

(2007) 01 MAD CK 0004

Madras High Court

Case No: Civil Revision Petition (PD) No"s. 983 and 1134 of 2005 and C.M.P. No"s. 11693 of 2005 and 13862 of 2005

Vasanthi Nelson

APPELLANT

Vs

Antony Nelson alias A.B.H.
Nelson, represented by power of
Attorney, Mr. Jerry Rodriques

RESPONDENT

Date of Decision: Jan. 22, 2007

Acts Referred:

- Benami Transactions (Prohibition) Act, 1988 - Section 3(2)
- Civil Procedure Code, 1908 (CPC) - Order 14 Rule 2(5), Order 40 Rule 1, Order 7 Rule 11, 151
- Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 - Regulation 4, 5, 6, 7
- Foreign Exchange Management Act, 1999 - Section 47(2), 49, 49(3), 6, 6(2)
- Foreign Exchange Regulation Act, 1973 - Section 3, 3(1), 3(2), 31, 31(1)

Citation: (2007) 3 LW 562 : (2007) 2 MLJ 369

Hon'ble Judges: K. Raviraja Pandian, J

Bench: Single Bench

Advocate: N.G.R. Prasad, for Balan Haridas, for the Appellant; K.R. Tamilmani, for NPK. Menon, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Raviraja Pandian, J.

Civil Revision Petition No. 983 of 2005 is filed against the order dated 13.07.2005 allowing the application in I.A.

No. 1025 of 2004 in O.S. No. 135 of 2004 on the file of the District Munsif, Udagamandalam, filed under Order XL Rule 1 of the CPC for

appointment receiver to take possession of the suit schedule property, manage the same and submit the accounts to the trial Court till the suit is

disposed off. Civil Revision Petition No. 1134 of 2005 is filed against the order dated 13.07.2005 dismissing the application in I.A. No. 259 of

2005 as to the maintainability of the suit and consequently to reject the plaint under Order XIV Rule 2 (5) and Order VII Rule 11 read with

Section 151 of the Code of Civil Procedure.

2. The necessary facts are as follows:

The respondent in both the revisions, is the husband, the plaintiff. The revision petitioner is the wife, the defendant. For the sake of convenience,

the parties are hereinafter referred to as in the plaint. The plaintiff filed a suit in O.S. No. 135 of 2004 seeking for a judgment and decree of

declaration that he is the owner of the said property on the ground that he entered into an agreement on 10.02.1992 along with his wife, the

defendant in the suit to purchase the suit schedule property from its vendor for a total sale consideration in a sum of Rs. 44,00,000/-. The sale

deed was executed on 23.01.1995 as document No. 858/1995 benami in the name of the defendant. The sale consideration of Rs. 44,00,000/-

was paid by the plaintiff from his own sources by way of two cheques of 51000 \$ payable at Clydesdale Bank PLC, Stronoway. The plaintiff

liked the ecology of the area Kothagiri. Therefore, he had chosen to purchase the property for his benefit. The other reason for purchasing the

property benami in his wife's name was the stipulation made in the Foreign Exchange Regulation Act, 1973 (In short "FERA") under which a

foreign citizen, (the plaintiff is a British national) could not acquire any immovable property in India, without the prior permission of the Reserve

Bank of India. However, the said Act is now repealed. The Benami Transaction (Prohibition) Act, would not attract to the case, as Section 3(2) of

the said Act exempted acquisition of immovable property in the name of wife or unmarried daughters.

3. After purchase of the suit property, the plaintiff spent huge amounts to reclaim the lands and to raise crops such as coffee, pepper, orange, etc.,

He raised cattle and sheep farms and laid roads at his own cost. He had also fenced the suit property with live wires to protect the crops from the wild animals. He had also installed generators and bore well etc. He named the estate as "Nelson Estate" and employed 50 workers. The plaintiff and the defendant had been living in the suit property till 2001. Incidentally, during the wedlock, the plaintiff and the defendant got a female child by name Antonia Kavitha and they fostered another female child by name Jayanna. During 2000, the defendant insisted to change her residence to Bangalore under the pretext of imparting education to children. The plaintiff provided her a separate residence at Bangalore by building a bungalow fully furnished and equipped totally at a cost of Rs. 30,00,000/-. The defendant and the children shifted their residence to Bangalore. The plaintiff had been paying Rs. 30,000/- per month for the maintenance of the defendant and the children.

4. During the middle of the year 2002, the plaintiff's health condition deteriorated and he was advised to go to England for treatment. During September 2000 he left India and got himself admitted in a hospital at England and remained there due to his health condition. During the period of his absence in India, he used to send money to the tune of Rs. 30,000/- per month towards the maintenance of the suit property to the defendant.

During March 2003, the plaintiff came back to India and found that the defendant had retrenched all the workers, sold away the cows, buffaloes numbering about 50, generators and the agricultural produce such as pepper, coffee, etc., and appropriated the amount without his knowledge.

After a further visit to England for his treatment on 17.08.2003, when the plaintiff returned to India, he was prevented from entering into the estate by the defendant and her persons and she has also committed acts of waste. Hence the suit.

5. Along with the suit, the plaintiff filed an application for injunction restraining the defendant from alienating, wasting or disposing of any of the suit

property, in I.A. No. 1070 of 2003. The injunction granted in favour of the plaintiff was carried on in revision by the defendant before this Court in

Civil Revision petition No. 2482 of 2003. The said revision was disposed off on 18.08.2005 after recording an undertaking of the defendant that

she would not alienate the property and would not change the nature of the property till the final disposal of the suit. Thereupon the plaintiff filed

I.A. No. 1025 of 2004 before the trial Court for appointment of receiver to take possession of the suit property as the defendant had committed

acts of waste of the suit property and breached the undertaking given by her in the earlier revision. The trial Court allowed that application. The

revision in CRP No. 983 of 2005 is filed against that order.

6. The defendant in turn filed I.A. No. 259 of 2005 by raising a preliminary issue as to the maintainability of the suit and to reject the plaint on the

premise that the defendant is the owner of the property, and that the sale deed stands in her name. The defendant was making negotiations for the

sale of a portion of the estate with the knowledge of the plaintiff. The plaintiff conveyed his no objection for selling the property and appropriating

the proceeds to be paid unreservedly to the defendant or to her order. The plaintiff is a foreigner. As per FERA, a foreigner cannot acquire any

property in India. The plaintiff deserted her and her children and she had to necessarily make provisions to support them. There is a presumption

in law that ostensible owner is also a legal owner. In the earlier revision in C.R.P. No. 2482 of 2003 the defendant had the benefit of stay. The

claim of the plaintiff in the suit that the purchase was made benami in her name is not maintainable in view of the legal embargo by the Benami

Transaction (Prohibition) Act, 1988 and the suit is not maintainable. The trial court rejected the application filed by the defendant for rejecting the

suit as not maintainable. In C.R.P. No. 1134 of 2005 the correctness of the said order is questioned.

7. Mr. N.G.R. Prasad, learned Counsel for the petitioner contended that Section 31 of the FERA restricted acquisition of immovable property in

India by a non citizen of India. The plaintiff, not a citizen of India cannot, therefore, acquire the property. The Foreign Exchange Management Act,

1999 (In short "FEMA") came into force on and from 01.06.2000. As per Section 6(3)(i) of FEMA, acquisition, transfer of immovable property

in India by a person residing outside India is prohibited. Further, he contended that the clarification issued by the Reserve Bank of India in Circular

No. 11 dated 16.11.2000 under Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000

prohibits acquisition of property by persons other than Indian residing in India. Hence, the suit, as framed has to be held as not maintainable and

consequently, the suit has to be dismissed. He further contended that the Benami Transaction (Prohibition) Act also stares at the face of the suit.

Learned Counsel relied on the following decisions to support his contentions that the suit itself is not maintainable:

(i) Mrs. Shoba Viswanatha Vs. D.P. Kingsley, . The following observation of the Division Bench was pressed into service:

Not only that the transaction without permission is prohibited, certain penal consequences are also imposed under law. We find that earlier, Courts

of law did not treat the mere imposition of penalty as an act prohibited by law or against public interest. But the said view seems to have changed

in course of time and the scope of "public policy" or "public interest" has also enlarged.

(ii) Renusagar Power Co. Ltd. v. General Electric Co. 1994 (1) Supp. SCC 644. Paragraphs 75 and 76 of that judgment which read as under

were referred to:

75. As laid down by this Court, FERA is a statute enacted for the national economic interest and the object of various provisions in the said Act is

to ensure that the nation does not lose foreign exchange which is very much essential for the economic survival of the nation. (See : Life Insurance

Corporation of India Vs. Escorts Ltd. and Others, and M.G. Wagh v. Jay Engineering Works Ltd. 1987 (2) SCC 542

76. Keeping in view the aforesaid objects underlying FERA and the principles governing enforcement of exchange control laws followed in other

countries, we are of the view that the provisions contained in FERA have been enacted to safeguard the economic interests of India and any

violation of the said provisions would be contrary to the public policy of India as envisaged in Section 7(1)(b)(ii) of the Act.

(iii) Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others, . The Supreme Court dealt with the consequences of

violation of FERA and observed:

...The object of the Act is clearly to protect the economic interests of the country and to deal with any violation that causes economic loss to the country. In the context of that object, any contravention of the provisions of the Act has to be viewed seriously and anyone directly responsible or conniving at the offence is liable to be punished. This appears to be the legislative intent in enacting FERA, 1973 replacing the Foreign Exchange Regulation Act, 1947 and also including it in the Ninth Schedule to the Constitution.

(iv) To assail the order of appointment of receiver, he relied on the case of M.O.H. Aslum v. M.O.H. Uduman 93 LW 729. A Division Bench of this Court considering a case where the business in the name of S.S. Agencies stands in the name of one of the defendants, which was admitted by the plaintiff, held as follows:

There cannot be any dispute that the Court can appoint a receiver in an interlocutory application to protect the properties which are the subject matter of the suit, if there is any apprehension that the properties will be damaged, wasted or misappropriated. But a Receiver can be appointed only in case where the plaintiffs make out a prima facie case as regards title to the property. In a case where the plaintiff's title to the property is in dispute, there cannot be any appointment of a receiver in respect of that property, the title to which the plaintiff has to establish at the trial.

8. On the contrary, Mr. Tamilmani, learned Counsel for the plaintiff submits that it is admitted by the defendant in paragraph 6 of the written statement filed by her that the two cheques given by the plaintiff was given as a gift and the proceeds of the same were utilized by the defendant to purchase the suit property. He further contended that Section 31 of the FERA cannot be put against the plaintiff as a total bar, but was only a restriction with certain conditions precedent to obtain prior permission from the Reserve Bank of India. Even assuming for a moment that Section 31 of FERA was breached, the consequence was only a penalty as provided u/s 50 of the FERA. Section 51 further provides for adjudication of contraventions. FERA has been repealed by FEMA, 1999 with effect from 01.06.2000. The repealing provision, i.e., Section 49(3) of FEMA contemplates that notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence

under the repealed Act if not taken within two years. The suit has been filed in October 2003. Hence, all the contentions put forth on behalf of the

defendant taking umbrage under FERA have to be rejected. Further, he submitted that Section 3(2) of the Benami Transaction (Prohibition) Act

saves the purchase of any property by any person in the name of his wife or unmarried daughter. The other contention is that the defendant has

committed acts of waste, which is manifest, as the contention has not been denied by the defendant. Thus, he contended that the orders of the trial

court either rejecting the application filed to reject the suit as not maintainable or allowing the application filed by the plaintiff for appointment of a

receiver cannot be stated to be illegal or irregular so as to warrant an interference of this Court.

9. Heard the learned Counsel on either side and perused the materials available on record.

10. Let me first consider whether the suit, as framed, is barred by the Benami Transaction (Prohibition) Act. Section 3 of the Act reads as under:

3.Prohibition of benami transactions

(1) No person shall enter into any benami transaction.

(2) Nothing in Sub-section (1) shall apply to

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved,

that the said property had been purchased for the benefit of the wife or the unmarried daughter.

The Act carves out an exception to the prohibition of benami transaction if the purchase is made in the name of wife or unmarried daughter. Hence,

the contention of the defendant that the suit is hit by the Benami Transaction (Prohibition) Act, 1988 has to be rejected and it is accordingly

rejected. As the statutory provision itself is very clear, no supporting material by way of precedent is required, as admittedly, the defendant is the

wife of the plaintiff and the property was purchased in her name.

11. Let me consider the next contention that the suit, as framed is not maintainable in view of FERA and FEMA. The provision of FERA restricting

the acquisition of immovable property in India, Section 31, the penal provision Section 50 and the adjudicating provision Section 51 have been

considered by the apex Court in the case of Renusagar Power Co. Ltd. v. General Electric Co. 1994 (1) Supp SCC 644 and in the case of

Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others, and by the Division Bench of this Court in the case of Mrs.

Shoba Viswanatha Vs. D.P. Kingsley, and without any uncertain terms held that the provisions contained in FERA have been enacted to safeguard

the economic interests of India and any violation of the said provision would be contrary to the public policy of India as envisaged in Section 7(1)

(b)(ii) of the Act. It is a categorical binding ruling.

12. The point to be seen in this case is whether there is any violation in the transactions under the FERA which formed the basis for filing the suit,

as framed. The vital factor in this case is that the plaintiff, a foreign national acquired the property in the name of his wife, the defendant, who is an

Indian citizen, out of his funds duly accounted for. The property was not registered in the name of the plaintiff, but in the name of the Indian citizen,

the wife. It is obvious that that might be the reason that no action has been taken under the FERA against such acquisition during the relevant

period the FERA was in force. It is an undisputed fact that FERA was repealed and in its place a new Act, FEMA came to be enacted in the year

1999. Sub clause (3) to Section 49 of the FEMA, provides that notwithstanding anything contained in any other law for the time being in force, no

court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention u/s 51 of the

repealed Act after the expiry of the period of two years from the commencement of the Act. FEMA came into force on and from 01.06.2000 and

the present suit came to be filed on 07.10.2003, verified by the plaintiff on 04.10.2003, ie., four months after the expiry of the two years" period,

as stipulated in Sub-clause(3) to Section 49.

13. Reference has been made to Section 6 of FEMA, which provides for capital account transaction to the effect that subject to the provisions of

Sub-section (2) any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction. Sub-section (2)

provides that the Reserve Bank may, in consultation with the Central Government, specify any class or classes of capital account transactions

which are permissible; and the limit upto which foreign exchange shall be admissible for such transactions. Section (3) provides that without prejudice to the generality of the provision of subsection (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate certain transactions stated under (a) to (j). Sub-clause (i) to Clause (3) is acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India.

14. Exercising the power under Clause (i) of Sub-section 3 to Section 6 and the Sub-section (2) of Section 47 of FEMA, the Reserve Bank made

Regulations relating to acquisition and transfer of immovable property in India called the Foreign Exchange Management (Acquisition and Transfer

of Immovable Property in India) Regulation, 2000. Regulation deals with the transfer and acquisition of immovable property by an Indian citizen

outside India. Regulation (4) deals with the acquisition and transfer of immovable property by a person of Indian origin. Regulation (5) provides

about the acquisition of immovable property for carrying on any permitted activity. Regulation (5)(a) introduced with effect from 22.07.2003

provides for purchase, sale of immovable property by foreign embassy, Consulate General. Regulation (6) provides for repatriation of sale

proceeds; Regulation (7) with which reference has been made provides for prohibition of acquisition or transfer of immovable property by citizen

of certain countries. Those countries are Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan. The citizens of these

countries could also acquire with the prior permission of the Reserve Bank any immovable property in India. Reserve Bank of India Clarification

AD (MA Services) Circular No. 11 dated 16.05.2000 has been taken in aid to contend in favour of the defendant. The circular proceeds that

except with the provisions of the Act or Rules or Regulations made thereunder, acquisition or transfer of immovable property in India by a person

including an Indian citizen outside India would require prior approval of the Reserve Bank.

15. The FEMA was enacted having regard to the on going process of economic liberalisation relating to foreign investments and foreign trade and

taking into account the certain developments that had taken place since 1993 under the policy of the Government in respect of foreign trade,

rationalisation of tariffs, current account convertability, liberalisation of Indian investments abroad, etc., which considerably reduced the rigour

contained in the earlier Act in respect of holding of immovable property by a foreign national. Section 6 of the FEMA is the relevant provision. The

marginal heading of that Section is capital account transaction which term is defined in the Act itself as a transaction which alters the assets or

liabilities, including contingent liabilities outside India of persons residing in India or assets or liabilities in India of persons resident outside India.

The terminology "person" is defined in the Act as --

person"" includes -

(i) an individual

(ii) a Hindu undivided family,

(iii) a company

(iv) a firm,

(v) an association of persons or a body of

individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office or branch owned or controlled by such person

person resident in India"" means -

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include

-

(A) a person who has gone out of India or who stays outside India, in either case -

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case otherwise than -

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India;

(w) person resident outside India"" means a person who is not resident in India.

From the above statutory provisions it is evident that the restriction in acquiring immovable property in India is attributable to citizens of the

countries mentioned in Regulation 7 which does not include the British national. Yet another factor whether the plaintiff would come within the

definition of the term ""a person resident in India"" u/s 2(v)B is a moot point to be decided in the suit. Above all, as already stated the property in

dispute is acquired and stands in the name of the Indian citizen, the defendant, the wife.

16. Now, let me consider the cases cited. The first of the decisions on which reliance has been placed by the learned Counsel for the petitioner is

the decision of a Division Bench of this Court in the case of Mrs. Shoba Viswanatha Vs. D.P. Kingsley, . That was a case in which the plaintiff

filed a suit for specific performance of the contract of sale a house based on certain correspondence inter-parties within the period of middle of

1980 and July 1981. It was the contention that on the basis of the correspondence between the parties, a concluded contract came into existence.

Inspite of the denial of the factum of agreement by the defendant, the property owner, the suit was decreed in terms of the plaint. On appeal, one

of the contentions raised which found acceptance by the Division Bench, was that the defendant was not an Indian citizen and any sale of the

property by a foreigner has to be approved by RBI under FERA. If the so called agreement was implemented, that would be against public policy.

While dealing with the said contention, the Division Bench held that the defendant was a foreign national long before 1981. The immovable

property, which belonged to non citizen could be conveyed only after obtaining permission of the Reserve Bank of India u/s 31(1) of FERA, 1973.

After considering the penal provisions u/s 50 and the rules made thereunder and also referring to the Supreme Court judgments in the case of

Renusagar Power Co. Ltd. v. General Electric Co. 1994 (1) Supp SCC 644 the Division Bench has held that keeping in view of the object

underlying FERA and the principle governing enforcement of exchange control law followed in other countries, the provisions contained in FERA

have been enacted to safeguard the economic interest of India and any violation of the said provisions would be contrary to the public policy of

India as envisaged in Section 7(1)(b)(ii) of the Act.

17. The second Renusagar's case cited supra, is one that has arisen under the provisions of the Foreign Awards (Recognition and Enforcement)

Act, 1961. The dispute also arose within the relevant period in which FERA was in force. After the decision of the Supreme Court in the first

Renusagar's case reported in 1987 (4) SCC 137 in respect of a dispute arising out of a contract for erection of a power plant known as

Renusagar power station, both the parties appeared before the arbitral tribunal for hearing and obtained an award which is a foreign award, the

enforcement of which was the subject matter the said decision.

18. The last of the decisions relied on taking shelter under the FERA to non suit the plaintiff maintaining the suit was rendered by the Supreme

Court in the case of Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others, . That was also a case which arose during

the relevant period in which FERA was in force and was decided with particular reference to Section 68 of FERA, which relates offences by the

companies.

19. From the summation of facts, it is clear that the disputed property is not in the name of a foreigner, but only in the name of an Indian citizen.

Apart from that, the enactment which prohibits the foreigner holding or transferring the property in India is not in force when the suit was filed. Even

the time limit prescribed for taking cognizance of the offence under the provisions of FERA, by Sub-clause (3) to Section 49 of FEMA, which

repealed the FERA, has expired at the time of filing the suit in this case. Hence, the contention with reference to FERA and FEMA against the plaintiff cannot be sustainable.

20. Now, let me come to the question regarding the appointment of a receiver. The application for appointment of a receiver was filed by the plaintiff on the grounds that the defendant in total disregard to the undertaking given before this Court in the earlier revision, committed acts of waste of the suit property - the estate - by retrenching the 50 workers employed for the purpose of maintenance of the coffee and pepper plantation; sold 50 cattle reared in the estate and demolished the labour quarters and converted it into a resort, which is being run in the name and style of "Creek and Crag"; removed the live wire fencing put up by the respondent encircling the entire estate to protect the crop from wild animals; sold the generators which supplied energy to the life wire; entered into an agreements for sale of the valuable trees available in the estate; third parties" right created over the property.

21. The defendant resisted the application stating that the revision in C.R.P. No. 2842 of 2003 which has been dismissed on 05.11.2004 for non prosecution has been restored to file on 28.12.2004 at the instance of the defendant and in view of the stay order passed by this Court the petitioner"s possession cannot be and rather should not be disturbed by the appointment of a receiver, apart from the general denial in paragraph

2. Based on the materials, the trial Court passed an order appointing a receiver after coming to the conclusion that the plaintiff is entitled to such an order for the proper maintenance of the estate.

22. It is pertinent to state there that none of the allegations which were raised for appointment of receiver has been denied by the defendant before the trial court. Even in the affidavit filed along with the revision, which is under consideration, the defendant has not denied any of the allegations of act of waste. The averments contained in the affidavit were to the effect that the defendant was making negotiations for sale of a portion of the estate with the knowledge of the plaintiff and the plaintiff has given consent by means of a letter. The plaintiff as a foreigner cannot maintain a suit.

The plaintiff abandoned the defendant and her children. The suit property stands in the name of the defendant and the presumption of law is that the

ostensible owner is the real owner of the property. Above all, to have the sympathy of this Court, it was projected in the affidavit that the trial court

has committed an error in passing an order appointing a receiver, when the application for maintainability of the suit was very much pending before

it. After the vacate stay petition was filed in the revision pointing out the falsity of the averment, a reply came to be filed by the defendant on

28.09.2005 wherein it was stated that only in the uncultivable portion of the estate resort has been put up, that the day to day affairs are being

managed and looked after by one Rohan Mathias and the petitioner's niece Poornima Maduram, both of whom are paid for their services

rendered. No right whatsoever has been created in favour of third parties, i.e., the above said two persons.

23. The factum of starting a tourism business in the uncultivable land and the contention that Rohan Mathias and Poornima were only paid servants

were denied by the plaintiff by filing a rejoinder stating that Poornima, being an advocate on the rolls of the Tamil Nadu Bar Council, cannot accept

a salaried job and Mathias being the owner of a reputed and well established tourism centre named as "Jungle retreat" cannot be expected to be a

paid servant of the petitioner. Further it was pointed out that the defendant himself has accepted in paragraph 12 of the affidavit dated 25.08.2005

filed in support of CMP No. 13862 of 2005 in CRP. No. 1134 of 2005 that a sum of Rs. 7,62,077/- has been paid during the year 2003-04 as

retrenchment compensation to the workmen.

24. It is not in dispute that the property was a plantation estate of coffee and pepper which has to be looked after with much care so as to get a

reasonable yield and thereby make a profit after meeting out the day to day expenses in maintaining the estate. The retrenchment of 50 workers

working in the estate by the defendant has not been disputed, rather admitted candidly by means of a solemn affidavit as aforesaid. If the field

workers of a estate over an extent of 330.77 acres, much less 120 acres of plantation crops were retrenched, it is obvious that the estate cannot

be maintained. In addition to that, labour quarters, which were available in the estate were demolished and rooms were put up for the purpose of resort business, which has not been denied. Likewise, the removal of the fence encircling the estate and selling it away along with generators which supplied power to the live wire also has not been denied. The conversion of a portion of the estate into tourism business has been accepted.

Inducting Mathias and Poornima into the possession and management of the estate, though denied stating that they are paid servants to look after

the estate, it is established by Exs.A8 and A9, which are copies of the telephone directories showing the names of Rohan Mathias and Poornima

as the owners of the telephone numbers in the estate. No body can comprehend telephone numbers of a estate or a resort to be in the name of a

paid servant. Thus, the story of paid servant cannot be accepted. There is no denial of the averment that the plaintiff was sending money @ Rs.

30,000/- per month to the defendant for maintenance of the estate and for maintaining the defendant and her children. Hence, the contention as put

forward by the plaintiff that the defendant has committed acts of waste of estate and the estate would not be safe if it is allowed to remain in the

hands of the defendant has to be accepted. Learned Counsel for the defendant relied on a judgment of the Division Bench of this Court in the case

of M.O.H. Aslum v. M.O.H. Uduman 93 LW 729 to contend that when the suit property stands in the name of the defendant and the legal

presumption is in favour of the defendant, the appointment of a receiver cannot be made.

25. A casual reading of the said decision at paragraph 7 would show that the decision does not in any way supports the case of the defendant, but

in fact it is against the defendant. Paragraph 7 reads as:

There cannot be any dispute that the Court can appoint a receiver in an interlocutory application to protect the properties which are the subject

matter of the suit, if there is any apprehension that the properties will be damaged, wasted or misappropriated. But a Receiver can be appointed

only in case where the plaintiffs make out a prima facie case as regards title to the property. In a case where the plaintiff's title to the property is in

dispute, there cannot be any appointment of a receiver in respect of that property, the title to which the plaintiff has to establish at the trial.

26. The averment contained in paragraph 6 of the written statement that the property has been purchased in the name of the defendant by and out of the money given by the plaintiff and the subsequent events of improving and maintaining the estate by the plaintiff and the act of waste alleged to have been committed by the defendant would necessarily make out a prima facie case in favour of the plaintiff to have an order of appointment of receiver.

27. In view of the reasons stated in the foregoing paragraphs, both the revisions are dismissed as devoid of merit. No costs. The connected miscellaneous petitions are consequently dismissed.