

Ram Khelawan Vs. Sudama Devi

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Court : Allahabad

Decided On : Oct-11-1963

Reported in : AIR1964All366

Judge : B.D. Gupta and ;H.C.P. Tripathi, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 503 - Schedule - Rule 1, Order 40

Appeal No. : F.A.F.O. No. 350 of 1960

Appellant : Ram Khelawan

Respondent : Sudama Devi

Advocate for Def. : Rathore and ;S.R. Dwivedi, Advs.

Advocate for Pet/Ap. : K.M. Sinha and ;Shambhu Pd., Advs.

Disposition : Appeal dismissed

Judgement :

Tripathi, J.

1. This first appeal from order is directed against an order passed by the learned Civil Judge of Faizabad on 6-9-1960 in miscellaneous case No. 25 of 1960 appointing the defendant-appellant Receiver of the property in suit and directing

him to furnish security for Rs. 15,000/-for accounting and for making good any loss to the estate in case a decree was passed against him.

2. One Smt. Sudama Devi filed a suit in forma pauperis against the defendant-appellant in which she claimed a decree for possession over the properties detailed in the plaint, inter alia, on the ground that she was the only daughter and sole heir of Ram Samujh, the deceased brother of defendant-appellant, that all the properties, which were subject-matter of the suit, were properties left by deceased Ram Samujh, that the defendant had no right to possess them and she should be put in possession of the same. She also prayed for being declared a pauper and being allowed to sue in forma pauperis.

3. On the same date she also made an application under Order 39, Rule 7 read with Order 41, Rule 1, C. P. C. in which she alleged that the opposite party, on hearing about the application to sue as a pauper, will try to remove the articles so that the applicant may get nothing, and will thus put the applicant to irreparable loss by their removal, concealment or conversion and, therefore, she prayed that the court may be pleased to appoint a Commissioner to inspect and prepare a list of the articles mentioned in the plaint and to preserve the same, till the disposal of the application or the suit. In this application she gave a list of the properties which consisted of a pukka house valued at Rs. 6,000/- and a large number of ornaments and other moveables valued at about Rs. 22,000/-.

4. It appears from the record, that, on this application, the Court was pleased to appoint one Sri Ram Samujh Pandey, a lawyer, to prepare an inventory of the properties which were the subject-matter of the suit, but did not pass any order regarding her other prayer. It also appears from the record that the Commissioner could not prepare a list of the properties. However, the learned counsel for the defendant-appellant conceded before us that the list of the properties given in the plaint were substantially correct and were found in possession of the defendant.

5. During the pendency of the proceedings for declaring the plaintiff-respondent a pauper, another application was presented by her on 6-8-1960 in which she alleged that the opposite party was anxious to defeat the claim of the applicant by removing the articles found inside the house and if the articles are removed she

will never get back the properties even if a decree is passed in her favour. Consequently she prayed that a Receiver be appointed of the properties in suit which had been found with the defendant. In support of her application, an affidavit was also filed on the same day by her next friend Jokhan Ram in which similar allegations were made that in case Receiver is not appointed there is great apprehension of the properties being removed or converted beyond recognition.

6. The defendant objected to the appointment of a Receiver before the trial court on the ground that he was in possession of the properties and as such the appointment of a Receiver was uncalled for. He admitted that Ram Samujh deceased was a brother of the defendant but he denied that the plaintiff was his daughter. He further alleged that Ram Samujh had died as a member of a joint Hindu family leaving the defendant as sole surviving co-parcener, and the plaintiff had no right to lay any claim on the properties in suit. It is significant to note that, in his objection filed before the trial Court, the defendant, though he contested the right of the plaintiff to file the suit, did not specifically meet her allegation that there was danger of the properties being removed in case a Receiver was not appointed for the same.

7. The learned Civil Judge, after hearing the parties, passed an order appointing the defendant himself as a Receiver of the suit property on the conditions, referred to above.

8. Learned counsel appearing for the defendant-appellant has contended before us that as the *forma pauperis* proceedings were still pending, and the plaintiff had not been declared a pauper on the date of the order, and as the suit had not been registered, the Civil Judge had no jurisdiction to pass an order appointing a Receiver. His further contention is that this was not a fit case in which the learned Civil Judge, should have appointed a Receiver in view of the fact that the defendant had been in possession of the properties and there was no allegation of any misappropriation, or malversation, on his part, of the properties in suit.

9. As regards the first point raised by the learned counsel for the appellant we do not find anything in Order XL Rule 1 C. P. C. to warrant such a proposition.

10. Order XL Rule 1 C. P. C. runs as follows: '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;
.....'

A careful perusal of this rule makes it abundantly clear that there is no warrant for the suggestion that, except in a suit, the Court has no authority to appoint a Receiver even if it is satisfied that it is just and convenient to do so.

11. This becomes apparent when a comparison is made between the phraseology used in Order XL Rule 1 and the words of Section 503 of the old Code. Section 503 provided as follows :--

'Where it appears to the Court to be necessary for the realization, preservation or better custody or management of property, moveable or immoveable, the subject of a suit or attachment.'

Thus according to Section 503 C. P. C., as it stood, the court could appoint a Receiver only in respect of the subject of a suit or attachment. When the provisions of the Code were amended the words 'subject of a suit or attachment' were deleted by the Legislature. This is significant This shows that the legislature thought it fit to remove the restraint which formerly existed in respect of the power of the court to appoint a Receiver only in respect of properties which were, the subject-matter of a suit or attachment.

12. The question arose before a Division Bench of the Bombay High Court consisting of Macklin and Gajendragadkar, JJ. in the case of Bai Sakri v. Bai Dhani AIR 1948 Bom 139 wherein Their Lordships were pleased to hold that:--

'The omission of the words 'the subject of a suit or attachment' leaves the rule in extremely general terms and so far as Sub-rule (1) is concerned there is nothing whatever in the rule to suggest that a receiver could not be appointed in any

proceeding that was before the Court. It is, of course, necessary that there should be some proceeding before the Court, and a person who has no other business in the court at all cannot come to the Court and ask the Court to appoint the receiver and then go away. But so far as Sub-rule (1) is concerned there is nothing to suggest that an application to sue as pauper is not the sort of proceeding in which receiver could be appointed. It is true that Sub-rule (2) refers to parties to the suit, but we do not think that these words in Sub-rule (2) can be allowed to control the general terms of Sub-rule (1) in view of the fact that there has been a deliberate amendment of the old rule and the principal part of the amendment was to omit the only words which would limit proceedings before the court to suits or attachment.'

Their Lordships, therefore, held that where an application has been made for leave to sue in forma pauperis, a Receiver could be appointed under Order XL Rule 1 pending decision of the application.

13. We are in respectful agreement with the decision of the Bombay High Court in the above noted case. The question also came up for consideration in another connection before a Full Bench of this Court in the case of Mahomed Ali Khan v. Ahmad Ali Khan : AIR1945 All261 . The majority of the learned judges constituting the Full Bench were pleased to hold that :-

'Jurisdiction to protect property pending the ascertainment of rights is inherent in any court which once has cognizance in any form of a dispute involving the execution of a trust or the administration of assets, and the court has, not merely jurisdiction, but a duty to safeguard them. This being so a receiver can be appointed in proceedings other than suits.'

14. The question can be considered from another standpoint. An application for permission to sue in forma pauperis is in the nature, of a plaint. It contains a recital of the facts constituting the cause of action, the subject-matter of the claim and the reliefs prayed for in that regard. In fact, Rule 2 of Order XXXIII provides that:

'Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.'

15. The proceedings for determining the question as to whether the plaintiff should be declared a pauper and thus made exempt from payment of court fees of not then commences and, in the very nature of things, it takes some time before the Court is in a position to come to a definite conclusion in that connection. However, once the plaintiff or the applicant is declared a pauper, the application is deemed to be the plaint in the suit as provided under Rule 8 of Order XXXIII C. P. C. The learned counsel for the defendant-appellant has informed us that the plaintiff had been allowed subsequently to sue as a pauper in this case. Therefore, the result that can follow under the law, on her having been granted permission to sue as a pauper is that the application which she presented asking for permission will be, considered as a plaint in her suit, and her suit will be deemed to have been filed on the date when she presented the application. Therefore, by virtue of the subsequent order of the court granting her permission to sue as a pauper, we must now proceed on the assumption that the suit which has been registered, was also pending before the learned Civil Judge on the date on which the order of appointment of a Receiver was made.

16. The learned counsel for the appellant also contended that this was not a fit case on merits in which a Receiver should have been appointed. We do not find ourselves in agreement with this contention. The properties involved in that suit are of the value of Rs. 28,000/- out of which moveables are of the value of Rs. 22,000/-. The plaintiff, when she instituted the suit, was a minor living with her next friend in a different village. The defendant is in possession of the properties, and there was an allegation by the plaintiff that there was great apprehension of the properties being removed or converted beyond recognition during the pendency of the suit. In view of the fact that a large portion of the subject-matter of the suit consisted of moveables, we cannot hold that the apprehension expressed by the plaintiff in her application in this regard is wholly without any foundation. On the other hand, in view of the nature of the properties, it was but natural on the part of the plaintiff to seek the assistance of the court for their due preservation, and for the maintenance of status quo during the pendency of the trial. We are, therefore, of the opinion that it was just and convenient, in the circumstances of the case, to have appointed a Receiver in order to maintain the status quo in respect of the properties in suit. We also find that the learned Civil Judge has appointed

defendant himself as the Receiver of the properties, and has not dispossessed him of the properties in suit during the pendency of the trial. We are unable to understand what justifiable grievance he can make when he has not been dispossessed of the properties. It may be mentioned here that, during the pendency of this appeal, an undertaking was given on behalf of the defendant that he will not alienate or damage or destroy the immovable property and such moveables in dispute as were in his possession of which he also furnished a list to the trial court. In view of this, we do not find that any onerous condition has been imposed on the defendant by the order under appeal.

17. The learned counsel for the appellant further contended that the learned Civil Judge was not justified in asking the defendant to furnish security of Rs. 15,000/- for accounting and for making good any loss to the estate during his receivership. It may be noted here that properties involved in the suit are of the value of Rs. 28,000/- as referred to above. The plaintiff claims the entire properties as her own. The amount of security demanded by the trial court from the defendant to enforce liability to make good any loss to the properties occasioned by him during the pendency of the suit therefore cannot be held to be excessive. However, we must make it clear that the security for Rs. 15,000/- demanded by the trial court can be furnished by the appellant either in cash, or in the shape of any other property to the satisfaction of the trial court, within a period of 6 weeks from the date of this order.

18. This appeal, therefore, has no force and must be dismissed.

19. We, therefore, confirm the order of the learned Civil Judge dated 6-9-1960 appointing the defendant Receiver of the properties on his furnishing security for Rs. 15,000/- either in cash, or in the shape of any other property to the satisfaction of the court below, and dismiss this appeal. If no security is furnished within the period allowed by us it will be open to the learned Civil Judge to take whatever steps he deems proper, in consonance with the order under appeal, for the preservation of the properties during the pendency of the suit. As nobody has appeared for the respondent we make no order as to costs.

20. Let the record of this case be sent to the court below as expeditiously as possible.

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