

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.149 OF 2023**

Jayashree Vijaykumar Joglekar,
age about 66 years, presently residing at
Flat No.B-3, First floor, Sahakar Niwas,
V.S.Agashe Path, Behind Portuguese
Church, Dadar (W), Mumbai – 400 028.

... Appellant

versus

1. Chandrashekhar Sitaram Joglekar,
Age 65 years, presently residing at
8/28, Ashirwad, Opposite
Vidhyabhavan School, Ghatkopar
(E), Mumbai – 400 077.

2. Nutan Chandrashekhar Joglekar,
Age 62 years, presently residing at
8/28, Ashirwad, Opposite
Vidhyabhavan School, Ghatkopar
(E), Mumbai – 400 077.

... Respondents

WITH
INTERIM APPLICATION NO.3179 OF 2021

Mr. Kishor Patil i/by Mr. Rajiv S. Matkar, for Appellant.
Mr. Sandeep Jalan, for Respondents.

CORAM	: N.J.JAMADAR, J.
RESERVED ON	: 13 JULY 2023
PRONOUNCED ON	: 10 NOVEMBER 2023

JUDGMENT :

1. This appeal is directed against an order dated 9 November 2020 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No.1415 of 2020 in S.C.Suit No.1099 of 2020 and Notice of Motion No.1537 of 2020 in

Counter Claim No.6 of 2020, whereby the learned Judge was persuaded to partly allow Notice of Motion No.1415 of 2020 taken out by the Appellant and Notice of Motion No.1537 of 2020 taken out by the Respondents-Defendants, and thereby appointed the Court Receiver, High Court, Bombay, to keep the accounts of the two shops with all the powers under Order 40 Rule 1 of the Code of Civil Procedure, 1908, and appoint the Plaintiff as the agent of the Court Receiver to carry on the business in the suit shops till the final disposal of the Suit.

2. Mr. Vijaykumar Joglekar, the deceased husband of the Plaintiff, was the brother of Defendant No.1. Defendant No.2 is the wife of Defendant No.1. The deceased husband of the Plaintiff – Vijaykumar was running a medicine store in Shop Nos.15 and 16, Ram Nivas, Ranade Road, Dadar (W) (the suit shops), under the name and style of ‘Vijay Stores’ since the year 1967-68. The certificate under the Shops and Establishment Act and the Health Licence were issued in the name of Mr. Vijaykumar. All the requisite licences and permissions were also issued by the competent authorities in the name of Mr. Vijaykumar, including the GST registration certificate. Mr. Vijaykumar passed away on 8 August 2019.

3. The Plaintiff asserts, from 3 November 2019, the Plaintiff resumed the business at the suit shops. A Municipal Health Licence came to be issued in the name of the Plaintiff. The Plaintiff alleged, since February 2020, Defendant No.1 started visiting the suit shops under the pretext of helping out the Plaintiff. On account of the

disruption due to Covid-19 Pandemic, the Plaintiff took help of Defendant No.1 in managing the said shops. Taking undue advantage of the trust reposed by the Plaintiff, the Defendant No.1 allegedly flicked various amounts from the suit shops and sold stock without intimation to the Plaintiff.

4. The Plaintiff asserted, in the month of August 2020, the Defendants tried to forcibly take possession of the suit shops. The matter was reported to the police. As the Defendants continued to threaten to invade the rights of the Plaintiff over the suit shops, the Plaintiff was constrained to institute a Suit purportedly seeking injunction against the Defendants and their agents and assigns from entering into the suit shops and disturbing Plaintiff's use, occupation and possession of the suit shops. In the said suit, the Plaintiff took out Notice of Motion No.1415 of 2020 seeking temporary injunction against the Defendants, their agents and assigns from entering upon and disturbing Plaintiff's use, occupation and possession of the suit shops.

5. The Respondents-Defendants resisted the suit by filing a Written Statement and Counter Claim. The Defendants took out Notice of Motion No.1537 of 2020, and, in turn, sought a mandatory injunction against the Plaintiff to allow the Defendants to peacefully run the business at the suit shops in compliance with the understanding arrived at between the parties on 11 November 2020, to order the plaintiff to render true and correct accounts of the business from 2 August 2020 and in

the alternative, to appoint Court Receiver, High Court, Bombay, with all the powers under Order 40 Rule 1 of the Code of Civil Procedure. Interim order to appoint the Court Commissioner for local investigation and also a direction to the Plaintiff to deposit the entire amount with respect to the sales of August and September 2020 was also prayed for.

6. The Defendants premised the aforesaid prayers in the Counter Claim on the suit shops being the property of the father of Defendant No.1 and the deceased husband of the Plaintiff. The Defendants claimed, Defendant No.1's father was running the business in the suit shops. After the demise of the father of Defendant No.1, the mother of Defendant No.1 conducted the business in the suit shops and all the permissions and licences were issued in her name. The suit shops have all along been considered as a family business. After the demise of their mother, an Affidavit cum Declaration dated 21 December 1998 came to be executed by Defendant No.1, deceased husband of the Plaintiff and their sister, that the suit shops be transferred in the name of the deceased husband of the Plaintiff merely for smooth operation of the business. However, the tenancy rights devolved on the heirs of the Plaintiff's father in law. It is in that context, the parties entered into an understanding on 11 November 2020 to the effect that the Defendant No.1 would independently run the suit shops.

7. After appraisal of the pleadings, material on record and the submissions canvassed on behalf of the parties, the learned Judge, City Civil Court, was persuaded

to partly allow Notice of Motion No.1415 of 2020 and Notice of Motion No.1537 of 2020 and appoint Court Receiver, High Court, Bombay and also appointed the Plaintiff as the agent of the Court Receiver, to carry on the business in the suit shops. The learned Judge was of the view that there was material to indicate that after the demise of their mother, Vijaykumar, the husband of the Plaintiff, took over the business of the suit shops. All the certificates and licences in respect of the suit shops were issued in the name of Vijaykumar. In contrast, the Defendants claimed that they had paid electricity bills and salary of the employees, after the demise of Vijaykumar. The learned Judge, thus, concluded the suit shops as well as the business carried on therein, appeared to be joint family property of the Plaintiff and Defendants. Therefore, the Plaintiff's claim that the Defendants had no interest in the suit shops, did not merit acceptance. Nonetheless, if the Defendants were permitted to enter the suit shops, it would entail a chaotic situation detrimental to the business at the suit shops and benefit none. Thus, to protect the substance of the dispute, the learned Judge was persuaded to appoint the Court Receiver, High Court, Bombay.

8. It seems, the Plaintiff took out Notice of Motion No.782 of 2021 seeking review of the said order and grant of temporary injunction to restrain the Defendants from entering upon and disturbing the Plaintiff's use, occupation and possession over the suit shops. By an order dated 26 March 2021, the learned Judge, City Civil Court, found no merit in the Notice of Motion No.782 of 2021 and, hence, dismissed the said

Notice of Motion, opining that since the suit premises was custodia legis, the apprehension on the part of the Plaintiff that the Defendants would invade her rights was unfounded.

9. Being aggrieved by and dissatisfied with the order dated 9 November 2020 appointing the Court Receiver and the Plaintiff as an agent of the Court Receiver, the Plaintiff has preferred this appeal.

10. I have heard Mr. Kishor Patil, learned Counsel for the Appellant – Plaintiff and Mr. Jalan, learned Counsel for the Respondents – Defendants at some length. The learned Counsel took the Court through the pleadings and the documents on record.

11. Mr. Patil, learned Counsel for the Appellant submitted that the learned Judge, City Civil Court, having found that the Plaintiff was running the business in the suit shops could not have appointed the Court Receiver. The discretion to appoint the Court Receiver has not been exercised in consonance with the well-recognized principles. Mr. Patil laid emphasis on the fact that during the lifetime of Vijaykumar, the husband of the Plaintiff, all the licences and certificates were in his name alone. Till the demise of Vijaykumar on 8 August 2019, at no point of time, the Defendants had asserted their rights in the suit shops on the premise that it was the family business or otherwise. After the demise of Vijaykumar, the licences and certificates came to be issued in the name of the Plaintiff. Taking undue advantage of the situation

which arose on account of the death of the husband of the Plaintiff and the Covid 19 pandemic, the Defendant No.1 made an endeavour to establish control over the suit shops and even diverted amounts. Thus, the Plaintiff was constrained to seek injunctive reliefs against the Defendants. In such a situation, without semblance of right, title and interest in the suit shops vesting in the Defendant No.1, the Plaintiff could not have been made to operate the suit shops as the agent of the Court Receiver.

12. Mr. Patil strenuously submitted that in the affidavit cum declaration made by the Defendant No.1 and Mrs. Sushama Patankar, sister of Defendant No.1, and the deceased Vijaykumar, after the death of their mother, the siblings had categorically affirmed that they had no objection to transfer the registration certificate in respect of the suit shops in favour of Vijaykumar as they both were not interested in the said business. Assertion of rights after the death of Vijaykumar and that too, after 20 years, does not sustain the appointment of the Court Receiver as there is no case, much less, a strong prima facie case in favour of the Defendants.

13. Mr. Jalan, learned Counsel for the Respondents submitted that the appeal is not properly constituted as the impugned order dated 9 November 2020 merged with the order passed by the learned Judge, City Civil Court on 26 March 2021, whereby the review application preferred by the Plaintiff came to be dismissed. It was, therefore, incumbent upon the Appellant to assail the said order. Mr. Jalan would further submit that there is no justifiable ground for assailing the impugned

order as the grounds in the appeal memo do not indicate that the Appellant is really aggrieved by the order of appointment of the Court Receiver. In any event, since with the appointment of the Court Receiver, the property remains custodia legis, the apprehension on the part of the Plaintiff of invasion of her right qua the suit shops was wholly unfounded.

14. Mr. Jalan made an endeavour to draw home the point that after the demise of Vijaykumar, pursuant to a verbal agreement between the parties, the family business came to be entrusted to the Defendant No.1 and, in that capacity, while conducting the business, Defendant No.1 had executed various tasks including payment of salary to the staff. In the circumstances, according to Mr. Jalan, the fact that the suit shops represent family business is rather incontrovertible. Emphasis was laid on the fact that before the licence came to be transferred in the name of Vijaykumar, incontestably, the licence stood in the name of the mother of Defendant No.1 and Vijaykumar. The affidavit cum declaration made by the Defendant No.1 and Mrs. Sushama Patankar, cannot be construed as relinquishment of their rights in the family business.

15. Mr. Jalan further submitted that the Appellant-Plaintiff does not deserve to be heard in this appeal as an ad-interim order was obtained by the Appellant by making a patently false statement that while the Plaintiff had prayed for injunction simplicitor against the Defendants, the trial court had suo motu appointed the Court

Receiver in respect of the suit shops. Inviting the attention of the Court to the prayers in the Notice of Motion, Mr. Jalan strenuously submitted that the appointment of the Court Receiver and further direction that the Plaintiff be appointed as agent of the Court Receiver, in the circumstances of the case, does not cause any prejudice to the Plaintiff and, therefore, there is no merit in this appeal.

16. Facts are few and, by and large, uncontroverted. Indisputably, Sitaram Joglekar, father of the Defendant No.1 and Vijaykumar died on 8 November 1967. Whether the business in the suit shops was commenced by Sitaram Joglekar need not be delved into, at this stage as, indisputably, Pramila Joglekar, mother of Defendant No.1 and Vijaykumar, was conducting the business in the suit shops under the name and style of 'Vijay Stores and Joglekar Company'. The licence and certificates were in her name till she died on 20 September 1998. The parties are not at issue over the fact that after the death of Pramila Joglekar, Defendant No.1, Vijaykumar and Sushama Patankar executed an Affidavit cum declaration in the years 1998 and 2000 whereby and whereunder, Defendant No.1 and Sushama gave no objection to transfer the licences and certificates in favour of Vijaykumar.

17. Consequently, the licences came to be issued in the name of Vijaykumar with effect from 12 April 1999. Health Renewal Receipts and GST Registration certificate were also in the name of Vijaykumar, who passed away on 8 August 2019. Though a dispute seems to have arisen after the death of Vijaykumar, the licence came

to be issued in the name of the Plaintiff (Exhibit H) to the appeal memo.

18. It would be contextually relevant to note that the stand of the Defendants in the Counter Claim is that in the month of February 2020, in the wake of a dispute over the entitlement to the flat to be allotted in the redevelopment of the building wherein the old family house was located, a verbal agreement was arrived at between the parties that till the said issue was amicably resolved, Defendant No.1 would be permitted to run the business in the suit shops.

19. In the backdrop of the aforesaid uncontroverted facts, the learned Judge, City Civil Court was of the view that the suit shops as well as the business conducted therein appeared to be joint family property and the Plaintiff and Defendants have share in the suit shops. However, if the Defendants were permitted to enter the suit shops, it would lead to a chaotic situation and, therefore, to protect the interest of the parties, the learned Judge appointed the Court Receiver. Though, a number of submissions were canvassed, as noted above, the real question that comes to the fore is whether the learned Judge correctly exercised the discretion to appoint the Court Receiver. Thus, without delving into the barnacles, I propose to deal with the hull of the controversy, namely, the justifiability of the appointment of the Court Receiver.

20. Few propositions are elementary : (1) Appointment of Court Receiver is an equitable relief. (2) The relief is discretionary in nature. (3) The discretion, in turn, is required to be exercised in a judicious manner. (4) The appointment of the

Court Receiver is conditioned by the test of court finding the same “just and convenient”. (5) Ordinarily, the Court Receiver ought not to be appointed unless the parties seeking relief a strong prima facie case and an excellent prospect of success in the suit, ultimately. Lastly, the order of appointment of Receiver shall not take the character of removing a person from possession or the custody of the property, whom any party to the suit has no present right to remove.

21. Appointment of Court Receiver has been considered to be a harsh remedy as it invariably entails the consequence of taking control over the property from person who is in possession or management thereof. The principles which guide the exercise of discretion in the matter of the appointment of the Court Receiver were enunciated succinctly by the learned Single Judge of the Madras High Court in the case of **T. Krishnaswamy Chetty V/s. C. Thangavelu Chetty and Ors.**¹, as under :

“17. 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

1 1954 SCC Online Mad 374

Plaintiff that *prima facie*; he has very excellent chance of succeeding in the S. 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. 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 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. 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.”

22. In the case of Krishna **Kumar V/s. Grindlays Bank**² the Supreme Court expounded the principles which must be kept in view while passing an order of appointment of the Court Receiver, as under :

- “(a) that the appointment is on the discretion of the Court;
- (b) the basic object of this appointment is the preservation of property in dispute pending judicial determination of rights of party to it;
- (c) a receiver should not be appointed unless the plaintiff prima facie proves that he has a very excellent chance of succeeding in the suit; and
- (d) since appointment of receiver deprives the opposite party from the possession of property before the final judgment is pronounced, it should only be granted for preservation of manifest injury or wrong.”

(emphasis supplied)

23. In the case of **Parmanand Patel and Anr. V/s. Sudha A. Chowgule and Ors.**³ following observations were made :

“23. _____ A receiver, having regard to the provisions contained in O.40 R.1 of the Code of Civil Procedure, is appointed only when it is found to be just and convenient to do so. Appointment of a receiver pending suit is a matter which is within the discretionary jurisdiction of the Court. Ordinarily the Court would not appoint a receiver save and except on a prima facie finding that the plaintiff has an excellent chance of success in the suit. I

24. It is also for the plaintiff not only to show a case of adverse and conflict claims of property but also emergency, danger or loss demanding immediate action. Element of danger is an important consideration. Ordinarily, a receiver would not be appointed unless a case has been made out which may deprive the

2 (1990) 3 SCC 669

3 (2009) 11 SCC 127

defendant of a de facto possession. For the said purpose, conduct of the parties would also be relevant.” (emphasis supplied)

24. In the light of the aforesaid enunciation of law, governing exercise of discretion in the matter of appointment of the Court Receiver, the legality, propriety and correctness of the impugned order is required to be decided in the context of the facts of the case. It is imperative to note that in the counter claim instituted by the Defendants, there is no prayer for partition of the joint family properties. The Defendants-Plaintiff in the Counter Claim have prayed for injunction, prohibitory and mandatory, and rendition of the accounts of the business of the suit shops from 2 August 2020, the day the Defendants were allegedly dispossessed. It is also pertinent to note that the Defendants have made no endeavour to bring in the common hotchpotch, all the joint family properties, including the flat which is to be allotted upon redevelopment, which according to the Defendants, was the cause of the dispute and for the resolution of which the Defendant No.1 was allegedly allowed to run the business in the suit shops.

25. The question which thus wrenches to the fore is whether in a suit for injunction simplicitor, instituted by both the Plaintiff and Defendants, in the absence of a prayer for partition and separate possession of the joint family properties, the Court could have appointed a Receiver by directing the Plaintiff to cede control over the management of the suit shops to the Court Receiver.

26. Prima facie, there is no material to indicate that after the demise of Pramila, Defendant No.1 ever exercised the right over the suit shops, which was alleged to be the family business. Conversely, in the two Affidavits cum Declaration, Defendant No.1 and the sister of Defendant No.1 made categorical affirmations that they had no interest in the suit shops.

27. In the face of the aforesaid material, if the Defendants assert that the suit shops and the business run therein, are the joint family properties, it was incumbent upon them to seek partition, implead Sushma Patankar, their sister, in such a suit and also claim the accounts of the business since the demise of Pramila.

28. Unity of possession and community of interest is the hall mark of joint family property, provided appropriate pleadings are made about the existence of joint family property and/or nucleolus and appropriate reliefs are sought. In the absence thereof, on the basis of relationship between the parties, the presumption of existence of joint family property cannot be readily drawn.

29. The learned Judge, City Civil Court, in my view, did not advert to these aspects of the matter adequately and proceeded to appoint the Court Receiver professedly with a view to protect the interest of the parties. That objective could have been achieved without divesting the plaintiff, who has been in the management of the business in the suit shops, since the demise of Vijaykumar.

30. A profitable reference in this context, can be made to the decision of the

Supreme Court in the case of **Firm Ashok Traders and Anr. V/s. Gurumukh Das Saluja and Ors.**⁴ wherein in the context of a dispute amongst the partners over the management of the partnership business the Supreme Court, inter alia, observed as under :

“15. The most basic principle governing the discretion of the Court in appointing a receiver is whether it is 'just and convenient' to do so. A few factors are of relevance which we proceed to record dispensing with the need of delving into any detailed discussion. On the own showing of Group "A", they have 20% share in the partnership business and Group "B" has 18% share. The stand taken by Group 'C', which according to Group "A" holds 62% share, was not known before the High Court, and therefore, so far as the High Court is concerned the tussle was between the holders of 20% interest (Group "A") and holders of 18% interest (Group "B"). In this appeal, Group 'C' is represented and has vocally supported Group "B" standing by its side. Before us it is a case of holders of 20% interest claiming against the holders of 80% interest.

16. The finding recorded by the High Court is that it was Group "B" which was running business upto the date of passing of the order by it and was found entitled to continue the same upto 31.12.2003, meaning thereby, for nine months out of the total twelve months' period for which the business is to run, it is Group "B" which has been running the business. Excepting bald and general allegations of mismanagement and siphoning off of the fund nothing concrete has been alleged much less demonstrated to give real colour to the averments made. The High Court has thought it proper to appoint Group "A" as captain of the ship, which is the running business, to sail for the remaining period of three months. We fail to understand the logic behind such a change. It is a serious matter to appoint a receiver, on a running business. The High Court in spite of having formed

4 (2004) 3 SCC 155

an opinion in favour of directing the appointment or receiver has rightly observed that retail liquor trade is an intricate and tricky trade and hence cannot be entrusted to a third party. If that be so, we fail to appreciate the justification behind turning out the persons in actual management of business and passing on the reins in the hands of those who were not holding the same for nine months out of the twelve. We do not say that such a course has any prohibition in law on being followed. But we do not think a case oppression of minority by majority- the sense in which their term is understood in law-having been made out on the material available in the present case. A better course would have been to allow the conduct of the business continuing in the hands of persons who were doing so still now but at the same time issuing such directions and/or devising such arrangement as would protect and take care of the interest of those who are not actually running the business and that is what we propose to do.”

31. There is another aspect which renders the order of appointment of the Court Receiver, High Court, Bombay by the City Civil Court legally unsustainable. In the case of **Girish M. Joshi V/s. Jagat Manubhai Parikh and Ors.**⁵ the learned Single Judge of this Court held that there is no provision either in the Original Side Rules or in the Rules framed under the City Civil Courts Act which empowers the City Civil Court to appoint the Court Receiver, High Court, Bombay as a Receiver in the suits and proceedings filed in the City Civil Court at Bombay.

32. In the case of **Shakti International Pvt. Ltd. V/s. Shakti Metal Processors Pvt. Ltd.**⁶ another learned Single Judge of this Court after an exhaustive

5 WP 2527 of 2009 dt. 11 Sept. 2009

6 2017 SCC Online Bom 321

analysis of the power of the Courts and authorities other than the High Court to appoint Court Receiver, High Court, as a Receiver in respect of the proceedings before those authorities, held that the arbitral tribunal has no power to appoint Court Receiver, High Court, Bombay under Section 17 of the Arbitration and Conciliation Act, 1996.

33. On this count as well, the impugned order deserves to be interfered with. However, I deem it in the fitness of things to direct the Appellant-Plaintiff to maintain accounts of the business transactions in the suit shops so that, should there be a need, at the stage of final adjudication, the Court can balance the equities and pass appropriate orders.

34. For the foregoing reasons, I am persuaded to allow the Appeal.

35. Hence, the following order :

ORDER

- (i) The Appeal stands allowed.
- (ii) The impugned order dated 9 November 2020 of appointment of the Court Receiver stands quashed and set aside.
- (iii) The business in the suit shops shall run under the management and control of the Appellant-Plaintiff.
- (iv) The Appellant Plaintiff shall maintain the accounts of the business, properly, truly and correctly.

- (v) The Plaintiff shall submit the statement of accounts at the end of each financial year to the Defendants and produce the books of accounts as and when directed by the Trial Court during the pendency of the Suit.
- (vi) This arrangement shall be subject to the final outcome of the suit.
- (vii) Interim Application also stands disposed.

(N.J.JAMADAR, J.)