



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. (MD) .No.264 of 2017

1.K.Karuthammal
2.Muthu @ Muthulakshmi
3.K.Paunraj
4.K.Uckiraipandi

.. Appellants/Petitioners/Plaintiffs
Vs.

1.R.Kasammal
2.K.Rajavadivu
3.Muthupandiammal
4.S.R.Thangapandi
5.S.R.Sonaimuthiah
6.S.R.Thangaraman
7.Sathya
8.Ramar

..Respondents/Respondents/Defendants

Prayer:- Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of Civil Procedure Code, against the fair and decretal order, dated 12.09.2015 made in I.A.No.221 of 2013 in O.S.No.19 of 2013, on the file of learned IV-Additional District Judge, Madurai.

For appellants :Mr.Veerakathiravan
Senior Counsel
for M/s.Veera Associates

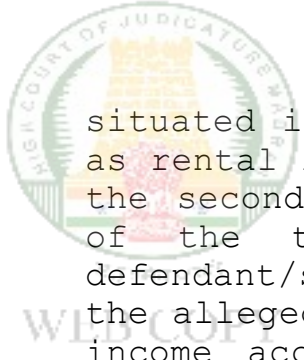
For R1 :Mrs. Krishnaveni
for Mr.D.Sadiq Raja

For R2 :Mr.G.R.Swaminathan
for Mr.D.Sadiq Raja

For R3 to R8 :Mr.Anand Chandrasekar
for M/s.Sarvabhauman Associates

JUDGMENT

The plaintiffs in O.S.No.19 of 2013, which is a suit for declaration that certain documents are sham and nominal/unenforcible and for a consequential relief of partition are the appellants. The challenge in this appeal is to the order dismissing I.A.No.221 of 2013, an application for appointment of receiver in I.A.No.221 of 2013, it is stated that all the suit properties are house properties



situated in and around Madurai City and a large income is earned as rental income from the said properties. It is also claimed that the second defendant has fabricated certain gift deeds in favour of the third defendant. The affidavit accuses the second defendant/second respondent, who is said to be in management of the alleged joint family properties of misappropriating the rental income accrued from the suit properties and also tampering of records.

2. Paragraph No.5 of the affidavit filed in support of this petition is extracted for useful reference:

"5. I humbly submit that the 2nd respondent being the elder male member of the family is not managing the properties properly. Moreover he is misusing the rents and income accrued from the suit properties. I also suspect that the 2nd respondent is tampering the accounts and is maintaining false and fabricated accounts by taking advantage of the above said invalid deeds. Under these circumstances, it is not safe to keep the suit properties under the management of the 2nd respondent. In the event of management of suit properties were left under him then the petitioners' interest will be affected seriously."

3. The said application was opposed by the defendants. The defendants would contend that the suit properties are not joint family properties and all the plaintiffs have executed documents relinquishing their rights in the suit properties as early as in 2007. Therefore unless the documents executed in the year 2007 by the plaintiffs themselves are set aside by a process known to law, the plaintiffs cannot maintain a suit for partition. It is also further contended that in the absence of the allegation of waste, an application under Order 40 Rule 1 of CPC., seeking appointment of a receiver cannot be entertained. The learned Trial Judge/IV-Additional District Judge, Madurai, after considering the rival contentions, dismissed the application by an order, dated 12.09.2015. Aggrieved by the said order, the appellants herein namely, the plaintiffs in the suit had filed a Civil Revision Petition before this Court in C.R.P.(MD).No.1454 of 2016. Though Civil Revision Petition was originally entertained by this Court, subsequently it was held that Civil Revision Petition is not maintainable and hence only an appeal would live. Therefore, the learned counsel for the petitioner sought to withdraw the C.R.P. (MD).No.1454 of 2016 with liberty to file a proper appeal. This Court has granted the liberty by an order, dated 21.03.2017 and thereafter the present appeal has been filed.

<https://hcservices.courts.gov.in/hcservices> The law relating to appointment of receivers is well settled. In Rukmani Devi and four others vs. R.M.Lakshmandoss, reported in 1995(2)LW471, a Division Bench of this Court at



paragraph No.7 had observed as follows:

"7. In so far as our Court is concerned, it has always been the uniform view that no Receiver shall be appointed in a partition suit unless there is a case of damage or waste to the properties. In Krishnan v. Maruvalamma (AIR 1935 Madras 402=41 L.W.353) it was held that in the absence of proof of special circumstances such as waste or a mismanagement by the karnavan, or a reasonable apprehension of the same, or his refusal to maintain some of the members, the mere institution of a suit for partition is no ground for the appointment of Receiver for such properties. The trial Court has discussed the matter in detail and given sufficient reasons for laying down that proposition. This has been followed in several other cases. The principle was applied in Venkata Achyuta Rao v. Srinivasaswami, AIR 1948 Mad. 396=61 L.W.74 by a Division Bench of this Court. "

5. The Division Bench of this Court had reiterated the five principles enunciated in T.Krishnamurthi Chetty vs. Thangavel Chetty and others reported in AIR 1955 MAD 430. The said five principles are as follows:

"13. The five principles which can be described as the "panch sadachar" of our Courts exercising equity jurisdiction in appointing receivers are as follows :

(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised-for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding : -- 'Mathusri v. Mathusri, 19 Mad 120 (PC) - 'Sivagnanathammal v. Arunachallam Pillai', 21 Mad LJ 821; --'Habibullah v. Abtiakallah', AIR 1918 Cal 882; -- 'Tirath Singh v. Shromani Gurudwara Prabandhak Committee', AIR 1931 Lah 688; --'Ghanasham v. Moraba', 18 Bom 474; --'Jagat Tarini Dasi v. Nabagopal Chaki', 34 Cal 305; -- 'Sivaji Raja Sahib v. Aiswariyanandaji', AIR 1915 Mad 926; -- 'Prasanno Moyi Devi v. Beni Madbab Rai', 5 All 556; -- 'Sidheswari Dahi v. Abhayeswari Dahi', 15 Cal 818;



-- 'Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das', AIR 1925 Lah 349;

-- 'Bhupendra Nath v. Manohar Mukerjee', AIR 1924 Cal 456.

(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit. -- 'Dhumi v. Nawab Sajjad All Khan', AIR 1923 Uh 623; -- 'Firm of Raghubir Singh' Jaswant v. Narinjan Singh', AIR 1923 Lah 48;

-- 'Siaram Das v. Mohabir Das', 27 Cal 279;

-- 'Mahammad Kasim v. Nagaraja Moopnar', AIR 1928-Mad 813; -- 'Banwarilal Chowdhury v. Motilal', AIR 1922 Pat 493.

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right, he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. -- 'Manghanmal Tarachand v. .Mikanbai', AIR 1933 Sind 231; -- 'Bidurramji v. Keshoramji', AIR 1939 Oudh 31;

-- 'Sheoambar Ban v. Mohan Ban', AIR 1941 Oudh 328.

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through, fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less 'in medio' is sufficient to vest a Court with jurisdiction to appoint a



receiver. -- 'Nilambar Das v. Mabal Behari', AIR 1927 Pat 220; -- 'Alkama Bibi v. Syed Istak Hussain', AIR 1925 Cal 970; -- 'Mathuria Debya v. Shibdayal Singh', 14 Cal WN 252; -- 'Bhubaneswar Prasad v. Rajeshwar Prasad', AIR 1948 Pat 195. Otherwise a receiver should not be appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disintitiled himself to the equitable relief by laches, delay, acquiescence etc."

6. In view of the principles enunciated above, I do not find that the plaintiffs have satisfied the requirements of law for appointment of a receiver which is accepted to be a very harsh remedy. The averments in the affidavit filed in support of the application extracted above do not satisfy the conditions that are laid down to be essential for appointment of a receiver.

7. In view of the above, I do not find any reason to interfere with the order of the Trial Court, which has adverted to the law relating to the appointment of a receiver and has concluded that there is no reason for appointment of a receiver.

8. In fine, the appeal is dismissed confirming the fair and decretal order, dated 12.09.2015, made in I.A.No.221 of 2013 in O.S.No.19 of 2013, on the file of learned IV-Additional District Judge, Madurai and in the circumstances of the case, there will be no order as to costs. Consequently, connected C.M.P.(MD).No.3094 of 2017 is also dismissed.

9. It is submitted by the learned Senior Counsel appearing for the appellants that their application for seeking relief of interlocutory injunction is pending in I.A.No.220 of 2013 before the Trial Court. Hence, the IV-Additional District Judge, Madurai, is requested to dispose of the same as expeditiously as possible not later than 15.07.2017.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.



To
The IV-Additional District Judge,
Madurai.

+2CC to M/S.Veera Associates, SR.No. 54566, 50135
+1CC to M/S.D.Sadiq Raja, Advocate, SR.No. 54516
+1CC to M/S.Pala Ramasay SR.No. 54509

C.M.A. (MD) .No.264 of 2017
27.04.2017

PJL
AM/SV MMS/SAR 1/09.06.2017/6P/6C