

Krishnaswami Naicker Vs. Naranappa Naicker

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Court : Chennai

Decided On : May-01-1958

Reported in : AIR1959Mad209; (1958)IIMLJ429

Judge : Basheer Ahmed Sayeed, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rule 16 - Order 40, Rule 1; Limitation Act, 1908 - Schedule - Article 182(5)

Appeal No. : A.A.A.O. No. 29 of 1957

Appellant : Krishnaswami Naicker

Respondent : Naranappa Naicker

Advocate for Def. : R.V. Seshadri and ;K. Ayyappan, Advs.

Advocate for Pet/Ap. : V. Ratnam, Adv.

Disposition : Appeal allowed

Judgement :

1. This second appeal is against the Order of the learned Subordinate Judge of Ramanathapuram at Madurai in A. S. No. 59 of 1956.
2. The main question of law that arises for consideration in this appeal is whether execution could be allowed in favour of the legal representatives of a deceased receiver and whether a receiver could have legal representatives to succeed him.

To appreciate the point for decision it may be necessary to mention a few relevant facts in brief. On 9-8-1923 the father of the appellant before me executed a mortgage in favour of one Solayappa Naicker for Rs. 200.

It was a simple mortgage. The mortgagee, Solayappa, was indebted to another Solayappa on a promissory note. The promisee P. Solayappa, filed a suit on the promissory note and obtained a decree. The suit filed by the said P. Solayappa was O. S. No, 25 of 1935. On 10-8-1936 the decree-holder P. Solayyappa in the promissory note suit O. S. No. 25 of 1935 was appointed receiver to collect the debts due to his judgment-debtor. Among the debts to be collected by the said decree-holder, P. Solayyappa, was the mortgage debt due by the father of the present appellant under the mortgage executed on 9-8-1923.

In order to collect the said debts under the authority given to him as receiver in O. S. No. 25 of 1935, the said receiver P, Solayappan filed O. S. No. 338 of 1936 on the file of the District Mun-sif's Court, Sattur, to enforce the mortgage and bring the property to sale. The preliminary decree in the mortgage suit filed by the receiver was passed on 9-12-1936. and the final decree on 22-8-,1940.

This receiver, Solayappa, died in February 1941. Thereafter on 18-6-1943 one Venkitaswamy Naicker, the son of Solayappa, the receiver, filed an execution petition to execute the mortgage decree and for sale of the mortgage property. On 8-10-1943 the execution petition was rejected on the ground that this Venkitaswamy Naicker had no locus standi to prefer the execution petition. Subsequently, on 2-7-1946, another execution petition was filed by one Naranappa Naicker, the brother of Venkitaswami Naicker the latter having apparently died. This execution petition was also rejected without notice to the judgment-debtor on 1-11-1946.

A further execution petition was filed by the said Naranappa Naicker on 22-10-1949, and it was also rejected on 24-2-1950 for the non-production of the order appointing Naranappa, a receiver in the suit O. S. No. 25 of 1935, in place of the previous receiver, who had died long ago. Another execution petition E. P. No. 134 of 1953 out of which the present appeal has arisen, in the suit, O. S, No. 338 of 1936, on the file of the District Munsif's Court at Sattur, was filed on 22-8-1952 by

Naranappa for two reliefs, viz., (1) to declare the second defendant a major, and (2) to direct the sale of the mortgage property.

It transpired on 12-1-1953 Naranappa obtained an order in his favour appointing him as a receiver and produced the same in court. Objection was taken by the second defendant that the execution petition dated 22-8-1952 was barred by limitation. The second defendant, the appellant before me, preferred an appeal before the learned Subordinate Judge of Ramanathapuram at Madurai.

His contention was that without an order of appointment neither Venkitaswami, the previous applicant, nor Naranappa the subsequent applicant could maintain any execution petition and that the three petitions filed prior to E. P. No. 134 of 1953 were all petitions not in accordance with law and that they could not have the effect of saving limitation for the execution petition filed on 22-8-1952. -The further contention raised was that the appointment of P. Solayappa as receiver did not have the effect of an assignment of the mortgage debt in favour of the receiver so appointed.

The third contention raised was that the appointment of Naranappa as receiver on 12-1-1953 cannot validate the execution petitions filed by him earlier. The learned Subordinate Judge however overruled the objections raised by the appellant before him and allowed the execution to proceed on the ground that the petition was in time and that it was not barred by limitation. In consequence he dismissed the appeal. It is against this order dated 20-6-1956 that the 2nd defendant has preferred this civil miscellaneous second appeal.

3. Mr. Ratnam appearing on behalf of the appellant has invited my attention to several passages in Kerr on Receiver, 12th Edn. (1952). The nature of the office of the Receiver is described by the learned author on page 1 in the following terms;

"A receiver in an action is an impartial person appointed by the court to collect and receive, pending the proceedings, the rents, issues and profits of land, or personal estate, which it does not seem reasonable to the court that either party should collect or receive or for enabling the same to be distributed among the persons entitled:"

The object of the appointment of a receiver is defined on page 4 under the caption "Object of appointment." In the next "paragraph the purposes for which a receiver is appointed is elaborately set out. On page 161 the learned author under the caption "When charge created" states as follows

"The appointment of a receiver does not of itself create a charge but as an effect of an agreement between the parties or of the terms of a statute, a charge may be created or rendered enforceable by the appointment. Thus the appointment of a receiver at the instance of debenture holders cause's the floating charge created by the debentures to crystallise into a specific enforceable charge."

Mr. Ratnam has also drawn my attention to the comment by the learned author that an order appointing a receiver does not of itself cause any estate to vest in the receiver and that the appointment at the instance of a judgment creditor of a receiver over the debtor's personal property does not create a charge; nor can the person who has obtained the order, by giving notice of it, obtain thereby a charge; nor has the court jurisdiction to make a declaration of charge when making the appointment.

A reading of all these passages in Kerr on Receivers to which my attention has been drawn by Mr. Ratnam, does not show that the receiver when appointed to collect a debt becomes the assignee of the debt in respect of which he is given authority to collect and account to the court such collection. Even so, Mr. Ratnam has invited my attention to the commentaries by Sir John Woodroffe occurring at pages 3 to 9 in his book on the Law relating to Receivers, 5th Edn,

In particular, he has relied on passages in which the description of receivers, the nature of the office of the receivers and the functions and powers of the receivers are dealt with. At page 3 the learned author mentions that the object of the appointment of a receiver is

"to protect the estate from unnecessary and expensive litigation, to preserve it for the equal benefit of those equally interested in its distribution and to keep the property at all times within the control of the court by which the receiver has been appointed."

Some of the comments which the learned author has made are as follows:

"A receiver can only be properly granted for the purpose of getting in and securing funds which the court at the hearing, or in the course of the cause will have the means of distributing among the persons entitled to those funds The Receiver appointed in a particular suit is nothing more than the hand of the court, so to speak, for the purpose of holding the property of the litigant whenever it is necessary that it should be kept in the grasp of the court in order to preserve the subject-matter of the suit pendente lite The receiver has no personal rights in the property and he cannot take any steps even for the purpose of defending his possession, without the sanction of the court. A receiver has no proprietary right or interest whatever. Notwithstanding his appointment the proprietary rights in the estate remain in the persons who are by law entitled to the estate The receiver's possession is not a possession by any personal right. It is the possession of the Court and he is totally devoid of any interest in the property. He is in the position of a stake-holder who has custody of the property for the benefit of the true owner A receiver duly appointed is from the moment of his appointment to be considered as an officer of the court itself. The receiver has no estate or interest himself, and his power to manage is created simply by the Order of the court appointing him and is binding only upon the persons before the court As the servant of the court and not of the parties-he has only such power as the court may choose to give him. and it is a contempt for any or of the parties to enter into an agreement with him restricting and controlling his powers."

These passages do not anywhere state that on the appointment of a judgment-creditor as receiver with specific authority to collect a debt due on a mortgage, the mortgage debt becomes assigned to the receiver so appointed in order to enable his legal representatives to proceed in execution of the decree obtained by the receivers.

4. In *Muthuchellappa v. Palaniappa*, , relied upon by Mr. Ratnam on behalf of the appellant, it has been held by a Bench of this court that an order of appointment of a Receiver to collect a debt was only to empower him to realise the amount and to await further directions of the court as regards its disposal if such directions had

not been given at the time of the appointment of a receiver and that the appointment of a receiver in respect of a debt would not be tantamount to an assignment in his favour of the debt itself so as to enable him to file a suit in the forum where he was appointed receiver.

The learned Subordinate Judge, however, got over the effect of this decision against the respondent by holding that since the appointment of a receiver does not assign the debt, in his view, the position of the receiver is one of an agent of the court. He went on to say that the court could ratify the acts of the agent by subsequent approval. The learned Subordinate Judge also observed that it was not necessary to go into the result of the execution petitions that were filed to find whether they were steps in aid of execution, and that In the present case the persons who had filed the execution petitions were the sons of the deceased Parapatti Solayappa Naicker, and that the subsequent order of appointment produced by Naranappa Naicker in 1953 validated the previous execution petitions filed by Naranappa Naicker and that the Court had approved of the action of Naranappa Naicker and all the three petitions which were in accordance with Order 21, Rule 11, G. P. C., should be deemed to be petitions which were steps in aid of execution.

The argument seems to be rather assuming too much and wholly unconvincing. It has to be remembered that though the original receiver, that is P. Solayappa Naicker, could be considered to be an agent of the court, as has been described by learned authors on Receivers that he is the "hand of the court", still, when once the receiver so appointed is dead, there is no agent available for the court, unless another in his place gets appointed. When the receiver was dead, any petitions filed during the interregnum, before another person was appointed as receiver could not be said to be competent nor in accordance with law, because the petitions were not filed by persons, who were clothed with any authority of the court.

In the present case, the next order of appointment of a receiver was made only in January 1953, and it is far-fetched to say that by reason of the appointment of Naranappa Naicker in 1953, all the applications filed by him before he was so

appointed receiver, were validated by the court appointing him as receiver. There is no force in the argument that because Naranappa Naicker was appointed receiver on 12-1-1953, the court approved of all his previous actions, when he was not a receiver appointed by the court.

5. The learned Subordinate Judge has also imported into a consideration of the case the theory that an officer appointed by court could have legal representatives to succeed to his office. The receiver appointed, for whatever purpose, is in law no other than an officer and this office cannot have any legal representatives to succeed thereto.

Unless it be that P. Solayyappa Naicker, who had been appointed receiver, also became the assignee of the debt, no question of any legal representatives succeeding to the receiver Solayyappa could arise, in so far as the receivership is an office created by an order of court; and as soon as the receiver dies the office comes to an end so far as he is concerned; and unless a successor is appointed by a fresh order issued by the court, there cannot be legal representatives to the deceased receiver coming and taking his place on his demise.

He can only have successor in office and not legal representative as such. If this were the law it will create an anomalous position. It is extremely doubtful whether by reason of a later appointment of one person as the receiver, the earlier actions of an unauthorised person do become ratified or approved by the subsequent appointment of the person as a receiver, unless there is something expressed to that effect.

This proposition of law does not appeal to me as being sound and it will again lead to strange results. By no stretch of imagination could the subsequent appointment have any retrospective effect, nor could it relate back to the dates on which the previous applications were made when Naranappa Naicker was not clothed with authority as receiver.

It is not a case of the sons of the deceased Solayappa taking up the office vacated by his demise by operation of any law either. Nor is it a case of the sons of Solayappa, namely Venkita-swami and Naranappa Naicker claiming under

Solayappa, the receiver any office in any capacity. So that neither under Section 146, C. P. C., nor under Order 21, Rule 16, could Naranappa Naicker claim to be entitled to file execution petitions in his capacity as legal representative or the deceased receiver. Neither the deceased Solayappa who sued as receiver nor his sons could be termed or recognised as decree-holders in their own right.

When once it is admitted that Solayappa, the receiver, did not become the decree-holder in his own right and the debt under the mortgage suit did not become vested in him in his individual capacity, then his position in the mortgage suit was merely that of a receiver, an officer of court, whose office ceased to exist on his demise. It is unnecessary in this connection to refer to the decisions that the appointment of a receiver does not date back to any period prior to the appointment.

If authority is required, the decisions in *Hudson v. Morgan*, ILR 30 Cal 713, and in *Mahamad. Kasim Sahib v. Panchapakesa Chetti*, ILR 35 Mad 578, and the passage occurring at p. 152 in *Ken-on Receivers* are sufficient on this point. It is also well known that the parties to the suit would get the right on the death of the receiver and not the so-called legal representatives of the deceased receiver.

6. It is, therefore, difficult to hold that the petitions relied upon by the respondent to save limitation could at all be considered to be steps-in-aid of execution, in so far as they have not been taken out by the decree-holder himself or any one who succeeded him in the office of receiver, in which capacity alone the decree was obtained in O. S. No. 338 of 1936. These execution petitions must therefore be declared as not being valid or competent and not being in accordance with law and they would therefore not help to save limitation for the execution petition filed in 1952.

7. Mr. Venugopalachari appearing on behalf of the respondent urges that, since the deceased receiver was appointed receiver in his own suit in which he obtained a decree and sought to execute the same, the appointment was made not on behalf of any others interested in the amount due under the mortgage but in his own interest as decree-holder in O. S. No. 25 of 1935. He also brought to my notice that in 1941 in E. P. No. 5 of 1940 in O. S. No. 25 of 1935 itself the sons of

the deceased, P. Solayappa, got themselves appointed as legal representatives of the deceased Solayappa, and therefore he advanced the contention that, since the receiver is appointed to safeguard his own interest for his own personal benefit and is authorised to collect the money due under the mortgage in order to recoup himself to the extent of the amount due to him under the decree obtained by him, and since his sons were brought on record in O. S. No. 25 of 1935, the authority and the right which the said P. Solayappa got by virtue of his appointment as a receiver could enure to the benefit of his sons, who were brought on record as legal representatives. He further relied upon the fact, that the order of appointment of P. Solayappa as a receiver also provided for the money collected under the mortgage being appropriated towards his decree, that the sons of the deceased P. Solayappa, were brought on record in O. S. No. 25 of 1935 as the legal representatives of the said P. Solayappa and were permitted to continue the execution proceedings and that the decree would also go to show that the legal representatives of the said P. Solayappa became clothed with the authority to continue to function in the place of the deceased P. Solayappa in regard to O. S. No. 338 of 1936.

I do not think that I could accept this argument of the learned counsel for the respondents. In so far as the decree in O. S. No. 25 of 1935 was a decree in favour of P. Solayappa in his own individual and personal right, the sons of the, deceased Solayappa were entitled to be brought on record as legal representatives for purposes of that decree and its execution. But the appointment of the said Solayappa as receiver to collect the rents due under the mortgage in respect of which he filed O. S. No. 338 of 1936, cannot be said to enure to the benefit of his legal representatives, his sons after his death.

It will be indeed a very strange proposition of law, if, when once a father is appointed as receiver by the Court for the collection of debts due to his judgment debtor, on his death the sons should be entitled to come on the scene and continue to discharge the functions, of the receiver. It would then mean that the office of the receiver becomes more or less one which can be succeeded from father to son and that the successors in office need not look to the court for any order of appointment in their favour and they could carry on from generation to

generation in that way.

It cannot for a moment be ignored that the office of receiver itself is created by an order of court and it is an Order of court which vests rights in the person so appointed by the court and such rights are not transferable from father to son, nor hereditary, as if the office of the receivership was an hereditary one. If the office itself is created by an order of court, then no one, who is not in possession of such an order of court and who is not appointed by virtue of such an order of court, could however be entitled to exercise any rights of a receiver in respect of any matter whatsoever, whether it be the collection of outstanding or the execution of any decree obtained.

8. Mr. Venugopalachari has again relied upon an order said to have been passed in favour of the respondents in another E. P. No. 6 of 1941 in O. S. No. 25 of 1935 in which it transpires that the legal representatives of the deceased Solayappa had applied for being appointed receivers and that they were so appointed and directed to collect some other debt due to the judgment debtor. But this Order cannot really extend itself to the legal representatives of the deceased Solayappa to function in relation to the collection of the debt due under O. S. No. 338 of 1936, unless there was an express authority given to the said legal representatives for that purpose.

9. The further point raised by Mr. Venugopalachari was that in so far as the receiver Solayappa was appointed and that the appointment was coupled with his own interest to collect the outstandings under the mortgage and appropriate the same to himself and pay over the balance, if any, to the judgment debtor the position of Solayappa became quite different from the ordinary receivers appointed by courts. I do not think that this argument has force.

Merely because a receiver was appointed to collect and to appropriate the same towards the debt that might be due to him under a decree, it does not mean that the receiver becomes entitled to act on his own behalf without any further reference to court or that he can leave his receivership to be succeeded to by his legal representatives, if he dies in the meanwhile. This argument, if accepted, is to ignore the fact that the appointment of a receiver has its source in the order made

by the Court and his death cannot by any means take away the authority of the court which brought into existence the office of the receiver.

If the receivership takes its origin and comes into being only by virtue of the order passed by the court in favour of the individual and that being the only way by which a receiver could have a right to function as such, it is futile to argue that any other person, who is not so clothed with an authority from court, will function as receiver when the previous receiver relinquishes his office.

If, therefore, once the deceased P. Solayappa is to be recognised as having functioned in relation to O. S. No. 338 of 1936 as receiver, there is no escape from the fact that no one else, even though it may be his own sons, has any right to come on the scene and claim to function as receiver and discharge the duties of a receiver without any appointment by a court in his or their favour.

Neither the fact that the sons were brought on record as legal representatives in the suit in which their father was personally interested and had a decree in his own right nor the fact that they had been appointed receivers to collect another debt, nor the fact that the father of the respondents had a personal interest in the decree obtained by him in O. S. No. 25 of 1935 would be of any avail to the respondents to claim that the applications they filed in execution of his decree between 1943 and 1950 were in accordance with law and that they would have the effect of saving limitation for the execution petition now in question.

10. I am, therefore, unable to agree with the learned Subordinate Judge that the E. P. No. 134 of 1953 was in time by virtue of the previous execution petitions filed in 1943, 1946 and 1949. I cannot also agree with the learned Subordinate Judge that the previous execution petitions were steps in aid of execution in order to make the execution petition now in question a proper and competent one.

11. In the result the order of the learned Subordinate Judge is set aside and this civil miscellaneous second appeal is allowed with costs.

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