

ANDHRA PRADESH HIGH COURT

Chavali Venkataswami

Vs.

Chavali Kotayya

A.A.O. Nos.291. 303 and 405 of 1958 and 18.63 and 65 of 1959 and C.M. Ps. Nos. 1132. 236,
927 and 3597 of 1957

(P. Chandra Reddy, C. J. and Srinivasa Chari, J.)

13.10.1958. 24.04.1959

JUDGMENT

Srinivasa Chari, J.

1. This appeal is against the order of the Subordinate Judge, Ongole, passed in I.A. Nos. 1032 and 1055 of 1958 in O.S. No.29 of 1958 on his file. The plaintiff is the appellant before us. The order that is now impugned is an order appointing the 1st defendant in the suit as a Receiver for the motor buses and lorries the permits for which stand in his name. The plaintiff was also appointed Receiver for the Buses and lorries whose permits stood in his name and likewise the third defendant was appointed Receiver for the lorries in his name. The court after appointing these Receivers directed them to furnish accounts every month to the court and whenever there was any difficulty in the management, they were directed to take directions, from Court.

2. It may be necessary to state a few facts in order to understand how this litigation started and under what circumstances this order for the appointment of a Receiver was made. Five brothers, Papayya, Iyyavaru, Kotayya, Jalayya, and Venkatiswami are all the sons of one Chintayya. The suit was filed by Venkataswami, the plaintiff for division of properties mentioned in the schedule to the plaint both moveable and immovable. We are now concerned with the buses and lorries forming part of the movable properties mentioned in Schedule A to the plaint. The plaintiff's case was that in 1945 among the brothers, Papayya and Jalayya had gone out of the family and three others remained joint. It was also alleged that the plaintiff, defendants Nos.1, and 2 were partners in the business entitled to a 1/3 share each. The further case of the plaintiff was that defendant No.1 Kotayya was the manager of the business and had the benefit of the monies realised in the business; that amounts realised in the business were invested later on and they all formed part of the partnership business. Defendant No.1 denied that there was any joint family property and averred that the properties belonged to him. He also stated that die alleged partnership with regard to the motor buses business was illegal not having been recognised by the authorities and being in contravention of the provisions of the Motor Vehicles Act. His further case was that in September, 1957, the plaintiff, defendants Nos. 1 to 3 referred the matter to arbitration and in pursuance of the award of the arbitrators each one was put in possession of certain vehicles and

that they were running them separately.

3. After the pleadings were filed an application for the appointment of a Receiver was filed by the plaintiff which was subsequently withdrawn by him. It would appear that defendant No.1 also filed an application for a Receiver being I.A. 1032 of 1958. Curiously enough the next day after the withdrawal of the application by the plaintiff, the second defendant filed an application for the appointment of a Receiver. This is I.A. 1055 of 1958. After hearing the arguments of the parties in regard to the appointment of a Receiver the Subordinate Judge appointed the plaintiff, the 1st and 3rd defendants as receivers in respect of the vehicles according to the permits that they were holding. Against this order of the Subordinate Judge passed in the above applications the plaintiff preferred an, appeal to this Court. He applied for the issue of an order directing suspension of the order appointing Receiver and our learned brother, Ranganatham. Chetty, J. passed an order on 31st October, 1958 in C.M. Ps.8683 and 8685 of 1958 appointing the 1st defendant and the plaintiff as joint receivers with equal powers to be in charge of the suit vehicles excepting vehicle bearing No.APG-12. The further direction was that an account be opened, in the joint names of the Receivers, that they should retain a third of the collections in their hands and deposit the 2/3rd in bank; if there was any disagreement they were to apply to the Court for directions. After this, the matter went to the lower Court and there being disagreement between the Receivers appointed by this Court, they applied to the lower Court for directions and the lower Court passed an order on 11th December 1958 in I. A.1433 of 1958 giving certain directions. Aggrieved by this order, the plaintiff filed C.M.A. 405 of 1958 and filed C.M.P.11, 170 of 1958 questioning the validity of the order passed by the Subordinate Judge on various grounds and for suspending the order of 11th December, 1958 passed by the Subordinate Judge. It was also prayed that the order dated 31st October, 1958 be modified by giving a direction that the powers to be exercised by the Receivers be exercised jointly. This application came up for orders again before our learned brother Ranganatham Chetty, J., who, after hearing, the parties, passed an order on 19th December, 1958 to the following effect:

"The receivership of the plaintiff and the 1st defendant is suspended. An Advocate, Mr. G.A. Swamy of Ongole is appointed interim Receiver until further orders to take charge of all the suit' properties and to be in management. All the workmen who were in the employment of the bus-service on the date of the application for receivership except Govindarajulu would be reinstated. The interim Receiver may apply for police aid if any of the parties give trouble."

This arrangement also became unworkable and there were perennial disputes between the defendants and the plaintiff. It may also be mentioned that very strong allegations have been made against the interim Receiver appointed by the order of this Court.

4. We have before us an appeal against the order appointing the Receiver with the subsequent modifications made by Subordinate Judge, the interim order passed by our learned Brother. Ranganatham Chetty, J. the application filed by the defendant Kotayya to remove the Receiver with a direction to the petitioner to surcharge and falsify the accounts maintained by the Receiver and to permit proceedings being taken against the Receivers as he may be advised to take. This petition is C.M.P. No.3697 of 1959. An application also has been filed by the Receiver to fix the amount of remuneration payable to him. This is C.M.P. No.927 of 1959.

5. The main contention of Mr. Subrahmanyam learned counsel for the appellant is that the Subordinate Judge had no jurisdiction to order the appointment of a Receiver on the application of the defendant where he had not claimed any relief but was only resisting the suit. His argument was that where the plaintiff filed a suit for division of the properties and the defence was only that the properties were not divisible for the reason that they belonged to him exclusively, an order for the appointment of a Receiver could not be made at his instance. For this purpose he relied upon English decisions. He drew our attention to Vol. 86 of the English and Empire Digest at page 483. There the reference is to the case of *Hardy v. Hardy*¹, What is stated therein was that a defendant in an action for dissolution of partnership who does not admit the existence of the partnership but claims the whole business to be his, cannot move for the appointment of a Receiver. Likewise he invited our attention to 35 English and Empire Digest, page 527 wherein it is said that in a suit for redemption the court would not grant a Receiver against the plaintiff, the mortgagor in possession, none being prayed for by the bill. With regard to this portion of the argument we must at the very outset point out that this plea was not taken in the lower Court nor does it appear that it was argued before the learned Subordinate Judge. Quite apart we would be governed in the matter of the appointment of a Receiver by the provisions of Order 40, Rule 1, C.P.C. It reads as under :

"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.....

It may be pointed out that the words of this rule make it abundantly clear that the Court would be justified in appointing a Receiver where it is satisfied that it would be 'just and convenient'. The provisions of the English Law corresponding to this rule were to be found in Section 25 of the Judicature Act of 1873 and now Section 45 of the Judicature Act of 1925. The words therein were 'just or convenient'. But even in England these words were interpreted to mean 'just and convenient'. What is required is that the Court should not merely exercise the power vested in it under this rule in an arbitrary or unregulated manner but according to legal principles after a consideration of the whole of the circumstances of the case and the Court has a complete discretion in this matter. Where, therefore, the words used are 'just and convenient' it cannot be said that it is only in the case where there is an application by the plaintiff for the relief that a Receiver could be appointed. The words 'appoint a Receiver of any property' are also significant. The fact that in a partition action, the defendant claims the properties to be his own separate property and resists the suit of the plaintiff for partition, would not matter so long as the Court is convinced that it would be just and convenient to appoint a Receiver for the protection of the interests of the parties. The rule is intended to safeguard the interests of parties pending final disposal of the suit.

¹(1917) 62 Sol. Jo. 142

The suit that has been brought by the plaintiff is for partition of properties also in the possession of the defendant. It may be that the defendant has set up the plea that the property belongs to him. We are not in a position to say as to what the result of the investigation would be. whether the Court would find that the properties are liable to partition or not. It is, therefore, in the interests of both the parties that the properties should be protected and their rights safeguarded pending final disposal. We cannot, therefore, accept the argument of the learned counsel for the appellant that in this case where there is no relief asked for by the defendant the Court is not

competent to appoint a Receiver.

6. We may also advert to one circumstance in the case and that is, that proceedings were taken under section 129-A of the Motor Vehicles Act as would be evident from Ex. A-17 and those proceedings were stopped on account of the fact that a regular civil suit had been filed with regard to the ownership of the buses in the possession of the respective parties.

7. The order of the lower Court is impugned as stated above on various grounds and one ground is that the Court was wrong in appointing defendant No.1 as the Receiver of the buses because of the fact that the permits in respect of those buses were in his, name. The learned counsel sought to impress upon us that the holding of a permit had nothing to do with the ownership of the property and the permit-holder is only to be regarded as the representative on behalf of the family for the purpose of the Motor Vehicles Act. We may straightway point out that the Motor Vehicles Act, Act IV of 1939 was amended by Act 100 of 1956 and Section 60 (1) (c) as amended, which deals with cancellation and suspension of permits says that if the holder of the permit ceases to own the vehicles covered by the permit, the Transport Authority which granted the permit may cancel the permit Therefore, the Motor Vehicles Act envisages the grant of a permit to the owner and the differentiation sought to be made by the learned counsel that it has nothing to do with ownership would not be of much avail after the amendment of section 60 (1) (c) of the Act. It would appear that the word 'possession' in Section 60 (1) (c) was substituted by the word 'own' and this amendment is significant. According to the Motor Vehicles Act and the rules made thereunder, the Transport Authority always looks to the permit-holder for the conforming to the conditions laid down in the permit. If there is any violation of any of the conditions it is the permit-holder who is held responsible and this fact is further borne out by the documents placed before us by the respondent, Exs. A-19 to A-15, which would indicate that permits were suspended temporarily in regard to buses in the possession of the plaintiff for violation of the Rule. Although the buses were in possession of the plaintiff the 1st defendant was charge-sheeted because he happened to be the permit-holder.

8. Learned counsel for the appellant took us through certain documents in order to satisfy the Court that the defendant's plea of exclusive ownership had been negated by his own admissions. Suffice it to say that it is too early a stage to express any opinion upon those documents. The suit has not been taken up for trial. The documents have to be proved and all relevant evidence has to be recorded in connection therewith. We are not in a position at this stage to decide the point. Further, it would amount to prejudging the case when the suit has not been tried. We do not want to prejudice the rights and interests of the parties at this stage. The agreement relied upon by the appellant is under serious controversy in that, at one place it is stated that it was signed by three persons and written by Siddanti and at another place that it was signed by four persons and written by another person. These are controversial matters and it would be hazardous to deal with them now.

9. The learned counsel for the appellant invited our attention to a decision of the Supreme Court in *P. Lakshmi Reddy v. L. Lakshmi Reddy*², We do not think that that case can have any relevancy in so far as the facts of this case are concerned. There, the question related to adverse possession. What was laid down by their Lordships of the Supreme Court was that the Receiver cannot be regarded as an agent and his possession cannot be construed as initiating adverse possession. There is no question of adverse possession in this case.

10. After giving our best consideration to the respective contentions raised in the appeal, we are of the opinion that the interests of both the parties would be protected if we appoint an independent Advocate Receiver in place of the present Advocate Receiver, who will cease to function from to-day. (The rest of the judgment is not material to this report.)

Order accordingly.

² AIR 1957 SC 314