

**THE HON'BLE SMT. JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

C.M.A. No.426 OF 2022

JUDGMENT: (Per Hon'ble Smt. Justice Moushumi Bhattacharya)

The appeal arises out of an order passed by the learned Trial Court on 27.07.2022 in an application filed by the appellant under Order XL Rule 1 read with Section 151 of The Code of Civil Procedure, 1908 for appointment of Receiver.

2. The appellant is the plaintiff in O.S.No.4 of 2013 and filed the Suit for partition and separate possession by metes and bounds in respect of the appellant and the defendant Nos.1 - 6 (respondents in the appeal).

3. The appellant is the grandson of one Ashok Kumar Patny, who died on 23.12.2011 and the defendant No.1 is the grandmother of the appellant and the wife of Late Ashok Kumar Patny. The defendant No.2 is the father of the appellant/plaintiff, the defendant Nos.3 and 4 are the paternal aunts of the appellant/plaintiff. The defendant Nos.5 and 6 are the sons of the

defendant Nos.3 and 4. The defendant Nos.7 - 17 are tenants who are depositing rents in respect of the properties described in the Will of the Late Ashok Kumar Patny. The defendant Nos. 18 and 19 are business entities started by Late Ashok Kumar Patny. The defendant Nos.20-23 are bankers of defendant Nos.1-6 and the defendant No.24 is an Insurance Company.

4. The appellant/plaintiff relies on a Will dated 14.07.2011 for claiming the reliefs in the Suit. The respondent Nos.1, 3 - 6 rely on an earlier Will dated 04.09.2010 of the Late Ashok Kumar Patny, which the said respondents claim was read out in the presence of all the family members after the demise of Ashok Kumar Patny and that all the family members including the appellant signed on the said Will. The answering respondents also say that the Late Ashok Kumar Patny had executed registered gift deeds dated 12.01.2005 and 02.06.2008 in favour of the respondent Nos.4 and 6 whereby the said respondents became the joint owners of a plot measuring 5515 Square Yards at Secunderabad Cantonment (schedule I and K properties). The

said respondents are receiving rents from respondent No.15 pursuant to the properties being leased out to the latter.

5. A brief background to the present appeal is as follows:

5.1. The appellant/plaintiff had earlier filed I.A.No.58 of 2013 in O.S.No.4 of 2013 seeking injunction against the respondents from alienating the suit schedule properties. The I.A. was dismissed by the Trial Court on 09.02.2015 and the appellant challenged the order of dismissal in C.M.A.No.467 of 2015. The said C.M.A was dismissed by a Coordinate Bench on 30.08.2018 - albeit with a direction on the respondent No.1 (grandmother of the appellant) to pay 5% share of the rent received by the respondent No.1 to the appellant as per the direction of the Trial Court dated 09.02.2015. The Trial Court passed an order on 28.09.2021 directing the respondent No.1 to comply with the order passed by the Coordinate Bench.

5.2. The appellant filed a second application bearing I.A.No.243 of 2022 seeking appointment of Receiver on the ground that the respondent No.1 (his grandmother) failed to comply with the

orders passed by the Trial Court in 2015 and the Coordinate Bench in 2018. The said I.A. was dismissed by the Trial Court by the impugned order dated 27.07.2022 which resulted in the present Appeal.

6. The appellant/plaintiff argues for setting aside of the impugned order rejecting the appellant's application for appointment of an Advocate as Receiver in respect of the suit schedule properties. According to the appellant, the respondents do not have any defence against non-compliance of the orders passed by the Trial Court and the High Court in respect of deposit of 5% of the rents to the share of the appellant's rights in the suit schedule properties.

7. The respondent Nos.1, 3 - 6, on the other hand, place emphasis on the appellant's conduct as the grandson of the respondent No.1 and a close relative of the respondent Nos.3-6 to say that the appellant has continuously interfered with the respondents' peaceful possession and enjoyment of the properties bequeathed to them by way of the Will of the Late Ashok Kumar

Patny dated 04.09.2010 and the gift deeds executed by Late Ashok Kumar Patny in favour of respondent Nos.4 and 6.

8. The impugned order also records the conduct of the appellant/plaintiff in failing to cooperate with the Court in complying with the direction issued by the Coordinate Bench on 30.08.2018 for disposing of the Suit within four weeks from the receipt of the order. The Trial Court also records that the appellant filed the application for appointment of Receiver at the stage of evidence of the appellant and that the only intention of the appellant is to prolong the proceedings with an attempt to mislead the Court with regard to deposit of 5% share of the rent by the respondent No.1.

9. The relevant part of the impugned order notes that the pleadings filed by the parties do not amount to a crystallized right of the appellant in respect of the relief claimed in the Suit which is for partition and separate possession of the suit schedule property A-Z and AA-HH. The order also records the plethora of defendants (24 in number) who have been made parties to the Suit and that most of these defendants have not contested the

proceedings. Most pertinently, the impugned order records that the appellant sought for appointment of Receiver in respect of the suit schedule properties.

10. We agree with the reasons given by the Trial Court in rejecting the appellant's application for appointment of Receiver. There is no perversity or infirmity in the reasons given by the Trial Court.

11. The law with regard to appointment of Receiver is found in Order XL Rule 1 of The Code of Civil Procedure, 1908. Sub-Rule (1) of Rule 1 of Order XL provides for 4 situations where the Court may appoint a Receiver without dislodging the Court's power to grant or refuse appointment of Receivers on equitable considerations. Order XL Rule 1(1) begins with

"Where it appears to the Court to be just and convenient, the Court may by order"

The provision makes it clear that appointment of Receivers is not granted as a matter of course but only where the Court deems it fit to make such appointment on being convinced that the conditions under Order XL Rule 11(1)(a)-(d) exist and

warrant appointment of a Receiver. The conditions cannot be said to be exhaustive since the Court preserves its power to refuse appointment of Receiver even where all the conditions exist. The Court's discretion is reinforced by the words "*just and convenient*" which the Court may construe and assess under this Section.

12. The Court would not also ordinarily appoint a Receiver except on a *prima facie* finding that the plaintiff has an excellent chance of success in the Suit. The plaintiff must show an adverse claim being made to the property as well as some imminent danger to the property or loss to the plaintiff calling for immediate action. The imminent risk of loss must clearly be spelt out and be sufficient to prod the Court into invoking its discretionary jurisdiction for appointing a Receiver. The conduct of the party seeking such appointment would also be a relevant consideration for the Court in exercising its discretion under Order XL Rule 1(1) of the CPC.

13. In essence, appointment of Receivers is an exceptional and unusual bend in the proceedings, even after a decree, where the Court delegates in part the power to monitor the course of the

proceedings and prevent the subject matter of the Suit being frustrated or even to prevent irrecoverable injury or loss to either of the parties to the suits/decrees. Collection of rents forms a part of Order XL Rule 1(d) where a Receiver is given the power to collect rents and profits pertaining to the suit property.

14. The Supreme Court and the High Courts have held in unison of the complete discretion conferred on the Court in the matter of appointment of Receivers under Order XL Rule 1(1) of The Code of Civil Procedure, 1908; *Kasturi Bai v. Anguri Chaudhary*¹, *Parmanand Patel (dead) by L.Rs. v. Sudha A. Chowgule*², *T.Krishnaswamy Chetty v. C. Thangavelu Chetty*³ and a Coordinate Bench of this Court in *Cheruku Swamy Nathan v. Venisetty Rathnam* (C.M.A.No.37 of 2021).

15. The facts brought to the notice of this Court do not indicate any threat of injury or loss, immediate or otherwise, to the plaintiff/appellant. There is clearly no imminent threat of the appellant either being dispossessed of his original share in the

¹ AIR 2001 SUPREME COURT 1361

² (2009) 11 Supreme Court Cases 127

³ AIR 1955 MAD 430

property or being deprived of the fruits thereto. The appellant is clearly hankering for the 5% share of rent from his grandmother/respondent No.1 while continuing to enjoy the benefit of the properties which are in the exclusive possession and control of the appellant. It is also relevant that the appellant has not been able to establish any title over the entire suit schedule property of which the appellant seeks a Receiver.

16. The appellant has admitted that there are certain properties which were gifted to the respondent Nos.3 and 5 by way of gifts and have also been acted upon. Hence, the Trial Court was wholly correct in its view that it was essential to determine the appellant's entitlement for partition of the suit schedule property and the extent of his share before appointing a Receiver in respect of the entire property.

17. The decisions relied upon by the appellant do not take his case forward. The fact of the appellant No.1 being an old lady, who could not manage the task of collecting rent from the tenants, weighed with the Supreme Court in *Kasturi Bai*. In *Parmanand Patel*, the Supreme Court took into account the fact

that the first respondent was required to operate not only under the Receiver but also in close collaboration with the Chartered Accountant. In *Cheruku Swamy Nathan*, a Coordinate Bench of this Court specifically found that the appellant was collecting rents out of the suit schedule immovable property and appropriating the rents to himself. In *Chelikam Rajamma v. Padileti Venkataswami Reddy*⁴, a Coordinate Bench of this Court was not satisfied of the plaintiff having made out any case for appointment of Receiver.

18. With regard to the appellant's claim of 5% of the respondents' share of rent, we note that the respondent No.1 has deposited rents till 2020. The question of whether the respondent No.1 should continue to deposit the rent is a matter which can be taken up by the parties in appropriate proceedings for adjudication. The subject matter of the present appeal cannot be mixed up with the appellant's claim of 5% of the rents to be deposited by the respondent No.1.

⁴ 1993 (2) ALT 154

19. At present, the only issue before us is whether the appellant had made out a case for appointment of Receiver over the entirety of the suit schedule properties. Considering the admitted facts, which have been placed before us, we are unable to accept the contentions of the appellant, either in fact or in law. We have also not found any infirmity in the impugned order warranting our interference.

20. C.M.A.No.426 of 2022 is accordingly dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

MOUSHUMI BHATTACHARYA, J

NAGESH BHEEMAPAKA, J

Date: 01.05.2024
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