IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

FAO.No. 269 of 2014 ()

APPELLANT(S)/PETITIONER/PLAINTIFF:

B. CHITHRA, AGED 45 YEARS,
D/O.LATE BHASKARAN, KALABHAM, KALLINGAL,
KILIMANOOR.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENT(S)/COUNTER PETITIONERS/DEFENDANTS:
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1. JYOTHISHKUMAR, AGED 36 YEARS
JYOTHI BHAVAN, KUNNUMMEL, KILIMANOOR
TRIVANDRUM-695 601.

2. VINOD, AGED 34 YEARS,
JYOTHI BHAVAN, KUNNUMMEL, KILIMANOOR
TRIVANDRUM-695 601.

3. PADMINI, AGED 62 YEARS
W/O.LATE BHASKARAN
JYOTHI BHAVAN, KUNNUMMEL, KILIMANOOR
TRIVANDRUM-695 601.

R1&2 BY ADVS. SRI.K.RAMAKUMAR (SR.)
SRI.T.RAMPRASAD UNNI
SRI.S.M.PRASANTH
SMT.ASHA BABU
SMT. AMMU CHARLES

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 11-02-2015, ALONG WITH OPC. 2039/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

vpv

P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.
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F.A.O.No.269 OF 2014 & O.P.(C)No.2039 of 2014
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Dated this the 11th day of February, 2015

JUDGMENT

P.N.Ravindran, J.

This appeal and the original petition arise out of an order passed by the Court of the Subordinate Judge of Attingal, appointing respondents 1 and 2 as party receivers and a subsequent order passed by the trial court declining to remove them from the receivership and to appoint the appellant/petitioner as the receiver. The brief facts of the case are as follows:-

2. The appellant as the plaintiff instituted O.S.No.125 of 2008 in the Court of the Subordinate Judge of Attingal for partition of the plaint A schedule properties consisting of 5 items into 4 equal shares and allotment of one such share to her. The plaint A schedule properties belonged to late Bhaskaran, husband of the third defendant and father of the plaintiff and defendants 1 and 2. A preliminary decree for partition was passed on 28.6.2012 directing division of the plaint schedule property into 3 equal shares and allotment of one such share each to the plaintiff and defendants 1 and 2. The trial court held that the third defendant who had

murdered her husband is disqualified under section 25 of Hindu Succession Act, 1956 from inheriting the properties of late Bhaskaran. Aggrieved by the said finding, defendants 1 to 3 filed R.F.A.No.888 of 2012 in this Court. The said appeal was heard and allowed by a Division Bench of this Court by judgment delivered on 5.2.2014. This Court held that the third defendant/third appellant is entitled to one-fourth share in the properties of her husband. The preliminary decree for partition passed by the trial court was accordingly modified and a preliminary decree for partition of plaint A schedule items 1 to 5 into four equal shares and allotment of one such share each to the plaintiff and defendants 1 to 3 was passed. The plaintiff has filed I.A.No.349 of 2014 to pass a final decree for partition and the said application is pending.

3. In the final decree proceedings, the plaintiff filed I.A.No. 506 of 2014 under Order XL rule 1 of the Code of Civil Procedure praying that a receiver may be appointed for the plaint A schedule properties. In the affidavit filed in support of the application, a copy of which is produced as Ext.P1 along with O.P.(C)No.2039 of 2014, she had averred that after the death of Bhaskaran, the plaint schedule properties were in the joint ownership, possession and enjoyment of the plaintiff and defendants and they were taking the income equally, that during the pendency of the suit, the defendants

obstructed her from entering into the plaint schedule properties and taking the income therefrom and that ignoring their resistance, she had been taking her share of income but she could not always succeed in doing so. She had also averred that the plaint A schedule items 1 and 2 are rubber plantations, that there are 400 standing rubber trees therein, that the yield is approximately 50 sheets per day, that plaint A schedule items 3 to 5 are a coconut garden and that the total monthly income from the plaint A schedule properties is not less than Rs.40,000/-. She had also averred that defendants are taking steps to slaughter tap the rubber trees and that they are also denying her, her share of income from the plaint schedule properties.

4. The defendants resisted the application by filing a counter affidavit dated 28.3.2014, a copy of which is produced as Ext.P2 along with O.P.(C)No.2039 of 2014. As regards the plaintiff's averment that the monthly income from plaint A schedule properties will be not less than Rs.40,000/-, the defendants contended in paragraph 6 of the counter affidavit that the annual income will not be even Rs.4,000/-. They also contended that the plaintiff who is a teacher earning Rs.50,000/- per mensem as salary, is not entitled to seek the appointment of a receiver. They also contended that she possesses other immovable properties.

5. The trial court considered the rival contentions and appointed defendants 1 and 2 as receivers to administer and manage the plaint A schedule properties. Relying on sub-rule (2) of rule 1 of Order XL of the Code of Civil Procedure, the trial court held that the court has no authority to remove defendants 1 and 2 who are in lawful possession of the properties as joint owners from the possession and custody of the plaint schedule properties. The trial court also directed the party receivers appointed by it to submit a monthly statement of accounts regarding the expenses and remit half of the income from the plaint schedule properties in court. It was also held that the plaintiff will be entitled to receive one-fourth share of the total income (half of the amount deposited) and the balance amount has to be given to the third defendant. The party receivers were also permitted to take Rs.2,000/- as remuneration. It was also observed that if defendants 1 and 2 commit default in complying with the stipulations in the order appointing them as party receivers, they are liable to be removed from the receivership. The appellant has aggrieved by the said order, to the extent it appoints respondents 1 and 2 as party receivers instead of appointing her as the receiver, filed F.A.O.No.269 of 2014.

6. The appellant had on 18.6.2014 filed I.A.No.861 of 2014 in the court below stating that though defendants 1 and 2 were

appointed as party receivers with a direction to file monthly statements and to deposit half the income in court, they have not so far filed a monthly statement of income or deposited the share of income due to the appellant and the third defendant in court. She had also averred in the affidavit filed in support of the application, a copy of which is produced as Ext.P5 along with O.P.(C)No.2039 of 2014, that defendants 1 and 2 have appropriated the entire income from the plaint schedule properties and therefore, as they have violated the terms and stipulations in the order passed by the court below on 11.4.2014 appointing them as party receivers, they are liable to be removed from the receivership. In paragraph 7 of the said affidavit, she had also averred that she is willing to deposit a sum of Rs.15,000/- every month without fail and also to file periodical statements of income and expenditure. In that application she prayed that defendants 1 and 2 may be removed from the receivership and she may be appointed as the receiver.

7. A week after the aforesaid application was filed, defendants 1 and 2 filed a statement dated 24.6.2014, a copy of which is produced as Ext.P4 along with O.P.(C)No.2039 of 2014, to the effect that the one-fourth share of annual income from the rubber trees is Rs.12,500/- and one-fourth share of the annual income from the coconut garden is Rs.1,162.50. Defendants 1 and 2 did not however

deposit any amount in court. They also filed Ext.P6 objection, a copy of which is produced as Ext.P6 along with O.P.(C)No.2039 of 2014, to I.A.No.861 of 2014. In the said counter affidavit they contended that the plaintiff has a monthly income of more than Rs.60,000/-, that defendants 1 and 2 are solely depending for their livelihood on the income derived from the plaint A schedule properties and therefore, the application to remove them from the receivership may be dismissed. They also contended that the offer made by the plaintiff to deposit Rs.15,000/- per month is without any bonafides.

8. The trial court considered the rival contentions and disposed of I.A.No.861 of 2014 by Ext.P7 order dated 24.7.2014 produced along with O.P.(C)No.2039 of 2014. By that order, the trial court held that one more opportunity has to be given to defendants 1 and 2 (the receivers) to comply with the directions of the court and that the question of removing them from the receivership can be considered thereafter. Defendants 1 and 2 were accordingly directed to comply with the order passed on 11.4.2014 on I.A.No.506 of 2014. The plaintiff has aggrieved thereby filed O.P.(C)No.2039 of 2014 with a prayer that she may be appointed as the receiver of the plaint A schedule properties.

9. We heard Sri.G.S.Raghunath, learned counsel appearing

for the plaintiff, who is the appellant in the appeal and the petitioner in the original petition. Though the respondents have been served and they have entered appearance through counsel, the learned counsel appearing for the respondents was not present when the appeal was called on for hearing today. There was also no representation on behalf of the learned counsel appearing for the respondents. Sri.G.S.Raghunath, learned counsel appearing for the appellant submitted that apart from filing Ext.P4 statement produced in O.P.(C)No.2039 of 2014 which incidentally was filed along with Ext.P6 objections to I.A.No.861 of 2014 wherein the plaintiff had prayed for an order removing defendants 1 and 2 from the receivership, defendants 1 and 2 had not deposited one-half share of the annual income from the plaint A schedule properties or filed monthly statements as directed by the court below. The learned counsel contended, referring to the contents of Ext.P4 report, that apart from stating that one-fourth share of the annual income from the rubber trees is Rs.12,500/- and one-fourth share of the annual income from the coconut garden is Rs.1,162.50, defendants 1 and 2 have not deposited even that amount in court. The learned counsel further contended that even going by Ext.P4 statement, defendants 1 and 2 ought to have deposited the sum of Rs.27,325/- and that as defendants 1 and 2 have failed to submit a monthly statement and deposit one-half of the income from the plaint A schedule properties in time, the court below ought to have allowed I.A.No.861 of 2014 and appointed the plaintiff as the party receiver. The learned counsel contended that the plaintiff is willing to deposit the sum of Rs.15,000/- per month towards the three-fourth share of the income payable to defendants 1 to 3, that she is also prepared to submit monthly statements and therefore, no prejudice whatsoever will be caused to the defendants. Referring to Ext.P4 statement, the learned counsel for the plaintiff contended that even going by the statements therein, the total annual income from the rubber plantation after meeting the expenses is only Rs.50,000/- and from the coconut garden is Rs.4,650/-, that the share of income which defendants 1 and 2 are receiving according to defendants 1 and 2 is only one-half of the said amount, that the appellant on the other hand is prepared to deposit the sum of Rs.15,000/- every month (Rs.1,80,000/- per year) towards the share of income of the defendants and that the appellant has also no objection in defendants 1 to 3 withdrawing their share of the income upon such deposit being made. The learned counsel contended that even when defendants 1 and 2 were appointed as receivers by order passed on 11.4.2014, the court below ought to have appointed the plaintiff as the receiver and that instead, on a wrong application of sub-rule (2) of rule (1) of Order XL of the Code of Civil Procedure, defendants 1 and 2 were appointed as party receivers.

10. We have considered the submissions made at the Bar by learned counsel appearing for the appellant in the appeal and the petitioner in O.P.(C)No.2039 of 2014. We have also gone through the pleadings and the materials on record. It is evident from the order passed by the court below on 11.4.2014 that defendants 1 and 2 are bound to submit monthly statement of accounts regarding the income and expenditure and also to remit one-half of the income from the plaint A schedule properties in court. Though the order appointing defendants 1 and 2 as receivers was passed on 11.4.2014, they did not file monthly statements of income and expenditure and deposit the share of income as directed by the court below. The plaintiff thereupon filed I.A.No.861 of 2014 on 18.6.2014 praying for an order removing defendants 1 and 2 from the receivership and appointing her as the receiver. Upon receipt of notice on that application, defendants 1 and 2 filed Ext.P4 statement dated 24.6.2014 produced in O.P.(C)No.2039 of 2014 to the effect that the total annual income from the rubber trees standing in the plaint A schedule items 1 and 2 is only Rs.50,000/- and from the coconut garden is only Rs.4,650/- and that one-fourth share of the

income therefrom will be only Rs.13,662.50. They did not however deposit even the one-fourth share of that income in court. The materials on record disclose that the only objection raised by defendants 1 and 2 to the application filed by the plaintiff for appointment as receiver is that while the plaintiff is earning a monthly salary of Rs.50,000/- from her avocation as a teacher, the sole means of livelihood for the defendants is the income from the plaint A schedule properties. The pleadings and the materials on record also disclose that consequent on the failure of defendants 1 and 2 to act in terms of the stipulations contained in the order appointing them as receivers, the plaintiff had filed I.A.No.861 of 2014 to remove them from the receivership and had offered to deposit Rs.15,000/- per month towards the three-fourth share of the income from plaint A schedule properties due to defendants 1 to 3. The materials before us disclose that according to the defendants, the annual income from the plaint A schedule properties after meeting the expenses for cultivation is only Rs.54,650/-. If as contended by them, defendants 1 and 2 are depending for their livelihood solely on the income derived from the properties, in view of the offer now made by the plaintiff to deposit Rs.15,000/- every month towards the share of defendants 1 to 3, defendants 1 and 2 will certainly be in a more advantageous position for the reason that each one of them will earn Rs.60,000/- per year without putting in any effort. The court below appears to have, when it passed Ext.P7 order which is impugned in O.P.(C)No.2039 of 2014, failed to take note of this aspect and also condoned the failure of defendants 1 and 2 to comply with the terms and stipulations in the order passed by it on 11.4.2014 appointing them as party receivers. We are therefore of the considered opinion that the plaintiff is entitled to succeed and to be appointed as party receiver of the plaint A schedule properties in O.S.No.125 of 2008 on the file of the Court of the Subordinate Judge of Attingal.

We accordingly allow O.P.(C)No.2039 of 2014, set aside Ext.P7 order dated 24.7.2014 in I.A.No.861 of 2014 in O.S.No.125 of 2008 on the file of the Court of the Subordinate Judge of Attingal and appoint the plaintiff as the party receiver of the plaint A schedule properties. The plaintiff shall forthwith take possession of the plaint A schedule properties and administer and manage it subject to orders to be passed by the trial court. The plaintiff shall deposit in the court below for payment to defendants 1 to 3 towards their share of profits from the plaint A schedule properties, the sum of Rs.15,000/- every month commencing from the date on which she takes possession pursuant to this judgment. The plaintiff shall also file monthly statements of income and expenditure in the court below. In the event of failure on the part of the plaintiff in complying with the aforesaid stipulations, it will be open to defendants 1 to 3 to move the court below for appropriate further orders. F.A.O.No.269 of 2014 is closed with the observation that the order passed in O.P.(C)No.2039 of 2014 shall govern the appeal as well. The parties shall bear their respective costs.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
ANIL K.NARENDRAN
JUDGE

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