
(1971) 11 MP CK 0005

Madhya Pradesh High Court

Case No: Miscellaneous A. No. 26 of 1970

Bal Vyasi

APPELLANT

Vs

Ujjala

RESPONDENT

Date of Decision: Nov. 29, 1971

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 51
- Madhya Pradesh Land Revenue Code, 1959 - Section 165(7), 165(7)(c)
- Specific Relief Act, 1963 - Section 34

Citation: (1973) JLJ 581

Hon'ble Judges: Shiv Dayal Shrivastava, J

Bench: Single Bench

Advocate: A.R. Naokar, for the Appellant; B.D. Gupta, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Shivdayal, J.

This appeal is from an order passed by the Additional District Judge, Bhind, appointing the Collector as Receiver in a suit between the respondent plaintiff and the appellant defendant.

2. The respondent Smt. Ujjala's suit is for a declaration that she is the Bhimiswami of the lands (Khasra Nos. 4, 5, 64, 172, 350, 403, 404, 415 and 680) of village Bhdhanpur. Pargana Bhind and that she is in possession of these lands. She alleges that she is an illiterate Pardanaashin woman without any issue that the defendant who, is her husband's sisters son, get a sale deed dated December 11, 1967, Executed and registered in respect of the suit lands for Rs. 20,000/- by somebody personating her. It is her contention that she newer executed that sale deed she seeks this declaration. She also claims cancellation of the mutation in revenue

record which the defendant got effected on faith of the impugned sale deed. She claims a declaration that it is fictitious, ineffective and without consideration.

3. The defence is that the said sale deed was executed by no person other than the plaintiff herself, and that she delivered possession to the defendants.

4. The defendant made an application under Order 39 rule 1, CPC, to restrain the plaintiff from interfering with his possession. The trial Court dismissed that application, but appointed a receiver. That order was set aside by this Court on the defendant's appeal. (Misc. Appeal No. 65 of 1969 decided on December 3, 1969).

5. When the case went back, the plaintiff made an application under Order 40, rule 1 CPC, for appointment of a receiver, The learned Additional District Judge appointed the Collector as receiver; directing him to auction the suit lands annually for the purposes of cultivation.

6. The defendant has preferred this appeal. It is contended by Shri Naoker, Learned Counsel for the appellant, that he is in possession, and his possession cannot be disturbed by appointing a receiver. Secondly, since the plaintiff's suit is not for possession but for a mere declaration, there was no question of appointing a receiver. Thirdly, the trial Court passed the order without taking any evidence. Fourthly, no third person could be appointed a receiver ; if at all, the defendant should have been appointed receiver. Fifthly, no receiver could be appointed in contravention of section 165 (7) of the M.P. Land Revenue Code, 1959.

7. At the first sight it looks strange that the plaintiff claiming herself to be in possession of the suit lands applied for appointment of a receiver. Shri Gupta, her Learned Counsel, argues that since she found herself unable to protect her possession, she applied for such appointment. But it appears that, if that was so, the proper remedy was to apply for an injunction to restrain the defendant from interfering with her possession.

8. On the objection of the defendant, issue No. 3 was framed by the trial Court whether the suit, as framed, is competent without the consequential relief of possession being claimed. This is a preliminary issue and the Court has to go into that question. If on the date of the suit, the plaintiff was in possession, it is all right otherwise she will have to amend her plaint and seek the relief of possession without which she cannot get a decree for mere declaration.

9. The implementation of the order appealed from was stayed by this Court when this appeal was admitted by a learned Single Judge. Now it is stated by Shri Gupta that the lands are lying idle for the last two years while according to Shri Naoker the lands have been cultivated by the defendant.

10. Adverting first to the question whether a receiver can be appointed when according to section 165 (7) (c) of the M.P. Land Revenue Code, the holding of a Bhumiswami is not liable to attachment or sale upto 5 acres of irrigated land and 10

acres of unirrigated land. There was a conflict of judicial opinion on the question whether a receiver can be appointed in respect of properties which cannot be attached and sold. In some decisions, the High Courts of Calcutta, Lahore, Nagpur and Orissa answered this question in the affirmative. The Nagpur High Court took the view that the appointment of a receiver does not amount to attachment (See Syed Waziruddin v. Syed Bashiruddin ILR 1937 Nag 534 In [Amir Uddin and Another Vs. Panchaiti Akhara Bara Udasi Nanak Shahi](#) ; and [Vasant Shamrao Khot Vs. Jagannath Ganesh Jambotkar](#), it was answered in the negative.

11. In [The Union of India \(UOI\) Vs. Hira Devi and Another](#), their Lordships reversed the decision of the Calcutta High Court in [Union of India \(UOI\) Vs. Sm. Hira Debi and Another](#). The question which their Lordships had to consider was whether the provident fund standing to the credit of the judgment debtor, a retired Government servant, which was a compulsory deposit, was not liable to attachment and sale. Mr. Justice Chandra Shekhara Aiyar, delivering the judgment of the Supreme Court, said :--

It is obvious that the prohibition against the assignment of the attachment of such compulsory deposits is based on grounds of public policy. Where the interdiction is absolute, to allow a judgment creditor to get at the fund indirectly by means of the appointment of a receiver would be to circumvent the statute. That such a frustration of the very object of the legislation should not be permitted was laid down by the Court of Appeals as early as 1886 in the case of Lucas v. Harris (1877) 18 QBD 127. Section 51 of the Civil P. C., no doubt recognises five modes of execution of a decree and one of them is the appointment of a Receiver. Instead of executing the decree by attachment and sale, the Court may appoint a Receiver but this can only be done in a case where a Receiver can be appointed. The Provident Fund money is exempt from attachment and is inalienable. Normally, no execution can lie against such a sum.

12. It appears that this position of the law was taken note of by the Legislature while enacting the M.P. Land Revenue Code, 1959. Clause (c) of section 165 (7) now clearly enacts that no receiver shall be appointed to manage the land of a Bhumiswami u/s 51 of the Code of C.P., 1908, nor shall any such land vest in the Court or in receiver contrary to the provisions of clause (a) of clause (b). Clause (a) declares only that part of the holding of a Bhumiswami to be liable to attachment or sale as is in excess of 5 acres of irrigated land, or 10 acres of unirrigated land. It is, therefore, contended by Shri Naoker that no receiver could be appointed in respect of the land so exempted from attachment and sale.

13. Shri Gupta, Learned Counsel for the plaintiff, on the other hand, urges that these provisions must be confined to the case of an execution proceeding. They have no application to the question of appointment of a receiver under Order 40, rule 1, CPC, when the title is in dispute and there are rival claims about possession. I consider it unnecessary to go into that question for the purposes of this appeal.

14. Principles relating to appointment of receiver may now be recapitulated as under:--

(1) Generally stated, the object of appointment of receiver is preservation of the subject matter of the litigation pending a judicial determination of the rights of the parties to it.

(2) The rule embodied in Order 40, rule 1, CPC, empowers the Court to appoint a receiver whenever it appears to it to be just and convenient to do so. The language employed in the rule leaves the matter to the discretion of the Court.

(3) The Court has fullest jurisdiction in the matter of appointment of receiver, but the discretion cannot be exercised arbitrarily or in an unregulated manner ; it must be exercised judicially, cautiously and according to legal principles on a consideration of the whole of the circumstances of the case.

(4) Appointment of receiver is recognized as one of the harshest remedies which the law provides for the enforcement of rights so that the jurisdiction must be exercised only in extreme cases.

(5) The Court does not, while considering the question whether a receiver should be appointed, arrive at any final decision on the merits of the case. Its aim is merely to preserve the status quo ante during litigation.

(6) Receiver cannot be appointed just because it is expedient or convenient to one of the parties to do so; nor merely because it will do no harm to do so.

(7) When a person is in bona fide possession of the property in dispute, his possession should not be disturbed by appointment of receiver unless there is some substantial ground for such interference such as a well founded fear that the property in suit will be dissipated or other irreparable mischief may be done unless the Court appoints a receiver. The plaintiff must not only show a case of adverse and conflicting claims to property, he must further show some emergency of danger or loss demanding immediate action and, further the plaintiff's own right must be reasonably clear and free from doubt.

(8) Although the jurisdiction of the trial Court in the matter of appointment of a receiver is discretionary, that discretion is liable to interference, if it is not in accordance with the principles on which judicial discretion must be exercised.

15. In *Owen v. Homan* 1853 4 HL cases 997. Lord Cranworth L.C. laid down:--

Where the object of the plaintiff is to assert right to property to which the defendant is in the enjoyment, the case is necessarily involved in further question. The Court, by taking possession at the instance of the plaintiff may be doing a wrong to the defendant, in some cases an irreparable wrong. If the plaintiff should eventually fail in establishing his right against the defendant the Court may, by its interim interference have caused mischief to the defendant for which the subsequent

restoration of the property may afford no adequate compensation.

See also *Mst. Tulsha Devi v. Shah Chronju Lal & others* AIR 1943 All (FB) and *Rosi Devil v. Bikal Maharana & others* AIR 1985 Ori 20.

16. In the present case the above principles were not present to the mind of the trial Court when it appointed receiver in a mechanical and summary manner. All that it says is that this will prevent future disputes between the parties and attempt to take possession from each other, thereby causing loss.

17. It was of the utmost importance that the trial Court should have proceeded to enquire the question whether on the date of the suit the plaintiff or the defendant was in possession. If the defendant was in possession then the following consequences would ensue :--

(1) The suit as framed would not be maintainable as it would be barred by the proviso to section 34 of the Specific Relief Act.

(2) The possession of the defendant could not be disturbed by appointing a receiver, and

(3) The plaintiff will get mesne profits, if she succeeds in the suit.

If on the other hand, the plaintiff was in possession on the date of the suit, a finding to that effect will entail these consequences:--

(1) The suit as framed will be maintainable, and

(2) The Court could issue a temporary injunction, restraining the defendant from interfering with her possession, or if the plaintiff so prayed for her protection, appoint a receiver. But this could not be done before an enquiry on the question as to who was in possession on the date of the suit is made.

18. It is nobody's case before me that the plaintiff was in possession on the date of the suit, but was dispossessed during its pendency.

19. I must make a few observations before I leave this case :--

(1) The trial Court should have engaged itself in first determining the preliminary issue whether the suit was barred by the proviso to section 34 of the Specific Relief Act. That issue should have been decided without loss of time. It is the duty of the trial Court to determine preliminary issues as expeditiously as possible.

(2) The crux of the suit on merits is whether the sale deed was executed by the plaintiff. The nature of the allegations made by the plaintiff demand that in the interests of justice the disposal of this suit must be expedited. I am told that each of the parties has summoned a hand-writing expert. It appears that if the plaintiff's claim is found strong action will have to be taken against her ; and against the defendants if the sale deed is false and forged. In the interests of justice such suits

must be disposed of with utmost speed.

(3) The trial of the suit must be postponed merely because proceedings for appointment or receiver, have been initiated. It I may say so it is a dereliction of duty to put off the trial just because such an application is made. The trial of the suit must take its own course and must not be detained because of such proceedings.

(4) When an appeal preferred from an order appointing or refusing to appoint a receiver the trial Court should sent on requisition from the appellate Court, only the record pertaining to proceedings for appointment of receiver, that is to say, the application, reply and evidence produced by the parties. Copies of the plaint, written statement and the issues should also be sent that is all which the appellate or revisional Court needs for the disposal of the appeal of revision. By sending the entire record to the appellate or revisional Court the trial is held up, which is wholly un-necessary and unwarranted. The record relating to the trial on merit should and must, be sent only when the appeal or revisional Court specifically requisitions it, but not otherwise.

20. The appeal is allowed. The order of the trial Court appointing a receiver is set aside. In the circumstances of the case the parties shall bear their own costs in appeal. The record of the trial Court shall be returned forthwith for proceeding with tin trial of the suit and for dealing with the plaintiff's application for appointment of receiver in the light of this order. Parties shall appear before the trial Court on December 14, 1971.