
(1915) 04 MAD CK 0034
In the Madras High Court

T. Raman Nair (Mullapalli Tarwad Manager) APPELLANT
Vs
Gopala Menon and Others RESPONDENT

Date of Decision : 19-04-1915

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 4

Citation : (1916) ILR (Mad) 584

Hon'ble Judges : Seshagiri Ayyar, J; Oldfield, J

Bench : Division Bench

Judgement

Seshagiri Ayyar, J.—One Raman Nair brought a suit against the present appellant to remove him from the karnavanship. The first Court

directed his removal. Pending the disposal of the appeal against the decree, the said Riman Nair was appointed receiver of the tarwad properties,

and he gave security for his proper management. The appeal was decided in favour of the karnavan in February 1913. Raman Nair, the receiver,

died in April 1913. The present application is by the successful karnavan for an order that the properties of the deceased receiver, in the hands of

the respondents, should be held liable for moneys misappropriated by him. The Subordinate Judge held that although an application of this kind

might be entertained against the receiver, if he were alive, it is incompetent against his legal representatives and that the proper procedure is to sue

the latter in a regular suit. We think this order is wrong.

2. Order XL, Rule 4, provides that where a receiver had occasioned loss to the property by his wilful default or gross negligence, the Court may

direct his property to be attached and sold. Mr. Rosario raises two objections to the applicability of this clause, He contends that the word

property refers to what was actually entrusted to the receiver and not to the income derived therefrom. We are unable to agree with him. Property

in this and in the other Clauses of the section is synonymous with estate. In most cases, it is for the collection of the income, that a receiver is

appointed. We are of opinion that the income from a property entrusted to the charge of a receiver is covered by the word property.

3. The learned vakil also urges that by misappropriating the income, it cannot be said that the receiver committed wilful default or negligence. The

Clause is not very happily phrased. It is a residuary provision and is intended to deal with all cases of loss to the estate not specially provided for.

One cannot say that a man who uses for his own benefit the money entrusted to him does not occasion loss by his wilful default. We must overrule

this objection also.

4. The far more serious objection raised was that in a summary proceeding, the legal representatives should not be proceeded against. There is no

question of respondents being executors under the will of the deceased. They are the ordinary legal representatives of the deceased. The provision

in Rule 4 is that the property of the receiver should be attached and sold. It does not necessarily involve the conclusion that the receiver is alive. In

Section 50, Clause (2) of the Code, where a provision is made for executing the decree against the legal representatives the language employed is

that the property of the deceased in his hands"" should be liable. We think the legislature has advisedly rendered the property liable in Order XL in

order that execution may be levied against it in the hands of the legal representatives. If a suit has to be instituted, the same representatives would

have to be impleaded as being in possession of the assets of the deceased; and we see no reason why the question which can be decided in a suit

should not be disposed of in the execution application. Mr. Rosario drew our attention to Jenkins v. Briant (1834) 7 Sim. 171 and to Ludgater v.

Channel (1847) 15 Sim. 479 in which it was held that the legal representatives of the defaulting receiver should not be held liable in summary

proceedings, In Order L, Rules 15 (a) to 24 of the Rules of the Supreme Court, there is no provision directing the recovery of the money against

the estate of the receiver, as we have in Order XL of our Code. We do not think that the cases cited affect the specific provisions of the Code of

Civil Procedure. We agree with the learned vakil that Section 145 has no application. It contemplates proceedings against a third party who has given an undertaking for the due discharge of the obligations resting upon a party to the suit. The receiver is not in that position. We think the provisions of Rule 4, Order XL, are comprehensive enough to enable execution being had against the legal representatives of the deceased receiver. We cannot accede to the contention that as the receiver is an officer of the Court, the respondents cannot be his legal representatives. In giving an undertaking to properly manage and in furnishing security in that behalf, he is rendering himself personally liable and in that capacity the respondents are his legal representatives.

5. For these reasons, we must reverse the order of the Subordinate Judge and direct him to dispose of the petition. Costs will abide the result.