

(1983) 11 BOM CK 0021

In the Bombay High Court

Case No : Civil Revision Application No. 298 of 1983

Venubai Annantrao

APPELLANT

Vs

Prabhabai Govindrao Jamkar and Others

RESPONDENT

Date of Decision : 07-11-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 43 Rule 1, 115

Citation : AIR 1984 Bom 314

Hon'ble Judges : Khandkar, J

Bench : Single Bench

Advocate : A.G. Godhamgaonkar and P.G. Godhamgaonkar, for the Appellant;
B.N. Bajpai, for the Respondent

Judgement

1. This Civil Revision Application by the original plaintiff is directed against the judgment and order recorded by the learned Extra Assistant Judge, Nanded in Miscellaneous Civil Appeal INo. 17 of 1982 decided of 26 the April 1983.

2. The petitioner-plaintiff filed Regular Civil Suit No. 223 of 1981 in the Court of the Civil Judge, Junior Division, Nanded, against the respondents-defendants for declaration of ownership and possession of field Survey No. 34 admeasuring 14 acres 27 gunthas situated at village Assadullabad, District Nanded and for perpetual injunction. In the said suit, the plaintiff had filed an application for temporary injunction under O. XXXIX, Rr. 1 & 2, Civil P. C. (hereinafter referred to as "the Code"), restraining the defendants from obstructing her possession over the said field. That application was contested by the defendants and after hearing both parties and on considering the material on record, the learned Second Joint Civil Judge, Junior Division Nanded rejected the plaintiffs application (Exh. No.5) vide order dated 24-4-1981.

3. The case of the plaintiff in the lower Court was that she was the owner of the field in question on the strength of the sale deed, which was executed by one Govindrao, husband of defendant No. 1, in the name of his wife and in lieu of her share in the land, she claimed to have been placed in possession of the suit

field in the year 1969 and since then she had been in possession thereof. Defendant No.1 claimed to be the owner of the suit field by virtue of the registered sale deed dated 7-9-1970, which is said to be a benami transaction by the plaintiff. She claimed to be in possession of the suit land and in the year 1980, she sold some plots out of that field in favour of defendants Nos. 2 to 5.

4. The learned trial judge came to the conclusion on considering the material on record that the plaintiff had failed to prove a prima facie case and hence by order dated 24-4-1981, he rejected the plaintiff's application for temporary injunction, thereby vacating an order of ad interim injunction earlier granted in favour of the plaintiff.

5. The plaintiff carried an appeal against that order to the District Court at Nanded, which was registered as Miscellaneous Civil Appeal No. 105 of 1981. The learned Assistant Judge, who heard that appeal, held that the plaintiff had a prima facie case, but she was not in possession of the suit field and the balance of convenience was not in her favour and hence he refused to grant temporary injunction to the plaintiff. However, considering the fact that both, the plaintiff and defendant No. 1, were claiming to be in possession of the suit field and considering the peculiar circumstances of the lower Court dated 24.4.1981. He, however, appointed a receiver to supervise the affairs of the suit land and the parties were directed to suggest the name of the receiver within five days in the lower Court, which was also directed to fix the remuneration of the receiver. This order came to be passed on 11-1-1982 and thereafter the matter went back to the trial Court.

6. On 26-2-1982, the learned Second Joint Civil Judge passed the following order.

"Shri V. A. Nandedkar, Advocate, is appointed as receiver with the consent of both sides Advocate. The receiver is directed to take possession of the suit land on receipt of order. He is directed to prepare the list of articles including moveable and Immovable which are in existence in the suit land. After taking possession of the suit land, the receiver shall auction the cultivation for the year and deposit the cultivation for the year and deposit and auction proceeds in the Court. The plaintiff is directed to deposit the necessary fee amount Rs.200/- initially. He, i.e., receiver is entitled to receive the remuneration at the rate of 15% from the auction amount. Regarding moveable articles and other fixed articles, suitable order shall be passed after submitting the report.

Issue notice to receiver accordingly. Feeling aggrieved by this order dated 26-2-1982, below Exh. No.110, the defendants preferred an appeal, being Miscellaneous Civil Appeal No. 17 of 1982, to the District Court at Nanded. The appeal was heard by the learned Extra Assistant Judge, Nanded, and it was decided on 26th April 1983. The learned Extra Assistant Judge passed the following order :--

"Appeal is allowed and the order of the lower Court asking the receiver to take the possession of the suit land is set aside. However, when the lower Court has

appointed Shri V.M. Nandedkar, Advocate, as the receiver of the suit land with the consent of the parties and when there are no practical difficulties at present for the possession of the suit land by the receiver."

It appears that while deciding this appeal, the learned Extra Assistant Judge was of the opinion that the learned Civil Judge has not properly understood the order dated 11-1-1982 passed by the appellate Court and he had acted in excess by asking the receiver to take possession of the suit land. Feeling dissatisfied with this order of the learned Extra Assistant Judge in Miscellaneous Civil Appeal No. 17 of 1982, the original plaintiff had filed this revision petition under S. 115 of the Code.

7. As observed above, in Miscellaneous Civil Appeal No. 105 of 1981, the learned Assistant Judge did not grant the prayer of the plaintiff for temporary injunction, but he appointed a receiver to supervise the affairs of the suit land. Against this appellate order dated 11-2-1982, Prabhabai, who is defendant No. 1 in the suit, had filed civil revision application to the High Court at Aurangabad, but that revision petition was summarily dismissed. Apparently, therefore, the order of the learned Assistant Judge dated 11-1-1982 passed in Miscellaneous Civil Appeal No. 105 of 1981 attained finality.

8. The first point that was pressed by Shri A. G. Godhamgaonkar, learned advocate for the petitioner was about the competency of Miscellaneous Civil Appeal No. 17 of 1982 decided by the learned Extra Assistant Judge on 26th April 1983. Shri Godhamgaonkar urged before me that the order dated 26-2-1982 passed by the learned Second Joint Civil Judge was not an appealable order since it did not fall under any of the clauses, namely, Cls. (a) to (d) of O. XLR. 1 of the Code. He contended that all Clauses of O. XL, IR. 1 of the code will have to be considered together and not in isolation and as such provisions of Cls. (b) to (d) of O. XL, R. 1 of the Code will automatically follow after the appointment of receiver is made under Cl. (a) of the said order. He further submitted that the order dated 26-2-1982 passed by the learned Second Joint Civil Judge below Exh. No. 110 was an interlocutory order and it was in continuation of the order of appointment Judge in Miscellaneous Civil Appeal No. 105 of 1981 and against such an interlocutory order, no appeal was competent under O. XLIII, R. 1 (s) of the Code. In support of his argument, he placed reliance on the decisions in *Samhutta Singh v. Bhyagwati Singh* AIR 1920 Pat 703; and *Narasinga Gowda v. subramanya Saralaya* AIR 1972 Mys 346. In the Patna case. Cited supra it was held that an order construing an order of appointment of a receiver did not fall either under R. 1 or under R. 4 of O. 40 and was not appealable. The facts in the Mysore case, cited supra, were that on a joint pursis of both parties, the trial Court appointed a receiver and directed him to take possession of property mentioned in the joint memo. When the receiver sought clarification as to whether the additional property was included in the order of receiver, a question arose with regard to interpretation of the order. The court, on hearing the parties, directed the receiver not to take possession of additional property. It was

held that the order of the trial court was merely one construing an earlier order appointing a receiver and does not fall within any of the categories contemplated by cls. (b) and (c) of R. 1, O. 40 and was not appealable under O. 43, R. 1 (S) of the Code. The order passed by the appellate Court was, therefore, set aside in revision since the appeal was not competent and as the order was without jurisdiction. The position, therefore seems to be clear that if the order is an interlocutory one, it would not fall within any of the Cls. (a) to (d) of O. XL, R.1 of the Code and as such, the appeal against such an interlocutory order was not competent under O. XLIII, R. 1 (S) of the Code.

9. The question for consideration, therefore, is whether the impugned order dated 26-2-1982 passed by the learned Second Joint Civil Judge below Exh. No. 110 was an interlocutory order or whether that order attracted any of the Cls. (b) to (d) of R. 1 of O. XL of the Code.

10. Order XL, R. 1 of the Code runs as under :--

"1, (1) where it appears to the Court to appoint a receiver of any property, whether before or after decree;

remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and confer upon the receiver all such powers, as to bringing and defending suits and for the realisation, management protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

....."

Shri Godhamgaonkar pressed before me that all these Cls. (a) to (d) contained in O. XL R.1 of the Code are not in isolation, but they will have to be considered together and once the receiver is appointed under Cl. (a), provisions of Cls. (b) to (d) will automatically follow.

11. Shri B. N. Bajpai, learned Advocate for the respondents, canvassed before me that the final order, which is appealable is one under which a particular person is appointed as a receiver and that order alone is appealable. In this connection, he placed reliance on the decision in *Gopalrao v. Devidas* AIR 1938 Nag 540. It was observed in that case that an application for the appointment of a receiver should not merely ask for the appointment of a receiver but should name out the person whom the applicant wants to be appointed as a receiver. If the application does not name out a receiver the Court should adjourn the matter for the naming of a receiver and it should not leave the matter of appointment at large. There should not be two distinct orders, one stating that it is just and convenient to appoint a receiver and then a later order appointing a particular person as a receiver. It was also observed in that case that an order stating that it is just and convenient to appoint a receiver merely expresses the opinion of

the Judge as to the expediency of the appointment of a receiver. Such an order is not appealable. But an order which ultimately appoints a particular person as a receiver is a final order and is appealable under O. 43, R. 1 of the Code. This view of the Nagpur High Court appears to have undergone a change and it is now well settled that an order for appointment of receiver not actually naming a receiver is an appealable order and in this connection, reference can be made to a decision in *Srinivasa Rao v. Baburao* AIR 1970 Mys 141. It was observed in this case that O. 40 R. 1 falls in the category of cases where all orders made under it have been made appealable and it has not been said that the only order appealable is the one appointing a receiver. Whenever an order can be brought within the purview of O. 40, R. 1 it at once becomes appealable under the provisions of O.43, R. 1 (s). The decision in *Rayarappan v. Madhavi Amma* AIR 1950 F C 140 was relied on in this Mysore case. Shri Bajpai also canvassed before me that a receiver can be appointed for a specific and particular purpose and it is not the position in law that once a receiver is appointed, all the four clauses of O. XL, R. (1) of the Code would automatically apply.

12. As a receiver may be appointed in any case, in which it appears to the Court to be just or convenient to do so, it is almost impossible to classify the cases in which the Court may exercise its discretion. A receiver can be appointed even in execution proceedings.

13. Shri Godhamgaonkar drew my attention to the observations made in *Kerr on Receivers*, 15th End., page 122. The Author says on that page that if the property over which a receiver is appointed is outstanding personal estate, the order should direct parties in possession of such estate to deliver over to the receiver all such estate, and also all securities in their hands for such estate or property together with all books and papers relating thereto. This commentary was brought to my notice by Shri Godhamgaonkar in support of his argument that in the instant case, when a receiver was appointed by the learned Miscellaneous Civil Appeal No. 105 of 1981, the receiver is entitled to exercise automatically all the powers conferred upon him by Cls. (b) to (d) of O. XL, R. 1 of the code. I have already referred to the order of the learned Assistant Judge in Miscellaneous Civil Appeal INo. 105 of 1981 above, under which he appointed receiver only to supervise the affairs of the suit land, survey No. 34 of village Assadullabad. The question for consideration is whether this order of the learned Assistant Judge would indicate that the receiver was automatically entitled to enjoy all the powers, which have been referred to in cls. (b) to (d) of O. XL. R. 1 of the Code. I do not find myself in agreement with the argument advanced by Shri Godhamgaonkar that once a receiver is appointed under Cl. (a) of O. XL. R. 1 of the Code, all the other Cls. (b) to (d) will automatically apply to his appointment. In the case of *S.B. Industries, Freegunj and Another Vs. United Bank of India and Others*, , it was observed that it may be said in a general way that receiver has no power except such as are conferred upon him by the order by which he is appointed. It is open to a court not to confer all those powers stated in O. 40, R. 1. It may confer upon him only powers as may be necessary

to preserve the property pending litigation so that it may not be damaged or dissipated. In that case, a receiver was appointed only to keep a watch on activities of the defendants so that they do not remove the plants and machinery fixed in the factory. It is, therefore, easy to gather that a receiver has no power except those which are conferred upon him by the order by which he is appointed. It is true that a receiver can be appointed (for) (1) preservation of property, or (2) enforcement of certain rights. Shri Godhamgaonkar canvassed before me that in the instant case, the receiver was appointed for preservation of property and as such all the cls. (b) to (d) mentioned in O. XL. R. 1 of the Code would automatically come into play in this case. In my opinion, this argument cannot be accepted. As observed above, a receiver can be appointed for a specific purpose and in the instant case, the order Miscellaneous Civil Appeal No. 105 of 1981 is to the effect that the receiver has been appointed in order to supervise the affairs of the suit field. Shri Godhamgaonkar canvassed before me that although such a direction of supervision was given by the lower appellate Court, yet it was clear in its mind that the receiver should take possession of the property and manage the same. The order passed in Miscellaneous Civil Appeal No. 105 of 1981 is final and it is difficult to accept the argument of Shri Godhamgaonkar that the lower Appellate court intended to place the receiver in possession of the property and manage the same. Had the lower appellate court really intended to place the receiver in possession of the property and to manage the same, it would have given specific directions as laid down in cls. (b) to (d) of O. XL. R.1 of the code. No such directions have been given by the lower appellate Court in its order in the said Miscellaneous Civil Appeal and as such, I find myself unable to accept the argument of Shri Godhamgaonkar to the effect that the receiver was intended to be placed in possession of the suit field for the purpose of management. To repeat, the argument advanced by Shri Godhamgaonkar to effect that the receiver was intended to be placed in possession of the suit field for the purpose of management. To repeat, the argument advanced by Shri Godhamgaonkar as stated above cannot be accepted.

14. In this connection, Shri Godhamgaonkar referred me to certain observations of the lower appellate Court in Miscellaneous Civil Appeal No. 105 of 1981, particularly those contained in para 29 of its order, where in the earlier portion, the lower appellate Court observed that the plaintiff (petitioner herein) was in possession of the suit land just before the institution of the suit, the same paragraph, towards the end, the lower appellate Court has observed that it could not be stated that the plaintiff was in possession of the suit land at present. This finding clearly goes to show that the plaintiff was not in possession of the land in question. In fact, the lower appellate Court should have given a clear finding whether the suit property was in possession of the defendants or of the plaintiff was not in possession of the land in question. In fact, the lower appellate Court should have given a clear finding whether the suit property was in possession of the defendants or of the plaintiff, but no such clear finding has been given by the lower appellate Court. However, it would not be open now for me to dilate upon

that question and the only course left for me is to see whether the impugned order of the lower appellate Court in Miscellaneous Civil Appeal No. 17 of 1982 is correct or it calls for any interference.

15. Under S. 115 of the Code, the High Court can interfere only if subordinate court appears to have acted in the exercise of its jurisdiction illegally or with material irregularity. Obviously, the exercise of revisional powers of the High Court is entirely discretionary and an applicant invoking the revisional jurisdiction of the Court must show not only that there is a jurisdictional error, but also that the interests of justice call for any interference. As observed above, the lower appellate Court in Miscellaneous civil Appeal. No. 105 of 1981 has directed the receiver to supervise the affairs of the suit field. Apparently, this order would fall within the ambit of Cl. (a) of O. XL. R. 1 of the Code. The learned trial Judge while passing the order dated 26-2-1982, below Exh. No. 110 in the suit, tried to interpret the order passed by the lower appellate Court in Miscellaneous Civil Appeal No. 105 of 1981 and he directed the receiver to take possession of the suit land. He has also given directions to the receiver under the said order to auction the land for cultivation for the year and deposit the auction the land for cultivation for the year and deposit the auction proceeds in the Court. I, therefore, feel that these directions given by the learned trial Judge under his order dated 26-2-1982 would fall within the meaning of Cls. (b) and (c) of O. XL R. 1 of the Code and as such they were not directions interlocutory in nature and, consequently the said order was an appealable one under O. XLIII, R. 1 (s) of the Code. Consequently, the appeal against the said order dated 26.2.1982 was, therefore, competent.

16. The next question that falls to be considered is whether the lower appellate Court while deciding Miscellaneous Civil Appeal No. 17 of 1982 was correct in quashing the directions given by the learned trial Judge on 26-2-1982 asking the receiver to take possession of the suit field. The direction given by the learned trial Judge under order dated 26-2-1982 was proper or not. The learned Extra Assistant Judge in his order dated 26-4-1983 strictly construed the order of the lower appellate Court in Miscellaneous Civil Appeal No. 105 of 1981 and he was (of) the view that the receiver was appointed only to supervise the affairs of the suit field. Shri Godhamgaonkar canvassed before me that by order dated 11-1-1982 in Miscellaneous Civil Appeal No. 105 of 1981, the learned Assistant Judge intended to place the receiver in possession of the suit field and to manage the same. In the case of All India Reserve Bank Employees Association Vs. Reserve Bank of India, , it was observed that the word "supervise" and its derivatives are not of precise import. The word must often be construed in the light of the context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with a power of inspection and superintendence of the manual work of other. In Oxford English Dictionary, the meaning of the word "supervise" is given and the said word means, "to look over, survey, inspect, peruse, to overlook or to command a view of". This meaning of the word "supervise" in no case can be interpreted to mean that the

person, who is directed to supervise a certain thing, should obtain possession of the property in question. Consequently, the lower appellate Court in Miscellaneous Civil Appeal No. 105 of 1981 did not intend to place the receiver in possession of the suit field, but it only directed the receiver to supervise the affairs of the suit field. The lower appellate Court, therefore, correctly interpreted the order in Miscellaneous Civil Appeal No. 17 of 1982 and quashed the direction of the learned Civil Judge dated 26-2-1982, under which he directed the receiver to take possession of the suit property. Normally, when a receiver is appointed over a certain property, it means that he should obtain possession of the land and manage the same of his own accord. However, the lower appellate Court in Miscellaneous Civil Appeal No. 105 of 1981 did not desire to place the receiver in possession of the suit field, but affairs of the suit field. This order was therefore, correctly interpreted by the learned Extra Assistant Judge in Miscellaneous Civil Appeal No. 17 of 1982 and I do not think that he acted in the exercise of his jurisdiction illegally or with material irregularity. In fact, the lower appellate Court while deciding Miscellaneous Civil Appeal No. 17 of 1982 correctly interpreted the order of the learned Assistant Judge in Miscellaneous Civil Appeal No. 105 of 1981 and rightly quashed the directions given by the learned Civil Judge below Exh. No. 110 on 26-2-1982 correctly interpreted the order of the learned Assistant Judge in Miscellaneous Civil Appeal No. 105 of 1981 and rightly quashed the directions given by the learned Civil Judge below Exh. No. 110 on 26-2-1982 whereby he asked the receiver to take possession of the suit field.

17. In view of my discussion above, it is clear that the impugned order of the learned Extra Assistant Judge dated 26-4-1983 in Miscellaneous Civil Appeal No. 17 of 1982 was correct and it does not call for any interference. Consequently, this civil revision application stands dismissed. Rule is discharged with no order as to the costs.

18. Petition dismissed.