

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.PD.No.4512 of 2014 and
M.P.No.1 of 2014

Kadar Hasan Maricar

...Petitioner

Vs.

- 1.M.A.S.Abdul Kadar Maricar
- 2.Abdul Latif Maricar
- 3.Md.Jamaluddin Maricar
- 4.Badarunnisa
- 5.Md.Riaz by POA Abdul Latif Maricar
- 6.Md.Niaz
- 7.Umma Hanima by POA M.A.S.Abdul Kadar Maricar
- 8.Hasan Maricar
- 9.Jagir Hussain
- 10.Humayun kabir
- 11.Vasanthi
- 12.Chellakannu
- 13.Karthikesan
- 14.J.Venkatesan
- 15.R.Subramaniyan
- 16.U.Ramachandiran
- 17.Dakshinamurthy
- 18.Kalaivanan
- 19.M.Ramakrishnan
- 20.R.Kaliaperumal
- 21.G.Dhavamani Devi
- 22.K.Mangayarkarasi
- 23.G.Jaganathan
- 24.C.Umarani
- 25.R.Prabakaran
- 26.S.Murugaiyan
- 27.V.Kasinathan

28.D.Kaliaperumal
29.S.Singaravelu
30.S.Sekar
31.U.Murugesan
32.R.Jayakumar
33.D.Dakshinamurthy
34.M.Govindarasu
35.K.Varadarajan
36.D.Kasthuri
37.N.Gunasekaran
38.T.Chandrasekar
39.T.Pakkirisamy
40.T.Govindaraj
41.M.Karunanidhi
42.N.Senthilvelan
43.Fathima Jogaran
44.Jani Basha
45.Abu Hasan
46.Muthu

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 10.10.2014 passed in I.A.No.273 of 2014 in O.S.No.74 of 2014 on the file of the Sub Court, Nagapattinam.

For Petitioner : Mr.J.Amritha Sarayoo
for Mr.J.Srinivas Mohan

For Respondents
For R1 to R7 : Mr.S.Giritharan

R8 to R46 : Given up

ORDER:

Aggrieved over the order dated 10.10.2014 passed in I.A.No.273 of 2014 in O.S.No.74 of 2014, the petitioner who is the first defendant in the above referred suit filed this Civil Revision Petition and pleaded to set aside the order dated 27.10.2014, in which the receiver was appointed by the learned Subordinate Judge, Nagapattinam.

2.Before the Court which passed the impugned order, the respondents 1 to 7 in this Civil Revision Petition filed a suit in O.S.No.74 of 2014 and seeks the relief of partition and separate possession. During the course of trial proceedings, the respondents 1 to 7 filed an application under Order 40 Rule 1 of Code of Civil Procedure for appointing the receiver to collect the earnings derived from the suit property. The learned Subordinate Judge, Nagapattinam in its order dated 10.10.2014 allowed the said application filed by the respondents 1 to 7 and ultimately appointed the receiver.

3.Before the trial court, in the affidavit filed by the respondents 1 to 7 they have stated as in the suit schedule

property they are entitled to 1/8 share. Further he stated that only the third defendant in the suit alone received the income derived from the suit property and he did not paid any share to them. It is the case of the petitioner that the other defendants in the suit cheated him and unlawfully earned much money by way of receiving rental income as well as by selling the crops cultivated in the suit agricultural land.

4.Today when the petition is came up for hearing, both the counsel appearing for the petitioner and the respondents are present.

5.The learned counsel appearing for the petitioner challenged the order passed by the learned Subordinate Judge, Nagapattinam in two folds. The first one is that the said impugned order was passed beyond the knowledge of the petitioner and other defendants. The second one is before appointing the receiver, the learned Subordinate Judge did not take into account and verified as whether the act of the defendants will cause any waste and endanger to the suit property.

6.In respect to the first point raised by the learned counsel appearing for the petitioner, it is true that the impugned order has been passed by the learned Subordinate Judge without hearing the petitioner and other defendants. So the said attitude committed by the learned Subordinate Judge, Nagapattinam is nothing but against the principles of natural justice. Even assuming that the said order is necessary to prohibit the waste committed by the other defendants, it is the duty of the presiding officer in issuing notice after granting the temporary relief. Now on close scrutiny of the order passed by the learned Subordinate Judge, Nagapattinam, nothing has been averred in respect to the urgency for appointing the receiver. So, the procedural lapses committed by the learned Subordinate Judge, Nagapattinam is one of the reason to set aside the impugned order dated 10.10.2014.

7.In respect to the second point raised by the learned counsel appearing for the petitioner, he relied on the judgment of **S.Mahalakshmi Vs. M.Syamala and others** of this Court reported in **1997 AIR (Madras) 34**, in which this Court has held as follows:

"For appointment of a Receiver, even after hearing both the parties, this Court has held in Krishnaswamy v. Thangavelu, that the following five requirements have to be fulfilled.

"1. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

2. The Court should appoint a receiver except upon proof by the plaintiff that prima facie he has a very excellent chance of succeeding in the suit.

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.

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. It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one. And

5. The Court, on the application made for the appointment 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."

The basic principle for appointment of the Receiver in order to dispossess a person who is in possession and enjoyment of their property, have been clearly laid down in the above judgment.

13. In yet another judgment reported in Subbalakshmi v. Rajalakshmi Ammal, (1988) 2 Mad LJ 330 this Court has reiterated that these five principles have to be complied with and also referred to the decision in *Dozier v. Logan*, 101 Ga 173 (229) rendered by Atkinson, J., wherein it is observed as follows:--

"The appointment of receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the creditors is exposed to manifest peril."

In the present case, there is no material to hold that the interest of the respondents herein is exposed to any such manifest peril so as to appoint a Receiver."

8. In this occasion, the learned counsel appearing for the respondents made a submission that only on considering the urgency, the learned Subordinate Judge, Nagapattinam passed such type of order. He has further contended that because of the appointment of receiver, the petitioner herein is no way prejudiced. In this occasion he has relied on the judgment of **T.Krishnaswamy Chetty Vs. C.Thangavelu Chetty and others** of this Court reported in **1954 SCC Online Mad 374**, in which this Court has held 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) (Z5); 'Sivagnanathammal v. Arunachallam Pillai', 21 Mad LJ 821 (Z6); 'Habibullah v. Abtiakallah', AIR 1918 Cal 882 (27); 'Tirath Singh v. Shromani Gurudwara Prabandhak Committee', AIR 1931 Lah 688 (28); 'Ghanasham v. Moraba', 18 Bom 474 (7.9); 'Jagat Tarini Dasi v. Nabagopal Chaki', 34 Cal 305 (Z10); '[Sivaji Raja Sahib v. Aiswariyanandaji](#)', AIR 1915 Mad 926 (Z11); 'Prasanno Moyi Devi v. Beni Madbab Rai', 5 All 556 (Z12); 'Sidheswari Dabi v. Abhayeswari Dahi', 15 Cal 818 (213); '[Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das](#)', AIR 1925 Lah 349 (Z14); 'Bhupendra Nath v. Manohar Mukerjee', AIR 1024 Cal 456 (Z15).

(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 Ali Khan, AIR 192.3 Uh 623 (Z16); *'Firm of Raghubir Singh' Jaswant v. Narinjan Singh*, AIR 1923 Lah 48 (217); *'Siaram Das v. Mohabir Das'*, 27 Cal 279 (Z18); *'Mahammad Kasim v. Nagaraja Moopana'*, AIR 1928-Mad 813 (Z19); *'Banwarilal Chowdhury v. Motilal'*, AIR 1922 Pat 493 (220).

(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 (221); *'Bidurramji v. Keshoramji'*, AIR 1939 Oudh 31 (Z22); *'Sheoambar Ban v. Mohan Ban'*, AIR 1941 Oudh 328 (223).

(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 (Z24); '[Alkama Bibi v. Syed Istak Hussain](#)', AIR 1925 Cal 970 (Z25~.); '[Mathuria Debya v. Shibdayal Singh](#)', 14 Cal WN 252 (Z26); 'Bhubaneswar Prasad v. Rajeshwar Prasad', AIR 1948 Pat 195 (Z27). 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. सत्यमेव जयते

(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 disintitled himself to the equitable relief by laches, delay, acquiescence etc."

9.Now on considering the submissions made on either side, in the judgment relied on by the learned counsel for the petitioner, this Court only after considering the findings arrived at by this Court in a case relied on by the respondents, came to the conclusion that for appointing the receiver, five important factors are necessary.

10.Now applying the said principles with the present case in our hand, in the impugned order passed there was no categorical finding as about the proof, emergency and defacto possession and title of the property.

11.The above factors are very much necessary. Further the same has been identified by the court before appointing the receiver. But in this case, the learned Subordinate Judge, Nagapattinam did not go into these aspects. Merely by saying the defendants are attempted to grab the income derived from the suit property appointed the receiver. It shows that the impugned order

passed is not having any legal requirements. In the eye of law, the impugned order passed is not depending upon the ingredients set out under Order 40 of the Code of Civil Procedure. So in any event, the order passed by the learned Subordinate Judge, Nagapattinam is necessarily to be set aside.

12.However both the counsel appearing on behalf of either side made a submission that some direction may be issued to the learned Subordinate Judge, Nagapattinam to dispose of the suit in a time framed manner.

13.Considering the submission made by the learned counsel on either side, since the suit is pending before the Sub Court, Nagapattinam from the year 2014, I am inclined to issue some direction to the learned Subordinate Judge, Nagapattinam for disposing the said suit in a time framed manner. The learned Subordinate Judge, Nagapattinam is directed to dispose the suit, i.e O.S.No.74 of 2014 as early as possible preferably within a period of six months from the date of receipt of a copy of this Order.

14. Accordingly, the Civil Revision Petition is allowed.
Consequently, connected miscellaneous petition is closed. No costs.

15.10.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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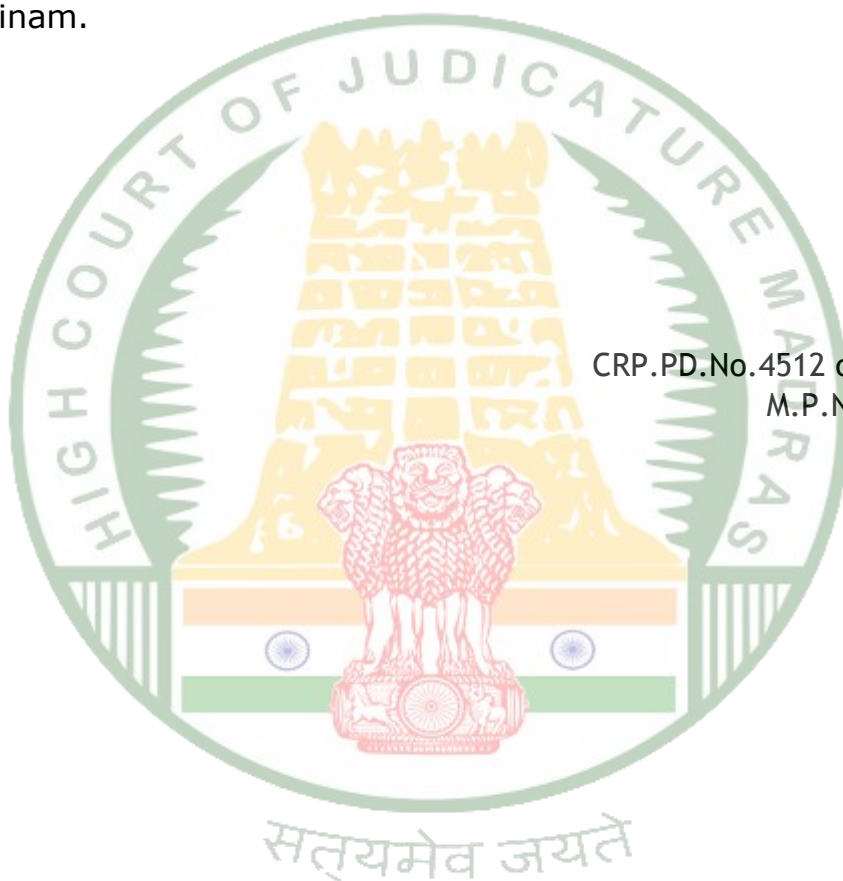


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R.PONGIAPPAN,J.

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To
The learned Sub Court,
Nagapattinam.



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