

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.289 OF 2018

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred by the appellants - petitioners - plaintiffs against the order, dated 30.01.2018, passed in I.A.No.2296 of 2017 in O.S. No.385 of 2016, by the Senior Civil Judge, Ramachandrapuram.

2. The appellants - plaintiffs made the aforesaid application under Order XL, Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'Code'), to appoint Court Receiver by directing him to take possession of the petition schedule land for administration of crop in the suit schedule land and to deposit the amount to the credit of the suit by selling away the yield in the presence of both parties till the disposal of the main suit.

3. The ground, on which, such request was made is based on the fact that earlier, the trial Court appointed the Court Receiver in I.A. No.1868 of 2016, to take possession of the petition schedule property and put the crop in auction and deposit the sale proceeds into Court and, therefore, requested for the aforesaid relief.

4. The aforesaid request was resisted by the respondents - defendants by filing an elaborate counter.

5. The trial Court observing that in the cross-examination, PW.1 has categorically answered that the petition schedule property has been in possession and enjoyment of the respondents - defendants and also admitted that the crop for the year 2016 was raised by them, and further observing that if really the respondents are tenants, the appellants are entitled to past profits, but not by filing the application to appoint Court Receiver and, thus, arriving at the finding that there was no merit, dismissed the application.

6. Heard Sri I. Chandra Sekhar, learned counsel for the appellants - plaintiffs.

7. On hearing the submissions made by the learned counsel for the appellants, there is no need to issue notices to the respondents to hear them as there appears to be no merit in the present appeal.

8. The learned counsel would submit that the trial Court was not right in dismissing the application since earlier also an Advocate - Commissioner was appointed for cutting the crop and selling the same in auction and depositing the sale proceeds into Court.

9. The short question is, whether the relief for appointment of a Receiver for administration as requested can be acceded to?

10. The suit relates to the year 2016. In case, the appellants really intended to get a Receiver appointed for management of the suit

schedule property, they would have come forward with an application under Order XL of the Code then itself, but not for appointment of an Advocate Commissioner for selling the yield and depositing the amount in the year 2016. But, what had transpired in 2017 is not forthcoming. Even otherwise, unless the appellants satisfy that it is just and necessary to appoint advocate commissioner, a harsh measure of dispossessing the respondents - defendants, more particularly, when there are categorical admissions occurring in the cross-examination of PW.1, the question of appointment of Receiver for the purpose mentioned by the appellants cannot be acceded to. Therefore, the order under challenge does not suffer from any legal infirmity or material irregularity warranting interference.

11. Therefore, the present Civil Miscellaneous Appeal is dismissed, however, in the circumstances, no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand closed.

April 04, 2018.
Mgr

A. SHANKAR NARAYANA, J