1969 KHC 207
Kerala High Court
V. R. Krishna Iyer, J.

SUBRAMANIA BHATTA v. C. ABDULLA
Parallel citation(s) : 1969 KHC 207 : 1969 KLT 979 : 1969 KLJ 683 : AIR 1971 Ker. 21 : 1969 KLR 996
CaseNo : C. R. P. No. 399 of 1969
Date : 15/07/1969

Code of Civil Procedure, 1908 -- O.40 R.1(d) -- Receiver -- Allegation of mismanagement -- Suit by owner for damages -- Receiver cannot be permitted to defend himself out of estate funds -- Appeal to Sub Court against order of Court on memo filed by receiver was not maintainable

Important Para(s):3, 7

Advocates:

K. T. Hareendranath; N. V. Prabhakaran; P. Ramaranjan; For Petitioner
K. Bhaskaran; P. Thankappan; For Respondent

ORDER

1. A single, simple point has been pressed before me in revision. The receiver of an estate, having allegedly mismanaged it, caused loss and the plaintiff, now found to be the owner by Court in the very litigation where the receiver was appointed sued him in heavy damages. Whereupon the defendant receiver moved by a memo that he be permitted to defend himself from out of the estate funds. The Trial Court, which appointed him, declined to accord the permission sought but on appeal the Subordinate Judge allowed the receiver's request. Meanwhile, as a matter of fact, the receiver himself was discharged but the suit against him survives. The plaintiff has come up in revision complaining that no appeal lay and further that his estate should not be used to finance the wrong doer in defending himself against the consequences of the wrong to the estate. If no appeal lies, the second question does not arise. But this question is mixed up with whether there is power at all in the Court to pass the order impugned.

2. A memo by a receiver, it was urged, was only an administrative matter and an administrative order even though by a Court, could not be subject even to a revision, let alone an appeal. I cannot assent to such a broad proposition. There are memos and memos, some seeking administrative directions, other involving judicial determination of rights. The former is perhaps not, while the latter certainly is amenable to superior judicial scrutiny. But is there a right of appeal, which is a creature of statute? Yes, if the order falls within the scope of O.43 R.1(s); otherwise, no. And O.43 R.1(s) directs us to enquire whether the order is a judicial, as distinguished from a purely administrative one and if the former, further whether it can be treated as one under O.40 R.1(d) or R.4 C. P. C. I have no doubt that R.4 does not cover such cases. And, indeed, the appellate Court justified its jurisdiction only under O.40 R.1(d) taking the view that here is an order conferring power on the receiver to defend a suit and so, in terms, it comes within R.1(d). I do not agree and will give my reasons for it. O.40 R.1(d) reads:
"....the court may by order (a).....
(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realisation, management, protection, preservation and improvement of the property the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.
The Court takes over the property into its custody where it is just and convenient to do so; the primary object being to preserve it during the litigation an officer of Court is put in physical charge thereof who holds it for the ultimate benefit of the true owner, subject to the directions of the Court.

3. The office of receiver being a substitute for the owner, the Code vests in the Court the power to clothe the receiver with all or any of the powers of the owner. The receiver must keep the property committed to the Court's charge doing all such acts as the proprietor would, lest there should be inaction, attrition, waste and disrepair. O.40 R.1(d) is thus a necessary provision in this behalf and incidentally but illustratively enumerates these powers; and its meaning will be too obvious to be misunderstood if we rewrite it, shedding the words not necessary for our purpose, to read as follows:
"R.1 ..... the Court may, by order
(a) .....
(d) confer upon the receiver all such powers ... . as the owner himself has

or such of those powers as the Court thinks fit."
The key words are "such powers ... as the owner himself has". Not "such powers even against the owner" in which case the receiver will function not on behalf of but in antagonism to the true owner. So the real test is whether the power "to defend" the suit sought by the respondent is one in exercise of the owner's power to defend an action against the estate. Where the action is by the owner and against the receiver as quondam manager for his mismanagement, can it be said that the receiver, by defending that suit, is exercising the power of the owner? More simply put, you can't pretend to defend on behalf of the owner a suit brought by the owner. The court by allowing the respondent to defend the suit offended the provision in R.1(d).

4. If a receiver is sued by the owner for his legitimate acts and thus harassed, can he not look to the Court as its officer for protection even in the matter of financing his defence? The Court may, in such actions, refuse permission to sue but cannot acting under O.40 R.1(d), authorise expenditure from the estate. That is not the type of legal proceeding covered by the provision. May be, there are other provisions, or ought to be, to help a receiver or ex receiver out of such a litigation but that is another matter. Just as a wife has sometimes to be financed by the husband to fight him, a public servant by the State, to vindicate his action when misconduct is imputed to him or an accused person is furnished free counsel by the State which prosecutes him for commission of an offence, even so a receiver may have to receive legal aid in appropriate cases if the Court's officers are to function without a future threat of prosecution by misuse of legal process. That is a problem for the legislature in which the Court is concerned but for which it can only suggest statutory solution.

5. In this case the situation is more complicated because the respondent has ceased to be receiver and the Court has ceased to have custody of the estate. In the view I have taken on the main point there is no need to investigate the impact of these developments on the power of the Court to pass the impugned order.

6. No direct decisions were cited before me but rulings dealing with peripheral points and remotely relevant were brought to my notice. Their inconsequence to this case persuades me to omit a discussion of them here.

7. I hold that the appeal to the Sub Court was not maintainable, that the Court had no power to confer on the receiver respondent the power to defend himself

against the owner of the estate from out of the estate and that this revision must be allowed. I do so but in the circumstances without costs. No observations in this judgment shall be construed to bear upon the merits of the suit against the ex receiver. The petitioner has alleged grievous neglect against him. If it were so, it was a grievous fault. And grievously shall he answer it. But if it were not so, it is a dangerous type of action threatening the freedom of officers of Court to function freely and fearlessly as managers of estates in custodia legis.