

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

C.M.A.No.1080 of 2018

Date:01.11.2018

Between.

M.S.Avinash Chandra
and another.

.....Appellants

And.

M.S.Balram,
S/o Late Balakistaiah
and five others.

.....Respondents

Counsel for the appellants. Mr. Manu

The Court made the following:



JUDGMENT: (*per* Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This Civil Miscellaneous Appeal is filed against order, dated 06-08-2018, in I.A.No.179 of 2018 in O.S.No.31 of 2012 on the file of the IX Additional District Judge at Wanaparthy.

We have heard Mr. Manu, learned Counsel for the appellants and perused the record.

The afore-mentioned suit was filed by respondent No.1 against respondent Nos.2 to 6 for partition and separate possession of his share of property. Though the said suit has been pending for the last six years, the appellants, who have not bothered to come on record, got themselves impleaded in the year 2018 and filed the afore-mentioned I.A. for appointment of a Receiver to manage item No.1 of the plaint 'C' schedule property. The lower Court has dismissed, in our view, very rightly the said application on the ground that the suit is at an advanced stage of trial. In addition to the said reasoning, we are of the opinion that the appellants failed to make out the case of waste and damage to the suit schedule property, which is *sine qua non* for appointment of a Receiver. Moreover, having slept over for six years, without even getting themselves impleaded in the suit, the appellants are not entitled to seek appointment of a Receiver. Further, the appellants failed to

satisfy the five principles laid down by the Madras High Court in **T. Krishnaswamy Chetty vs. C. Thangavelu Chetty and Ors.**¹, which are as under (para-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.

(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.

(3) Not only must the plaintiff show a case or 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.

(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

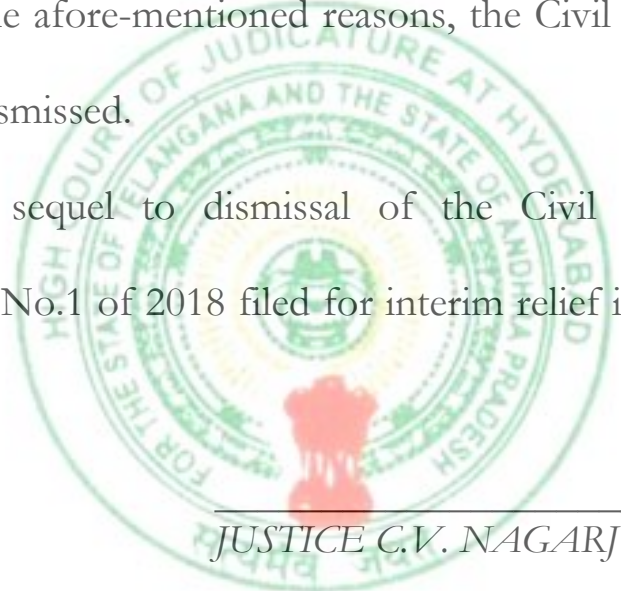
¹ AIR 1955 Madras 430

enjoyment of the property and no harm can be done to any one 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. Otherwise a receiver should not be appointed in suppression of a bona 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 the Court with clean hands and should not have disintitiled himself to the equitable relief by laches, delay, acquiescence etc.

For the afore-mentioned reasons, the Civil Miscellaneous Appeal is dismissed.

As a sequel to dismissal of the Civil Miscellaneous Appeal, I.A.No.1 of 2018 filed for interim relief is dismissed as infructuous.



JUSTICE C.V. NAGARJUNA REDDY

JUSTICE P. KESHA VA RAO

01st November, 2018
DR