



CNR: KAHC010409622016

NC: 2026:KHC:36457
MFA No. 6559 of 2016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO.6559 OF 2016 (CPC)

BETWEEN:

SMT. MEERA HARINATH,
W/O. SRI. J.V.HARINATH,
MAJOR, R/AT NO.7,
PYCROFTS GARDEN ROAD,
NUNGAMBAKKAM,
CHENNAI-600 006.
SINCE DECEASED
REP. BY HER LEGAL HEIRS

1.(a) J.V. HARINATH,
S/O. J.V.P. RAO,
AGED ABOUT 75 YEARS,
NO.7, PYCRIFTS GARDEN ROAD,
NUNGAMBAKKAM,
CHENNAI - 600 006.

1.(b) DR.SUMANTH
JANNAYAVULA VENKATA,
S/O. J.V.HARINATH,
AGED ABOUT 42 YEARS,
NO.47110 HAVASU ST. FREMONT,
CA - 94539,


Digitally signed
by
GAVRIBIDANUR
SUBRAMANYA
GUPTA
SREENATH
Location: HIGH
COURT OF
KARNATAKA



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UNITED STATED OF AMERICA,
REP. BY HIS POWER OF
ATTORNEY HOLDER
J.V.HARINATH S/O. J.V.P. RAO,
AGED ABOUT 75 YEARS,
NO.7, PYCRIFTS GARDEN ROAD,
NUNGAMBAKKAM,
CHENNAI - 600 006.

...APPELLANTS

(BY SRI. SAILESH.S.K., ADVOCATE)

AND:

1. D. VENKATESH,
S/O. LATE V.P.DEENADAYALU NAIDU,
MAJOR, R/AT NO.22,
NANDIDURGA ROAD,
JAYAMAHAL,
BANGALORE-560046.
2. SMT. INDIRA DEENADAYALU
SINCE DECEASED
W/O LATE V.P.DEENADAYALU NAIDU,
MAJOR, R/AT NO.22,
NANDIDURGA ROAD,
JAYAMAHAL,
BANGALORE-560046.
SINCE DECEASED
REP. BY HER LEGAL HEIRS
APPELLANT,
RESPONDENT NO.1 AND 2.



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3. SMT. SHOBHA KAMALAKAR
W/O SRI. KAMALAKAR,
MAJOR, R/AT NO.8/23
13TH CROSS,
VASANTHNAGAR EAST,
BANGALORE-560052.

...RESPONDENTS

(BY SRI. K.M. JAGANATH, ADV. FOR R1;
R3 SERVED - UNREPRESENTED)

THIS MFA IS FILED U/O 43 RULE 1(s) OF CPC, AGAINST
THE ORDER DT.14.07.2016 PASSED ON I.A.NO.1 IN
O.S.NO.3666/2015 ON THE FILE OF THE XLIV ADDITIONAL
CITY CIVIL & SESSIONS JUDGE, BENGALURU, DISMISSING
I.A.NO.1 FILED U/O 40 RULE 1 OF CPC AND ETC.

THIS APPEAL, COMING ON FOR ADMISSION THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR



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ORAL JUDGMENT

This appeal is preferred by the plaintiff challenging the orders passed on I.A.No.1 in O.S.No.3666/2015 vide order dated 14.07.2016 by the learned XLIV Addl. City Civil & Sessions Judge, Bengaluru (CCH-45).

2. It is the case of the appellant/plaintiff that the original plaintiff and defendant Nos.1 and 3 are the children of defendant No.2, late Sri. V.P.Deenadayalu Naidu and V.P.Deenadayalu Naidu was the son of Sri. V.Papaiah Naidu. During the lifetime of Sri. V.Papaiah Naidu he had acquired certain properties, one of which is a suit schedule property. On 14.07.1932 he had executed a Registered Will bequeathing his estate to his grandchildren while making his son V.P.Deenadayalu Naidu as a life interest holder. It is also the case of the plaintiff that the Will came into operation in July-1934 when Sri. V.Papaiah Naidu died and in terms of the Will, V.P.Deenadayalu Naidu was expected to be only entitled to enjoy the usufruct as a life interest holder, while the property stood bequeathed to the plaintiff and defendant Nos.1 and 3. It is also the case of the appellant/plaintiff that V.Papaiah Naidu



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purchased property from one of his debtor, Sri. Lingappa whose debt is prominently mentioned in the Will dated 14.07.1932. The acquisition was after the execution of the above Will and it was purchased by V.Papaiah Naidu and his eldest son on 12.12.1933. It is also contended that after the death of V.Papaiah Naidu, there was a partition inter-se amongst the brothers and the schedule property was redistributed to the share of V.P.Deenadayalu Naidu.

3. The original plaintiff filed suit for the relief of dissolving the partnership firm namely "Dheena Enterprises" which was formed under the partnership deed dated 29.1.1988 and also for a judgment and decree directing defendant Nos.1 to 3 to render accounts. The original plaintiff, Smt. Meera Harinath died and thereafter her legal representatives were brought on record namely her husband and son and the suit proceeded further. The present appeal emanates out of an order passed on the application filed by the plaintiff under Order 40 Rule 1 of CPC, whereby, the plaintiff sought for appointment of receiver in respect of immovable property bearing No.185, Brigade road, Bengaluru. The application was



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contested by the respondents/defendants. The trial Court, upon hearing the contentions and arguments of the counsel for all parties, did not find favour with the plaintiff and accordingly dismissed the application for appointment of receiver. It is this order that is in challenge before this Court.

4. It is the vehement contention of learned counsel for the appellant Sri. Sailesh.S.K., that the impugned order passed by the learned Trial Judge on the application is perverse, illegal and arbitrary and the same deserves to be set aside. Learned counsel further contends that the Trial Court has committed grave error by overlooking the facts, arriving at a conclusion that the partnership deed dated 29.01.1998 being a partnership at Will, the dissolution of partnership is not made in accordance with the provisions of Section 43 of the Indian Partnership Act, 1932. He also contends that the Trial Judge has misunderstood the legal and important aspect of the partnership and the provisions of the Act. It is further contended that the partnership having got dissolved as on 31.05.2014, the partnership would only remain at Will and therefore the dissolution of partnership ought to have been



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made in accordance with Section 43 of the Indian Partnership Act, 1932. He further contends that the real intention of the partners was that the partnership would continue only till 31.05.2014 and it was not envisaged thereafter.

5. Learned counsel further contends that he has sent a notice quite prior to filing of suit on 15.01.2014 and the said notice has not been taken in its true sense and spirit, which had sought for dissolution of the partnership. Therefore, he contends that once the notice has been issued by the plaintiff seeking to dissolve the partnership by way of a notice which is delivered and acknowledged by the defendant, it is deemed as communication of notice and partnership to have stood dissolved. Therefore, the learned Trial Judge has misread the entire provisions of the Act so also the notice sent by the plaintiff for dissolution of partnership. It is the further contention of learned counsel for the appellant/plaintiff that he has sought for appointment of receiver as the respondents/defendants had not accounted properly for the funds and the profits that were to come to the benefit of the plaintiff from April-2019 onwards. It is also the contention of learned counsel



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that defendant No.1 has unilaterally withdrawn more than Rs.3,36,00,000/- from the partnership firm without any basis and he has not given accounts and rendered any details of the said accounts. It is also the contention of learned counsel that the plaintiff is concerned and is very insecure due to huge security advance deposit of over Rs.20 Crores received from various tenants lying with defendant No.1 as a custodian of the erstwhile partnership firm. Therefore the appellant/plaintiff apprehends misuse of the huge amounts by defendant No.1 who is the managing partner in the partnership firm. All these aspects have not been properly considered by the learned Trial Judge while considering the application for appointment of receiver and has mechanically dismissed the application. On these grounds, learned counsel relies upon the following judgments in support of his case and seeks to allow the appeal and consequently allow the application for appointment of receiver.

- (i) ***E. Kuttappan vs. Mrs. Sarojini Bhaskaran***
reported in ***AIR 1998 KERALA 340.***



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(ii) ***Banarsi Das vs. Kanshi Ram and Ors*** reported in
AIR 1963 SC 1165.

6. Per contra, learned counsel Sri. K.M.Jaganath appearing for respondent No.1 vehemently contends that there is no illegality or perversity in the impugned order passed by the learned Trial Judge. It is based on the averments made in the affidavit and the arguments putforth, the learned Trial Judge having considered all these aspects including the reliance of the judgments made by the plaintiff did not find favour to appoint receiver as no cogent reasons were found for appointment of receiver and consequently when there was no negligence or mismanagement or improper management or misappropriation or waste or damage of the property have been specifically spelled out, the question of appointing the receiver as a matter of course would not arise and therefore, it is for the appellant/plaintiff to make a specific case to the satisfaction of the Court with regard to any damage or wastage of the property or misappropriation, which is not forthcoming even according to the application and the affidavit and hence



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did not agree rightly with the plaintiff and has dismissed the application which does not call for interference.

7. Further, learned counsel for respondent No.1 contends that when an application is made by the plaintiff for appointment of receiver, the plaintiff will have to make out a proper case to the satisfaction of the Court that it should appear to the Court to be just and convenient for the appointment of receiver of any property, whether before or after the decree. In the present case according to him and even according to the plaintiff in his own affidavit averments, there is no mention of any mismanagement or improper management or misappropriation or wastage or damage of the property. It is also contended by learned counsel that in view of several applications having been filed during the proceedings, for payment of the profits in accordance with the partnership deed, the same has been made good and if any amount is left out or in balance, the same shall be paid but he contends that no amount is due to be paid to the appellant/plaintiff. He contends that in the judgments relied by the learned counsel for the appellant/plaintiff, the same may



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not be applicable to the present facts of the case as in those cases, the misappropriation, wastage and damage has been made as an allegation in the affidavits. Therefore, he seeks for dismissal of the appeal.

8. I have heard learned counsel for the appellant and learned counsel for respondent No.1. Perused the materials and the impugned order. Apparently it is seen that upon the suit being filed by the plaintiff for dissolution of the partnership and for rendering of the accounts, an application came to be filed for appointment of receiver.

9. On a careful perusal of the application filed by the appellant/plaintiff, no doubt upon stating that all the relevant facts with regard to the partnership and previous litigations and the inheritance of the property by Sri. V.Papaiah Naidu and the property being left over given to their grandchildren and partnership deed having been constituted and the rent is being collected by defendant No.1, who is the managing partner of the partnership firm, it is stated that defendant No.1 has not provided the accounts, Income Tax Returns and has not replied



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to the notices sent by the plaintiff. Apart from that, it is stated that no accounts are furnished with regard to the partnership profits, the finances and defendant No.1 has been collecting huge amount as security deposit from the various tenants and has been paying partly sum to the plaintiff and rest of the defendants who are the partners in this firm. But nowhere in the affidavit, the plaintiff has stated with regard to mismanagement, wastage, damage, misappropriation of the partnership finances and the profits are misused. There is one sentence stated by the plaintiff that in view of non-rendering of the accounts and misleading the amounts to the plaintiff, the defendant No.1 is deliberately keeping away the plaintiff from all dealings and participation in the partnership firm and he is collecting huge amounts from the tenants and keeping it himself in the guise that the partnership firm continues to exist, despite the notice of dissolution and the suit being filed.

10. The Trial Court has taken into consideration all these averments and has formulated point for consideration as to whether the plaintiff has made out grounds which enable the trial Court to treat that the same are just and convenient to



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appoint a receiver in respect of the suit property. Upon consideration of the said point that was formulated for consideration, the learned Trial Judge categorically came to a conclusion that apart from sending the legal notice for termination or dissolving the partnership by the plaintiff to only defendant No.1, notices were not sent to other partners. However, a suit came to be filed for dissolution of partnership. It is a fact that all the partners who are defendants including the plaintiff, are now aware of the dissolution of the partnership sought by the plaintiff by virtue of the suit. But while going through the application for appointment of receiver and the impugned order, the trial Court has merely gone on the application filed by the plaintiff and the allegation made therein and has come to the conclusion that there is no averments or allegations made with regard to misappropriation, mismanagement, wastage and damage of the property. It would be relevant to extract the provisions of Order 40 Rule 1(a) of CPC:

"1. Appointment of receivers.—(1) Where it appears to the Court to be just and convenient, the Court may by order—



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(a) appoint a receiver of any property, whether before or after decree.

(b) xxx

(c) xxx

(d) xxx."

11. The provisions of Order 40 Rule 1(a) of CPC is for appointment of receiver but when it appears to the Court to be just and convenient. Therefore, it is necessary for the plaintiff to make out a case that it should be just and convenient for appointment of receiver in the suit schedule property. It is also not in dispute which is submitted during the course of argument that pursuant to the application filed during the course of the trial, on an application being filed by the appellant/plaintiff, the defendants were ordered to pay Rs.89,38,556/- and the same has been paid by the defendant No.1 for the period from April-2019 to September-2023. It is also submitted by learned counsel for the respondent that pursuant there to, the profits arising out of the partnership deed has been duly sent to the appellant/plaintiff. Therefore, when there is no clear allegations made or no proper documents produced or any material placed before the Court



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with regard to mismanagement, damage or wastage of the property, the receiver cannot be appointed as a mere formality. At the most, what could have been asked and ordered was the rendition of accounts including the finances and the details of the accounts of the partnership firm. Learned counsel for the appellant has relied upon the judgments in his favour but on perusal of the said judgments, it is apparently clear that the Court will have to find out whether some circumstances exist and necessitate which is sufficient and cogent as contemplated under the provisions of Order 40 Rule 1 of CPC, to be just and convenient for appointment of receiver. Unless such necessary circumstances exist or made out, as a matter of course, the receiver cannot be appointed. When in the judgment relied by the learned counsel for the appellant/plaintiff, the very same aspect has been reiterated wherein it is held that it is for the person approaching the Court to state the acts of waste or damage or independent grounds for appointment of receiver, irrespective of the fact whether there is dissolution of the partnership firm or not. If in a given case the acts of waste or damage are established irrespective of the fact as to whether



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the partnership firm is dissolved or not, a receiver may be appointed.

12. In the present case, at the present moment, as there is no instances or circumstances exhibited by the plaintiff to show that there is a wastage of the property, misappropriation or damage to the property of the partnership firm, this Court at this stage does not find any good ground or cogent reason to differ from the findings arrived at by the Trial Court. It is needless to mention that this Court is sitting in a first appeal and it is for the Court to see as to whether there is any perversity committed by the Trial Court in dealing with the application and not to impose its own opinion upon the application.

13. At this stage, this Court is of the opinion on the allegations made by the appellant/plaintiff which is vehemently contended in the application that respondent No.1/defendant has not rendered accounts and not given the Income Tax returns of the partnership firm. There is some substance in such argument that the respondent/defendant would be



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directed to furnish the accounts and also the details of the financial transactions of the partnership firm and also the Income Tax Returns and it would be kept open for the appellant/plaintiff to make any such application in future if so warranted and advised upon coming to know of any mismanagement, wastage or damage that is caused to the property.

14. Under the circumstances, having not found any merit in the application; I pass the following:

ORDER

- (i) The appeal is ***disposed off***.
- (ii) The respondent No.1/defendant is hereby directed to render the accounts of the partnership firm and also furnish the Income Tax Returns of the partnership firm and if at all learned counsel for the defendant/respondent has no objection for the appellant/plaintiff to visit the partnership firm office, he is at liberty to visit the same and inspect the accounts in the presence of either himself or liberty to take his Auditor along with him to have an inspection of the



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accounts, without creating any law and order situation or untoward incident.

- (iii) In view of the fact that the suit is of the year 2015, the learned Trial Judge is requested to dispose of the suit expeditiously.
- (iv) Learned counsels for both the parties are also requested to co-operate with the learned Trial Judge to dispose of the suit itself.
- (v) Ordered accordingly.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE