

(1949) 03 MAD CK 0007

In the Madras High Court

Case No : A.A.O. No. 52 and Civil Revision Petition No. 92 of 1949

T.S. Sivaprakasa Mudaliar and Another

APPELLANT

Vs

K.M. Samarapuri and Others

RESPONDENT

Date of Decision : 31-03-1949

Acts Referred:

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

Citation : AIR 1950 Mad 116 : (1949) 62 LW 585

Hon'ble Judges : Raghava Rao, J;Horwill, J

Bench : Division Bench

Advocate : C. Narasimhachariar, for the Appellant; Rao and Ram, for the Respondent

Judgement

Horwill, J.—In February 1948 two persons to whom we will refer as respondents 1 and 3, brought into existence two companies. One was

the Thirunageswaram Weavers' Welfare and Benefit Co., the share holders of whom are weavers working in Thirunageswaram. The other was

Ramada and Co., Ltd. a private company consisting of only two share-holders, respondents 1 and 3 themselves. These two persons were

presumably responsible for the drawing up of the constitution of the two companies; and it was agreed upon at the same time that a managing

agency agreement should be executed, whereby the powers of management in the Thirunageswaram Weavers' Welfare and Benefit Co., Ltd.,

should be exercised by Ramaswami and Co. Ltd., for a term of 20 years, with a further extension of 20 years upon the resolution of the company

at an ordinary general meeting. Unfortunately, these two respondents fell out; and so made it difficult for them to conduct either their own business

of Ramaswami and Co., Ltd. or that of the Thirunageswaram Weavers' Welfare

and Benefit Co., Ltd. of which these two respondents are the two leading directors. The Weavers' Welfare and Benefit Co., became divided into two factions, the larger, controlling 240 to 305 shares out of a total of 403, supporting respondent 3, and the other controlling anything upto 163 shares, following the leadership of respondent 1. It would appear, if the allegations of respondent 1 are true, that respondent 3, as the controller of the larger number of share-holders, succeeded in depriving respondent 1 of all share in the management, with the result that respondent 1 filed O. S. No. 395 of 1948 on the file of the District Munsif of Poonamallee for a declaration that he was equally entitled with respondent 3 to manage the affairs of Ramaswami and Co., of which the main concern was the conducting of the Weavers' Welfare and Benefit Co., and praying for an injunction to restrain defendant 3 from unlawfully ousting him from the joint manager ship of the companies. At the same time, he filed I. A. No. 939 of 1948 for a temporary injunction. A temporary injunction was passed on 3rd November 1948; but as respondent 1 was not satisfied with the extent of the temporary injunction passed, he filed C. M. A. No. 90 of 1948 in the Court of the District Judge of Chingleput against the order in I. A. No. 939 of 1948. On 10th November 1948, on an application for the appointment of a receiver, one Devaraja Mudaliar was appointed as receiver on 4th December 1948. Respondent 3 attempted to circumvent this order in favour of respondent 1 by getting two men of his faction to file I. A. NO. 54 of 1949 in C. M. A. No. 90 of 1948, to restrain the receiver from interfering with the affairs of the management of the Thirunageswaram Weavers' Welfare and Benefit Co. By that time there were proceedings pending in the High Court also, and so the learned District Judge dismissed that application. C. M. A. No. 52 of 1949 has been filed against the order of the District Judge dismissing I. A. No. 54 Of 1949, while in C. R. P. No. 92 of 1949 respondent 3 prays this Court to revise and set aside the order of the District Judge appointing a receiver. We may add that Devaraja Mudaliar refused to accept the office of receiver, with the result that the learned District Judge was unable to secure the unanimous approval of all interested parties with regard to the person to be appointed as receiver. Various names were submitted to him by the rival factions, and he appointed one Janab M.K.

Sandhamiyan Sahib, whom he considered to be the most fitted for that office.

2. Very many points have been argued on behalf of respondent 3 and the two members of his faction who filed I. A, No. 54 of 1949. The first is

that the Court had no jurisdiction to appoint a receiver in a going concern like Ramaswami and Co. Their learned advocate seeks as authority for

that contention a brief dictum to be found at the conclusion of the judgment of Greaves J. in Kailash Chandra Datta Vs. Sadar Munsif, . There, the

learned Judge said without giving any reasons,

. . . . there is no jurisdiction in a Court to appoint receiver of a company. If it is necessary to protect the assets of a company other means must

be sought which are provided by the provisions of the Companies Act.

We find no provision in the Companies Act which excludes the jurisdiction of a Court to appoint a receiver; though since the Companies Act

makes provision for dealing with circumstances in which a company is mismanaged, it should not be necessary in the vast majority of cases to

appoint a receiver. It might even be improper to do so in certain circumstances. Our attention has been drawn to a number of instances in which

Receivers have been appointed; and although the particular case that we are here considering does not fall within one of the categories of cases in

which receivers have been appointed by Courts, we think this is a case in which, if the allegations are accepted, the appointment of a receiver

would be the most satisfactory way of dealing with the temporary difficulty that exists during the pendency of the suit. If the allegations of

respondent 1 be true, he is kept out of possession and management by respondent 3 and seeks in his suit to have it declared that he is entitled to

participate equally with respondent 3 in the management of Ramaswami and Co., Ltd.

3. It was next argued that even though it be unobjectionable to appoint a receiver for Ramaswami and Co. with regard to its own business, it

would be improper to appoint a receiver for that part of the business of Ramaswami and Co. which deals with its managing agency on behalf of the

Weavers" Welfare and Benefit Co. It has been argued that since the contract of agency was between the Weavers" Welfare and Benefit Co. on

the one hand and Ramaswami and Co. on the other, a receiver cannot be substituted for Ramaswami and Co. If Ramaswami and Co. is not to

manage the affairs of the Weavers' Welfare and Benefit Co. then, it is argued, it is for the company to decide who shall manage it. The receiver is

however only the manager of the business of Ramaswami and Co. and was not substituted for Ramaswami and Co. The business of Ramaswami

and Co. was not taken away from it. That company continues to exist and to be the managing agents of the Weavers' Welfare and Benefit Co. As

the manager of that company, the receiver is entitled to perform all the duties of that company, including the managing agency of the Weavers'

Welfare and Benefit Company.

4. In arguing against the appointment of a receiver for the management of the Weavers' Welfare and Benefit Co. in the place of Ramaswami and

Co. it is contended that Ramaswami and Co. was appointed because of the peculiar confidence which the Weavers Welfare and Benefit Co, had

in Ramaswami and Co. If from the managing agency agreement it appeared that that was so. there would be considerable force in the argument;

and it would then not be proper on the part of a Court to appoint somebody in whom the Weavers' Welfare and Benefit Co. had no confidence,

in the place of persons whom they selected because of the confidence that they had reposed in them. We have already pointed out that

Ramaswami and Co. was not appointed as agents by a company already in existence. The Directors of Ramaswami and Co. were responsible for

bringing the Thirunageswaram Weavers' Welfare and Benefit Co. into existence. The agreement makes it clear in very many places that

Ramaswami and Co. Ltd. is entitled to assign or transfer its interests, and that the company, by whatever name it may be known or whoever may

be the assignees or transferees, is entitled as of right to manage the affairs of the Weavers' Welfare and Benefit Co. for the period of the contract.

We therefore find nothing in the terms of the agreement which affords any ground for concluding that the continued right of Ramaswami and Co. to

manage the affairs of the Weavers' Welfare and Benefit Co. was dependent upon the peculiar confidence reposed in the directors of the one by

the shareholders of the other.

5. A fourth argument is that I. A. No. 54 of 1949 should not have been dismissed in limine, and that the learned Judge should have considered the

arguments put forward on behalf of the Weavers' Welfare and Benefit Co., and

passed a reasonable order after considering their objections. That argument is akin to another point that has been made in the appeal and the revision petition, i. e., that even apart from the application, I. A, No. 54 of 1949, the learned Judge should have consulted the Weavers' Welfare and Benefit Co. before appointing a receiver, because it was their interests that were, primarily affected by the order of appointment. In principle, we agree that it would have been advisable to consult members of the company and that the learned Judge should have given fuller reasons for dismissing I. A. No. 54 of 1949; but in this connection one has to remember that consulting the members of the Weavers' Welfare and Benefit Co. is tantamount to consulting respondents 1 and 3 again, for they are the leaders and spokesmen of their respective factions amongst the weavers.

6. Another argument by the learned advocate for the two petitioners in I. A. No. 54 of 1949 is that the services of Ramasawami and Co. Ltd. were legally dispensed with for misconduct, and that since Ramaswami and Co. Ltd. is no longer entitled in law to manage the affairs of the Weavers' Welfare and Benefit Co. the receiver, whose powers are not greater than those of Ramaswami and Co. would also be precluded from interfering with the affairs of the Weavers' Welfare and Benefit Co. We have been taken through the various affidavits and statements made on behalf of respondent 3 and the faction that he leads; and it is not at all clear that any definite allegation has been made--still less proved--that the agency of Ramaswami and Co. Ltd. has been legally determined. In some affidavits reference is made to a determination of the agency as early as May 1948; but there appears to have been another meeting on 15th November 1948 on which the learned advocate for respondent 3 and his faction chiefly relies in the proceedings before this Court. As to what happened on that date we may well refer to respondents 3's reply affidavit in C. M. P. No. 1049 of 1949, para. 3, in which he said :

As the notice for the statutory meeting was too short, the statutory meeting was adjourned to 15th November 1948. On 14th October 1948 notice of an extraordinary general body meeting to be held on the same day, i. e., 15th November 1948 to remove the said directors including respondent 1 herein was issued to all the shareholders. On 15th November 1948 after the statutory meeting was over, the general body meeting

was held in which Ramaswami and Co. as well as the six directors who colluded with respondent 1 were removed.

So it would appear that the extraordinary general body meeting was for the removal of respondent 1 and others from the directorship of the

Weavers' Welfare and Benefit Co. No material has been put before us or before the lower Court to show the nature of the summons that was

issued in that case, that it was received by respondent 1 and others, that the meeting was regularly held, and that the requisite statutory majority

was obtained in support of the resolution terminating the agency of Ramaswami and Co.

7. Lastly, it is said that the receiver appointed was not a man of substance. The learned District Judge has given reasons which seem to us sufficient

for selecting the person whom he appointed, as being a man outside the factions and of considerable experience in the business carried on by or on

behalf of the Weavers' Welfare and Benefit Co. It is of course clear that the powers of the receiver are coterminous with the powers of

Ramaswami and Co. It should not be necessary for us to say that the appointment of a receiver does not prevent the Weavers' Welfare and

Benefit Co. from holding meetings and conducting business other than that covered by the agency agreement with Ramaswami and Co. Ltd.

8. C. M. A. No. 52 of 1949 and C. R. P. No. 92 of 1949 are dismissed with the costs of the contesting respondent 1, one set.