

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2020

DATE OF DECISION : 02.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.Nos.4275 & 4277 of 2019

R.Kaliyaperumal @ Perumal ... Appellant in CMA No.4275
of 2019

R.Perumal @ Kaliaperumal ... Appellant in CMA No.4277 of
2019

-vs-

1. P.Apparsamy

2. K.Ramesh ... Respondents in CMA No.4275 of 2019

1. P.Apparsamy

2. M/s Balaji Theatre, Puducherry
rep.by its Partner K.Ramesh
S/o Kaliaperumal @ Perumal
Flat No.15, II Floor
Sri Chankakya Apartments
Sinthankudi, Pondicherry-11... Respondents in
CMA No.4277 of 2019

Memorandum of Grounds of Civil Miscellaneous Appeals filed under Order XLIII, Rule 1 of the Code of Civil Procedure, against the common fair and decretal order dated 13.09.2019 passed in I.A.Nos.847 of 2019 & 44 of 2017 in O.S.No.130 of 2008 on the file of the learned III Additional District Judge, Puducherry.

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For Appellant:: Mr.P.Wilson, Senior Counsel for
Mr.D.Ravichander in both the appeals

For Respondents:: Mr.T.R.Rajaraman for
Ms.A.B.Reehana Begum for R1
in both the appeals
Mr.V.Manohar for R2 in
both the appeals

JUDGMENT

These two civil miscellaneous appeals have been filed challenging the correctness of the impugned decretal order dated 13.9.2019 passed in I.A.Nos.847 of 2019 & 44 of 2017 in O.S.No.130 of 2008 on the file of the learned III Additional District Judge, Puducherry, raising the following substantial questions of law:-

"(i) When this Court, while disposing of the A.S.No.16 of 2011 by its order dated 27.3.2017, directed the parties to workout their remedy before the concerned Court where the comprehensive suit is pending, whether the impugned decretal order can be passed appointing an Advocate Receiver to collect all the relevant records and accounts of the firm from P.W.1- Apparsamy, Commissioner, Oulgaret Municipality, Income Tax Office, Pondicherry, Auditor of the firm and any other authority?

(ii) When the judgment and decree passed in O.S.No.130 of 2008 has directed the defendants therein including the appellant herein to furnish full accounts of receipts and expenditure of the firm for the period from 2004 to 2007 to the Receiver, whether that period can be modified from 2004 till the date of judgment?"

2. It is the case of the appellant that when the suit in O.S.No.130 of 2008 was filed by Mr.K.Ramesh, the plaintiff therein (i) directing the defendants therein to furnish full accounts of receipts and expenditure of the firm for the period from 1995 to 2007; (ii) directing the payment of such amounts that may be due to the plaintiff; (iii) appointment of official Receiver and cost of the suit, another suit in O.S.No.45 of 2009 was filed by Mr.R.Perumal @ Kaliyaperumal and Mr.P.Apparsamy

seeking an order of permanent injunction restraining the defendants, their men from interfering with the conduct of the business, administration of the plaintiffs firm and from entering into the theatre premises in any manner. By a common judgment dated 1.10.2010, O.S.No.130 of 2008 was decreed as follows:-

"21. In the result, O.S.No.130 of 2008 is decreed as follows:

(i) Thiru M.Udaya Baskar, Advocate is appointed as Receiver on a remuneration of Rs.7,500/- per month and he shall finish his mission within six months from the date of the judgment.

(ii) The defendants shall furnish the full accounts of the receipts and expenditure of the firm for the period from 2004 to 2007 to the Receiver-Mr.M.Udaya Baskar, Advocate, who shall determine the amount payable to the plaintiff as directed in paragraph-19 above.

(iii) The defendants shall pay to the plaintiff such amounts that may be found due and payable to the plaintiff by the Receiver."

2.1. The trial Court passed a decree in O.S.No.45 of 2009, as follows:-

"O.S.45 of 2009 is decreed granting the relief of permanent injunction against the defendants restraining them from interfering with the day-to-day affairs of the firm M/s Balaji Theatre managed by the plaintiffs and that the defendants shall not enter the premises of Balaji Theatre."

3. Aggrieved thereby, A.S.No.16 of 2011 was filed against the judgment and decree dated 1.10.2010 passed in O.S.No.45 of 2009 by Mr.K.Ramesh and Mrs.R.Kavitha against M/s Balaji Theatre represented by its partners Mr.R.Perumal @ Kaliaperumal and P.Apparsamy. As the suit was filed for permanent injunction, the entire issue was with regard to the affairs of the partnership firm run by the father and son. Since the father has filed the suit restraining his son from interfering with the affairs of the firm, which has been decreed by the trial Court, learned counsel appearing for both parties submitted before this Court that the parties have filed a comprehensive suit in O.S.No.115 of 2011 and both the parties were willing to workout their remedy in the comprehensive suit, therefore, they prayed for dismissal of the appeal suit. Accordingly, this Court, recording their statement, directed the parties to work out

their remedy before the concerned Court where the comprehensive suit is pending, by order dated 27.3.2017 passed in A.S.No.16 of 2011.

4. Thereafter, the plaintiff in O.S.No.130 of 2008 has filed I.A.No.847 of 2019 for appointing a new Advocate Receiver in the place of the earlier Advocate Receiver-M.Udaya Baskar for executing the decree passed in O.S.No.130 of 2008 dated 1.10.2010, on the ground that the Advocate Receiver has not completed the mission and returned the warrant, due to which the plaintiff was not able to get the benefit of the decree at all. The Court below, after hearing the parties, allowed the I.A.No.847 of 2019 in O.S.No.130 of 2008, by order dated 13.9.2019, holding as follows:-

"In the result, I.A.847/2019 is allowed. Advocate Thiru Sri Raja Chandiran, is appointed as Advocate Receiver with a mission to collect all the relevant records and accounts of the firm from PW1-Apparsamy, Commissioner, Oulgaret Municipality, Income Tax Office, Pondicherry, Auditor of the firm and any other authorities connected with this case and take into consideration the amounts outstanding by the company to banks towards any loan and determine the actual amount due by the firm to the DW1 for the period from 2004 to till date of judgment and has to submit his report within six months from the date of receipt of warrant. All other reliefs remain unaltered. The refixed remuneration of Rs.25,000/- will be paid by the petitioner/plaintiff to the Receiver directly."

5. Mr.P.Wilson, learned Senior Counsel appearing for the appellant, assailing the impugned decretal order, raising objection for the maintainability of the I.A.No.847 of 2019, stated that when A.S.No.16 of 2011 was filed before this Court challenging the judgment and decree passed in O.S.No.45 of 2009 granting injunction not to interfere with the suit premises, this Court directed the parties to workout their remedy in the comprehensive suit filed in O.S.No.115 of 2011, which is pending before the learned Subordinate Judge, Puducherry, as a result, the judgment rendered in O.S.Nos.130 of 2008 & 45 of 2009 got merged, therefore, the parties cannot revert back once again to reopen the suits. Secondly, when the judgment passed in O.S.No.130 of 2008, while appointing Receiver, directed the defendants to furnish full accounts of receipts and expenditure

of the firm for the period from 2004 to 2007, the I.A.No.847 of 2019 was allowed modifying the decree to determine the actual amount due by the firm to D.W.1 for the period from 2004 till the date of the judgment, which is not permissible. Hence, the decretal order passed in I.A.No.847 of 2019 in O.S.No.130 of 2008 is unworkable, for the simple reason that in case of partnership accounts, there cannot be a decree for rendition of accounts without a prayer for dissolution of the firm. Referring to Form No.21 of Appendix D of the Appendices to the First Schedule of the Code of Civil Procedure, he contended that the Court, while passing a preliminary decree in a suit for dissolution of partnership, can direct the Receiver to take account of the credits, property, debts and liabilities of the said partnership in respect of the transaction between the plaintiff and the defendant. But the conditions mentioned in Form No.21 thereof have not been followed. Therefore, the erroneous impugned decretal order is not in accordance with Form No.21 of Appendix D of the Appendices to the First Schedule of the Code of Civil Procedure and it is liable to be set aside.

6. Per contra, Mr.V.Manohar, learned counsel appearing for the second respondent submitted that when the civil suit in O.S.No.130 of 2008 sought for the relief of (i) permanent injunction directing the defendants to furnish full accounts of the receipts and expenditure of the firm for the period from 1995 to 2007; (ii) directing the payment of such amounts due to the plaintiff; (iii) appointing an Advocate Receiver and the other suit in O.S.No.45 of 2009 sought for the relief of permanent injunction against the defendants restraining them from interfering with the day-to-day affairs of the firm M/s Balaji Theatre with a further direction to the defendants not to enter the premises of Balaji Theatre, both the suits were decreed by a common judgment dated 1.10.2010. Aggrieved by the same, when Mr.K.Ramesh and Mrs.R.Kavitha filed A.S.No.16 of 2011 only against the judgment and decree passed in O.S.No.45 of 2009 dated 1.10.2010, for the reasons best known to them, no appeal has been filed against the judgment and decree passed in O.S.No.130 of 2008, resultantly, that became final. Therefore, the order passed in A.S.No.16 of 2011 dated 27.3.2017 cannot prevent the decree holder to execute the decree in the manner known to law. Referring to Order XX, Rule 17 of the Code of Civil Procedure, Mr.V.Manohar argued that when Order XX, Rule 17 empowers the Court below to give special direction with regard to the mode in which the account is to be taken, the order passed in the I.A.No.847 of 2019 in O.S.No.130 of 2008 to determine the actual amount due by the firm to D.W.1 for the period from 2004 till the date of judgment, cannot be found fault with. Therefore, the civil miscellaneous appeals are

liable to be dismissed.

7. Mr.T.R.Rajaraman, learned counsel appearing for the first respondent submitted that when the appeal in A.S.No.16 of 2011 has been disposed of directing all the parties to workout their remedy in the comprehensive suit in O.S.No.115 of 2011, the Court below has wrongly passed the impugned decretal order, which has no basis or legs to stand.

8. But this Court is unable to find any infirmity in the impugned decretal order. The reason being that admittedly, two suits were filed in O.S.Nos.130 of 2008 and 45 of 2009. The suit in O.S.No.130 of 2008 sought for appointment of an Advocate Receiver and to direct the defendants including the appellant herein to furnish full accounts of receipts and expenditure of the firm for the period from 2004 to 2007, which was decreed on 1.10.2010. The trial Court has also decreed the other suit in O.S.No.45 of 2009 granting the relief of permanent injunction against the defendants restraining them from interfering with the day-to-day affairs of the firm M/s Balaji Theatre. It is not in dispute that when A.S.No.16 of 2011 was filed against the judgment and decree passed in O.S.No.45 of 2009, it is not known why there was no appeal filed against the decree passed in O.S.No.130 of 2008. Therefore, the judgment and decree passed in O.S.No.130 of 2008 and the consequential impugned decretal order passed to execute the said decree, cannot be found fault with. Moreover, this Court, while disposing of the A.S.No.16 of 2011, directed the parties to workout their remedy in the comprehensive suit pending in O.S.No.115 of 2011. When A.S.No.16 of 2011 was taken up for hearing, it appears that, all the parties to the proceedings jointly appealed to the Court that they would work out their remedies in a comprehensive suit likely to be filed, hence, the Appeal Suit No.16 of 2011 need not be pressed into service. That means that they have nothing to do with the judgment and decree passed in O.S.No.130 of 2008 dated 1.10.2010, inasmuch as it has become final and concluded, hence it is enforceable in law. Nothing has been mentioned about the judgment and decree passed in O.S.No.130 of 2008. In this context, it is relevant to extract Order XL, Rule 1 of the Code of Civil Procedure, as follows:-

- "1. Appointment of receivers.--(1) Where it appears to the Court to be just and convenient, the Court may by order--
- (a) appoint a receiver of any property, whether before or after decree;
 - (b) remove any person from the possession or custody of the property;
 - (c) commit the same to the possession,

custody or management of the receiver; and
(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove."

9. A careful reading of Order XL, Rule 1 of the Code of Civil Procedure vividly makes the issue clear that where it appears to the Court to be just and convenient, the Court may appoint a receiver of any property either before the decree or after the decree. Moreover, the Court has also been vested with the power to remove any person from the possession of the property so as to commit the same to the possession or management of the receiver. Therefore, when the Advocate Receiver appointed by the Court being an independent person between the parties to the suit, he was appointed only to preserve the property of the partnership firm. Moreover, the appointment of Receiver is only in the discretion of the Court, hence, no fault can be found with such appointment.

10. Again it is relevant to extract Order XX, Rule 17 of the Code of Civil Procedure, as follows:-

"17. Special directions as to accounts.--The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised."

11. A cursory reading of Rule 17 of Order XX of the Code also tells upon the parties to the dispute that the trial Court

is vested with enormous power to give special directions with regard to the mode in which the account is to be taken. Therefore, when Order XX, Rule 17 of the Code vested the Court to give special directions with regard to the mode in which the account is to be taken with a further direction that in taking the account, the books of accounts shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties to take such objection thereto, no prejudice can be found. Therefore, the arguments advanced by the learned Senior Counsel appearing for the appellant that the impugned decretal order appointing an Advocate Receiver has to go, cannot be accepted. The reason being that when the Court below is vested with the special power under Order XX, Rule 17 of the Code of Civil Procedure to give special direction directing the accounts to be taken or by any subsequent order can give special direction with regard to the mode in which the account is to be taken, as the judgment and decree passed in O.S.No.130 of 2008 dated 1.10.2010 have become final and concluded, hence, they are capable of being executed, therefore, answering the substantial questions of law against the appellant, both the civil miscellaneous appeals fail and they are dismissed. Consequently, C.M.P.Nos.24177 & 24185 of 2019 are also dismissed. No costs.

Sd/-
Asst.Registrar (CCC)

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Sub Asst. Registrar

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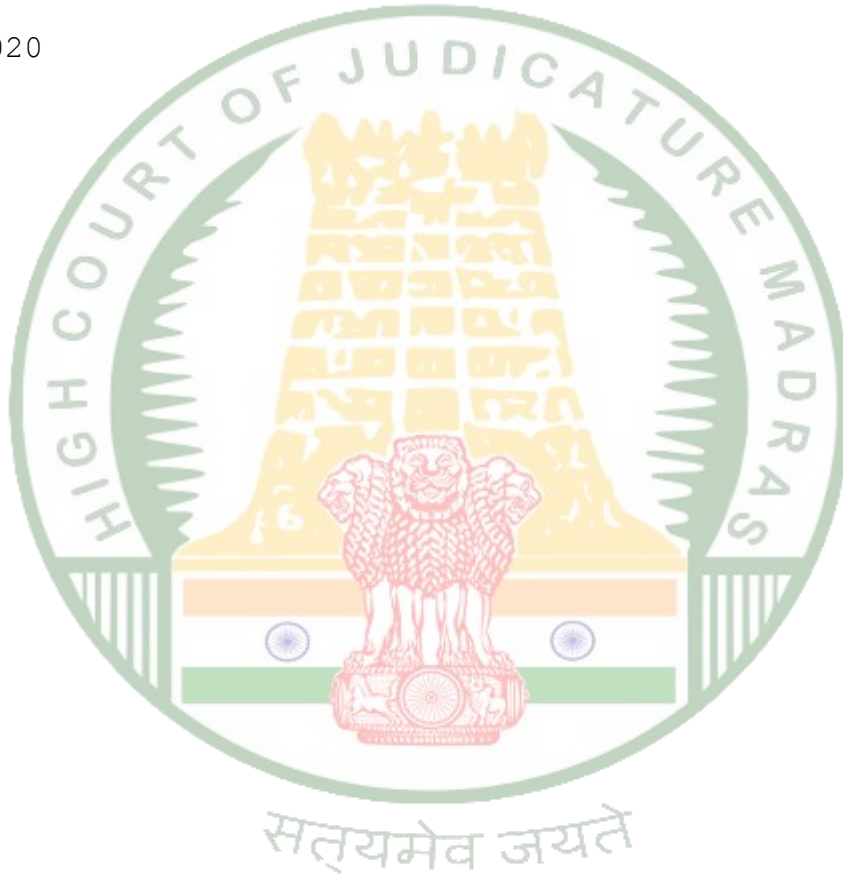
1. The III Additional District Judge
Puducherry

copy to
The Section Officer
VR Section
High Court Madras

+2 cc to Mr.V.Manohar Advocate sr35161,35160
+2 cc to M/s.D.Ravichander Advocate sr35144,35145

C.M.A.Nos.4275 & 4277 of 2019

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