
(1953) 02 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Application No. 8 of 1952

Vishwanath

APPELLANT

Vs

Kanakmal

RESPONDENT

Date of Decision : 07-02-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1(1), Order 41 Rule 1, 109
Constitution of India, 1950 — Article 133
Government of India Act, 1935 — Section 205

Citation : (1953) 02 MP CK 0001

Hon'ble Judges : Mehta, J;Dixit, J

Bench : Division Bench

Advocate : Pandey, for the Appellant; Waghmare, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an application under Article 133, Constitution of India, for leave to appeal to the Supreme Court from our decision dated 27-11-1951 in Civil Miscellaneous Appeal No. 42 of 1951, upholding an order made by the Additional District Judge, Indore, whereby he appointed a receiver of the mortgaged property in the Plaintiff-non-applicant's suit to enforce four mortgages executed by the applicant.

2. We have heard learned Counsel for the parties. In our opinion, this application must be rejected because the order sought to be appealed from is not a final order and the proposed appeal does not involve any substantial question of law. The question as to what is a "final order" for the purposes of Section 109, CPC and Section 205, Government of India Act, 1935, has been considered in a number of cases. In - "Mohammad Amin Brothers Ltd. v. Dominion of India AIR 1950 FC 77 (A)", it has been observed that:

The expression "final order" in Section 205, Government of India Act, has been used in "contradistinction to what is known as "interlocutory order" and the essential test to distinguish the one from the other has been discussed and

formulated in several cases decided by the Judicial Committee. All the relevant authorities bearing on the question have been reviewed by this Court in their recent pronouncement in - AIR 1949 1 (Federal Court) and the law on the point, so far as the Court is concerned, seems to be well settled. In full agreement with the decisions of the Judicial Committee in - "Firm Ram Chand Manjimal v. Firm Goverdhan Das Vishandas AIR 1920 PC 86 (C) and - AIR 1933 58 (Privy Council) , and the authorities of English Courts upon which the pronouncements were based, it has been held by this Court that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties. To quote the language of AIR 1933 58 (Privy Council) , "The finality must be a finality in relation to the suit. If after the order, the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it. The fact that the order decides an important and even a vital issue is by itself, not material. If the decision on an issue puts an end to the suit, the order will undoubtedly be a final one, but if the suit is still left alive and have got to tried in the ordinary way, no finality could attach to the order.

3. The expression "final order" as used in Article 133 has to be construed in the light of these observations. Mr. Papdey learned Counsel for the Petitioner while accepting the proposition that the true test of finality is whether the order finally disposes of the rights of the parties, argues that in the present case the order appointing a receiver is a final order inasmuch as it has affected the right of the applicant to remain in possession of the property during the pendency of the suit. We are unable to accept this contention. The appointment of a receiver is in the discretion of the Court, and is made whenever, it appears to the Court that it would be just and convenient to appoint a receiver. The appointment of a receiver is not intended to effect, and does not in any way decides, the rights of the parties. The object of appointing a receiver in a mortgage suit is merely to protect the security. That being so, it cannot be maintained that an order appointing a receiver or refusing the appointment of a receiver is a final order within the meaning of Article 133. This view is supported by the case of - Rajniti Prasad Singh and Others Vs. Nrisingha Charan, , where it was held that an order refusing the appointment of a receiver was not a final order u/s 109(a), CPC This decision of the Patna High Court was followed by the Madras High Court in - "Rayarappen Nayanar v. Madhavi Amma AIR 1950 Mad 215 (F). The Madras case was no doubt reversed subsequently by the Supreme Court (see - "Rayarappan Nayanar v. K.V.V. Madhavi Amma AIR 1950 FC 140 (G). But it was reversed on a different ground and not on the ground that an order removing or appointing a receiver affected the rights of the. parties and, was, therefore, a final order. Learned Counsel for the applicant sought to distinguish the Madras and Patna cases by saying that those cases dealt with an order refusing the appointment of a receiver. The appointment of a receiver being discretionary, and made by the Court not on a consideration of the rights of the parties to remain in possession of the property during the pendency of the suit but only on the consideration of preserving the property no distinction can be made between an order appointing

a receiver or one refusing to appoint a receiver. Indeed, if as the learned Counsel for the applicant contends, the appointment of a receiver affects the right of the party already in possession to continue in possession of the property while the suit lasts, it is clear that an order refusing the appointment of a receiver would also affect the right of the party claiming the appointment of a receiver and the dispossession of the other party during the pendency of the suit. It is thus clear that no distinction can be drawn between an order appointing a receiver and an order refusing the appointment of a receiver.

4. Even if it is taken that in the present case the order appointing a receiver is a final order, the appeal intended to be filed therefrom does not involve any substantial question of law. The contention that Order 41, Rule 1, Sub-clause (1) has been interpreted differently in - Anandi Lal and Others Vs. Ram Sarup and Others, and, therefore, the case involves a substantial question of law may be disposed of by saying that the decision of the Allahabad High Court in - Anandi Lal and Others Vs. Ram Sarup and Others, was doubted in - Mt. Tulsha Devi Vs. Shah Chironju Lal and Others, and subsequently Sub-rule (1) of Rule 1, Order 40 was amended in Allahabad so as to make it clear that a party to the suit is not included in the words "any person". Learned Counsel for the applicant also raised the objection that the trial Court had no jurisdiction to try the suit and pass an order appointing a receiver. As to this, it is sufficient to say that the point was never raised while proceedings were pending in the Court below or in this Court. As the point was not raised and decided, it cannot be said that the order appointing a receiver rested upon a consideration and decision of that point and that a substantial question of law was involved in the case. Learned Counsel for the applicant also advanced the argument that as this Court while maintaining the order of the lower Court appointing a particular person as a receiver, observed that the applicant was not precluded from stating his objections in the lower Court to the appointment of that person as a receiver, the order passed by this Court was not an affirming order. There is no substance in this contention. The result of our decision was to confirm the order of the lower Court as regards the appointment of a receiver and the selection of a particular person by the Court as a receiver. The direction given by us, namely, that if the applicant thought that the person selected should not have been appointed as a receiver or that he should have been asked to give security, the applicant was at liberty to put his objections in the trial Court in no way varied the order passed by the lower Court.

5. The result is that this application is dismissed with costs.