
(1961) 12 KL CK 0016
In the High Court Of Kerala
Case No : C.R.P. 1161 of 1960

Varkey

APPELLANT

Vs

Travancore Forward Bank Ltd.

RESPONDENT

Date of Decision : 19-12-1961

Acts Referred:

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

Citation : (1962) KLJ 260

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : George Vadakkal and Verghese Kalliath, for the Appellant; K.C. John, for the Respondent

Final Decision : Allowed

Judgement

T.C. Raghavan, J.—The only question in this Civil Revision Petition is whether a receiver should be appointed pending suit. Both the lower courts directed that a receiver should be appointed, if the defendant failed to make certain deposits towards mesne profits. But they gave different reasons for reaching this conclusion. In revision the defendant-petitioner before me disputes the correctness of the order appointing receiver. The suit is for recovery of possession on the basis of a caretaker arrangement alleged to have taken place more than 12 years prior to the date of suit. The defendant contends, inter alia, that he had been in possession for more than 12 years as owner and thereby had perfected title by adverse possession. The trial court directed the appointment of a receiver in default of the defendant making certain deposits. The reason for making that direction by the trial court appears to be that the defendant does not possess any means and if the suit is ultimately decreed it will not be possible to realise the mesne profits from him. In appeal the learned District Judge confirmed that order on the ground that the case was a clear case of disputed title and therefore the appointment of a receiver by the trial court was justified.

2. I do not think that the reason given by either of the lower courts is sufficient

for the appointment of a receiver. It is now well settled that the appointment of a receiver should not be allowed as a matter of course. O. XL, R. 1 lays down that where it appears to the court to be just and convenient, the court may appoint a receiver. Mulla in his commentaries on the Code of Civil Procedure, 12th Edn. p. 1168 observes: The words "just and convenient" do not mean that the Court is to appoint a receiver simply because the Court thinks it convenient ; they mean that the Court should appoint a receiver for the protection of rights or for the prevention of injury according to legal principles. The order is discretionary and the discretion must be exercised in accordance with the principles on which judicial discretion is exercised. Hence, the Court should not appoint a receiver of property in the possession of the defendant who claims it by a legal title, unless the plaintiff can show prima facie that he has a strong case and a good title to the property.

In the case before me, the plea of the defendant is that he perfected title to the property by adverse possession for more than 12 years; and that is a perfectly legal title too. One of the documents produced on the plaintiff's side is the sale deed in its favour, which was more than 12 years prior to the suit. So that, even if the sale deed is accepted as a document of title, there is nothing on record to show that the defendant's case that he perfected title by adverse possession is false or unacceptable. Unless and until the plaintiff establishes a prima facie strong case for recovery of possession, a receiver should not be appointed. As I have already observed, the appointment of receiver should not be allowed as a matter of course. A poor man who is in possession of his property is entitled to continue in possession and is not to be thrown out of possession simply because another man produces a document of title which is more than 12 years prior to the date of suit and because the man in possession is not in a position to deposit mesne profits. Therefore, the ground on which the trial court based its order cannot be sustained ; nor can the reason advanced by the lower appellate court to confirm that order be considered to be sound or good. The defendant appears to have been in possession for more than the statutory period to prescribe for title by adverse possession and the mere production of a document of title by the plaintiff does not prima facie indicate a strong case in its favour for recovery of possession, especially in view of the case of adverse possession pleaded by the defendant.

Therefore, I am constrained to allow the Civil Revision Petition and set aside the order appointing receiver. The C. R. P. is accordingly allowed. But, in the special circumstances of the case, I do not direct the respondent to pay the costs of this petition.

The lower court is directed to dispose of the suit as early as possible.