the different High Courts. So far as this Court is concerned, the decisions are consistent in holding that a person not a party to the proceedings before the Land Acquisition Officer, cannot be added as a party to a proceeding pending on a reference u/s 30 of the Land Acquisition Act before a civil Court. To the same effect are the decisions of the Full Bench of the Patna High Court reported in Amar Singh Yadav and Another Vs. Shanti Devi and Others, ., and that of Punjab & Haryana High Court in Indraj Vs. Sham Lal, ., as also the Judgment of Calcutta High Court reported in Manjur Ahmed v. Rajlakshmi, AIR 1956 Cal 2., while the High Courts of Kerala, Karnataka etc., took a different view.

7. However, on the facts and in the circumstances, we are of the view that we need not go into the said controversy for the purpose of disposal of the present Civil Revision Petition. The person viz., the petitioner in the lower Court, who filed the application to be impleaded under Order 1 Rule 10 of the CPC as a party to the proceedings, is a Receiver-cum-Commissioner appointed by a competent civil Court with legal powers to take possession of the plaint schedule properties and collect the income there from and administer the same. It is also mentioned in the decree that he is entitled in the first instance to sell the properties to the extent of decretal amount of Rs. 61,324 /- for which a final decree was passed and he was also further directed that the properties, after the satisfaction of the decretal amount, will be divided in certain shares or dispose of the properties and distribute to the plaintiff and the first defendant in the ratio indicated in the decree. We have already mentioned that the first defendant is one Saleha Fatima who was a party before the Land Acquisition Officer in the award proceedings and also sought a reference u/s 18, and in fact a reference was made by the Land Acquisition Officer and it is pending in O.P.No. 29 of 1987 on the file of the Subordinate Judge, Jangaon.

8. The legal status of a receiver appointed by a Court and his powers have been succinctly stated in a Judgment of a Division Bench of Madras High Court reported in Koypathodi Moidin Kutty (died) and Others Vs. A.K. Doraiswami Aiyar, ., as under:

"The object of appointing a receiver in an action is the preservation of the

properties which are the subject-matter of the suit for the benefit of the parties who might be declared entitled to the same in the action. For this purpose the Court takes the properties into its own custody and assumes management thereof through its officer, the receiver. Under Order 40, R.I. (d) the Court can confer upon the receiver all such powers as to bringing and defending suits and for the realisation and management of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits and the like as the owner himself has. The result of appointing a receiver under O.XL, R.I, C.P.C. is that the parties to the action are removed from the possession of the properties which pass into "custodia legis" and that thereafter the only person who can realise the income and conduct proceedings in Court is the receiver:

"The appointment of a receiver operates as an injunction restraining the parties to the action from receiving any part of the property affected by the appointment" (Halsbury Laws, Volume 28, page 48, para 87)."

The learned Judges after considering the case law relevant thereto further held as under:

"We are, therefore, of opinion that the true position of the receiver in law is that though he is not the owner or agent of the owner he is nevertheless his representative and as such representative he is entitled to take all such proceedings in Court as are open to the owner and he can do so in his own name."

Having considered the position and legal status of a receiver appointed by the Court, the learned Judges stated that the receiver appointed can come on record and continue actions instituted by the owners under Order 22, Rule 10 C.P.C. In fact, in the said case, the receiver was appointed on 27-3-1945 in O.S.No. 32 of 1941 on the file of Sub-Court, Kozhikode. The said suit was filed for partition of the properties belonging to the tarwad. He wanted to come on record to continue the execution proceedings of the decree after the E.P. was dismissed on 6-6-1945 on the ground that the decree-holder was reported dead and that no legal representatives were impleaded. It is pertinent to notice that it is not a case where the receiver was appointed after the E.P. was dismissed. The learned Judges clearly held in this connection as follows:

"A receiver acting under the authority of the Court is a statutory representative of the real owner. He is entitled to commence proceedings in his own name so as to bind the true owner and he should be entitled to continue all proceedings initiated by him. If it is a suit the application will fall under Order 22, Rule 10 and if it is an execution proceeding it will fall u/s 146."

9. The above decision of the Madras High Court, by which we are bound, is an authority for the proposition that the object of appointing a receiver by the Court is to take the properties into its own custody and assume management through the receiver for the purpose of preserving the same for the benefit of ultimate

successful party. The receiver so appointed is the only person who can realise the income from the said properties and conduct proceedings which the original owner could have conducted. He is also treated as a representative of the true owner and entitled to take all proceedings in Court as are open to the true owner, and such a receiver can come on record to continue the proceedings initiated by the true owner under Order 22, Rule 10 C.P.C. if it is a suit, and if it is any other proceeding u/s 146 CPC. We are in respectful agreement with the above stated propositions.

10. Further, in the present case it is relevant to notice, that the award of the Land Acquisition Officer itself refers to the fact that the receiver was appointed in the suit O.S.No. 18 of 1963 on the file of First Additional Chief Judge, City Civil Court, Hyderabad. But obviously, by mistake, he was not shown as a party to O.P.No. 29 of 1987 on the file of Sub-Court, Jangaon.

11. The only other question that has to be considered is whether Order 22, Rule 10 of the CPC applies to the proceedings initiated on a reference u/s 30 of the Land Acquisition Act. This point is no longer *res Integra*. In *Sunder Lal Vs. Paramsukhdas*, the learned Judges of the Supreme Court categorically held that Order 22, Rule 10 of the CPC is applicable to the Land Acquisition proceedings pending on a reference u/s 30 of the Land Acquisition Act. It was held in the said Judgment that a person who is an "interested person" within the meaning of Section 3(b) of the Land Acquisition Act can invoke the provision of Order 22, Rule 10 of the CPC and come on record in the proceedings pending on a reference u/s 30 of the Land Acquisition Act. In the said case, the learned Judges of the Supreme Court upheld the order of the High Court allowing an application filed under Order 22, Rule 10 of the CPC and Section 151 CPC filed by attaching creditor in a pending proceeding on a reference u/s 30 of the Land Acquisition Act.

12. We are also of the opinion that the receiver-cum-commissioner can also maintain an application u/s 146 of the CPC to be made a party in O.P.No. 29 of 1987. It is now well settled by the decisions of the Supreme Court reported in *Jugalkishore v. Raw Cotton Co.*, AIR 1955 SC 376., and *Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another*, that the expression "claiming under" occurring in Section 146 of the CPC is wide enough to include cases of devolution and assignment mentioned in Order 22, Rule 10 of the CPC and the said Section 146 of the CPC is a beneficent provision and should be construed liberally so as to advance justice and not in a restricted or technical sense. O.P.No. 29 of 1987 on the file of Sub-Court, Jangaon will also come within the meaning of "any proceeding" occurring in Section 146 of the Code of Civil Procedure.

13. The receiver is continuing, as aforesaid, even now. Therefore, he is the person to represent the estate and the true owner. He comes within the meaning of the expression "person interested" u/s 3(b) of the Land Acquisition Act. It should also be borne in mind that a part of the estate, to which he is appointed as a receiver to administer, is the subject-matter of the land acquisition proceedings and the dispute with regard to the apportionment is pending u/s 30

of the Land Acquisition Act. Further, as mentioned above, one of the persons who sought a reference and raised a dispute, saleha Fatima, is already a party to O.P.No. 29 of 1987.

14. For the reasons mentioned above and having regard to the decision referred to, we are clearly of the opinion that the receiver-cum-commissioner is entitled to come on record and prosecute the pending O.P.No. 29 of 1987 on the file of the Subordinate Judge, Jangaon under Order 22, Rule 10 as well as u/s 146 of the Code of Civil Procedure.

15. It is true that the application was filed under Order 1, Rule 10 of the Code of Civil Procedure. We have already stated that we will not go into the said question. But the application can be traced to the power under Order 22, Rule 10 and Section 146 of the Code of Civil Procedure. So long as the source of power is there, quoting a wrong provision will not deter the Court from applying the proper and correct provision of law. This proposition is also well settled.

16. Therefore, we are treating the application I.A.No. 166 of 1988 filed under Order 1, Rule 10 of the CPC as one filed under Order 22, Rule 10 and Section 146 of the Code of Civil Procedure. So treated, we have no hesitation in holding that the order of the lower Court allowing the application is proper, just and correct. Accordingly this revision petition is dismissed. There will be no order as to costs.

17. It should be remembered that the basis principle on which the decisions which have held that Order 1 Rule 10 have no application to a proceedings pending before the Civil Court on reference u/s 30 is, that the Civil Court gets jurisdiction only to decide a dispute which is raised before the Land Acquisition Officer during Award proceedings and referred to it u/s 30 and no other. Addition of a representative of a party whose dispute is referred to by the Land Acquisition Officer and pending in the Civil Court u/s 30, will not result in raising any other dispute than the one which was referred to by the Land Acquisition Officer to the Civil Court for determination. Therefore, the underlying principle for holding that Order 1 Rule 10 CPC will not apply to the proceedings pending in a Civil Court on a reference by the Land Acquisition Officer u/s 30 will not be violated.

18. We place on record our thanks to Sri C. Poornaiah, learned Senior Counsel, who appeared as Amicus Curiae at our request and assisted the Court.

19. After the Judgment was dictated in open Court, Sri Balaji, learned Counsel requested us to have the matter to-day so that in case any further light is thrown on the point at issue by subsequent investigation, the same can be considered by this Court. To-day Sri Manthani, learned counsel appearing for Mr. Balaji, contended that though the receiver was appointed to take possession of the property from the Tahsildar, he never took possession and, therefore, he cannot be a proper person to represent the estate. He further contended that the receiver has not taken permission from the Court which appointed him as a

receiver to be impleaded in these proceedings.

20. These submissions, in our opinion, have no substance. Saleha Fatima is already a party at whose instance the receiver was appointed to take possession of the property and to administer the same. The validity or otherwise of the order appointing the receiver is not the subject-matter before us. Therefore, we are not inclined to accept this submission.

21. The other objection that the receiver has not taken permission from the Court which appointed him as a receiver to pursue these proceedings need not detain us any longer. Under the terms of the Order, he was asked to take possession and administer the property, in other words, manage the properties. Wherever a proceeding can be taken by the party in the suit in which the receiver was appointed, the receiver also can take the proceedings in the place of the said party. Smt. Saleha Fatima is already a party and the receiver is seeking to come on record in addition to the said Saleha Fatima. There cannot be any objection for the receiver to come on record in addition to Saleha Fatima. We do not find any merit in these submissions. They are accordingly rejected. This will not prevent the parties from raising all objections that are open to them under law in the proceedings O.P.No. 29 of 1987 on the file of Sub-Court, Janagaon.