

MAHESWARY
v.
YOGESWARY AND OTHERS

COURT OF APPEAL,
WIJETUNGA, J. and WIJEYARATNE, J.,
C.A. APPLICATION No. 610/84,
WITH C.A./L.A. 63/84,
D.C. JAFFNA CASE No. MISC 313,
FEBRUARY 22, 1990.

Civil Procedure – Appointment of Receiver. – Letters of Administration.

Held–

A receiver is appointed for the protection of the disputed property. Where a right is asserted to a property in the possession of a defendant claiming to hold it under legal title, a receiver should not be appointed unless a strong case is made out. But a plaintiff seeking appointment of a receiver on the merits of his case and nothing else is in effect asking the Court to prejudge the case and act on the footing that the defendant is in wrongful possession. Followed, *Pabbia Umma v. Noordeen*⁽¹⁾ and *Corbet v. The Ceylon Coy Ltd*⁽²⁾.

It was premature for the learned District Judge to have come to a finding that the Property belong to the plaintiff at an inquiry held into the appointment of a receiver. It is clearly not competent for him to have come to a finding on the main issues at that stage.

Also held, it is essential that letters of administration should be obtained for the plaintiffs to proceed further with this action.

Cases referred to :

- (1) *Pabbia Umma v. Noordeen* 41 NLR 102
- (2) *Corbet v. The Ceylon Coy Ltd.* 4 SCC 143
- (3) *Hadjjar v. Markar* 15 NLR 279
- (4) *Alagakawandi v. Muttumal* 22 NLR 111
- (5) *Buyzer v. Anyaratne* 70 NLR 139.

APPLICATION for leave to appeal from order of the District Judge of Jaffna.

K. Kanag-Isvaran, P.C. with Anil Tittawella, Miss Yasmin Gaffoor for defendant-petitioner.

Plaintiff-resopondents absent and unrepresented.

April 03, 1990

WIJEYARATNE, J.

The plaintiffs-respondents filed this action on 9.12.1983 against the defendant-petitioner to be declared entitled to the business called "Paramasivam Rice Mill" situated on the land called Ninanithathai Mudithan at Kokuvil and certain ancillary reliefs.

It should be noted that the 1st plaintiff is the daughter-in-law of the defendant-petitioner having been married to Theiventhirampillai, the elder son of the defendant-petitioner who departed this life on 30.09.1983. The 2nd and 3rd plaintiffs are the minor children of the 1st plaintiff by the said Theiventhirampillai.

Briefly the case for the plaintiff is that the business belonged to Theiventhirampillai and after his death devolved on the 1st, 2nd and 3rd plaintiffs. Therefore they prayed that they be declared entitled to this business, that possession thereof be handed to them and that the defendant, her agents and servants be ejected therefrom.

The position taken up by the defendant was that the "Paramasivam Rice Mill" was founded by Narayanapillai, the deceased husband of the defendant, on a land belonging to the defendant and it was set up and named after her younger son Paramasivam to advance him in life and after the death of the said Narayanapillai the defendant engaged Theivanthirampillai to manage it on her behalf. The defendant also averred that the said Theivanthirampillai had no proprietary or beneficial interest therein and alleged that Theivanthirampillai had fraudulently registered the business in his own name and obtained licences. The defendant further claimed that in any event the said Theivanthirampillai held the said business in trust for her. The defendant also took up the position that this action cannot be maintained without obtaining letters of administration in view of the provision of Section 547 of the Civil Procedure Code.

The plaintiffs had made an application for the appointment of a receiver, to which objections were filed by the defendant.

At the inquiry into this application both sides led evidence. Documents P1 to P13 were marked on behalf of the plaintiffs while D1

to D14 were marked on behalf of the defendant. Thereafter written submissions were filed.

The learned District Judge by his order dated 7.4.1984 allowed the application and subsequently appointed as receiver one P. Packiyathan, J.P., and a retired Registrar of the District Court of Jaffna.

Being dissatisfied the defendant has filed this application to revise the said order and also the connected application (C.A./L.A. 63/84) for leave to Appeal against this order.

At the hearing Mr. K. Kanag-Isvaran, P. C., appeared and made submissions and cited various authorities on behalf of the defendant-petitioner.

The plaintiff-respondents were unrepresented.

In the case of *Pabbia Umma v. Noordeen*⁽¹⁾ it was held that a receiver is appointed for the protection of the property. Where a right is asserted to a property in the possession of a defendant claiming to hold under a legal title, a court will not interfere with the possession by appointing a receiver unless a very strong case is made out.

In this case there is a definite dispute about the ownership of this business and the possession thereof.

As stated by Clarence, J., in *Corbet v. The Ceylon Coy Ltd.*⁽²⁾ "Plaintiff in asking for a receiver. . . . does so upon the merits of his case and nothing else ; and to ask the Court to grant a receiver upon such grounds is in effect to ask the Court to prejudge the whole case."

That is just what has happened in this case. The learned District Judge has gone on to say as follows :-

"On the evidence placed in court, I hold that Paramasivam Rice Mill belonged to Theivendrampillai the deceased husband of the 1st plaintiff and that the plaintiffs are entitled to the said rice mill etc. So that the defendant is in wrongful possession of the said mill which belongs to the plaintiffs and is causing loss to the plaintiffs by not working the said rice mill."

It was premature for the learned District Judge to have come to such a finding at this inquiry into the question of whether to appoint a receiver. It is clearly not competent for him to have come to a finding on the main issues in this case at this stage.

For these reasons, acting in revision, the order of the learned District Judge dated 7.5.1984 appointing a receiver and the subsequent appointment of P. Packiyathan is set aside.

It should be further mentioned that in view of the decisions of the Supreme Court in the cases of *Hadjar v. Marika*⁽³⁾ *Alagakawandi v. Muttuma*⁽⁴⁾ and *Buyzer v. Ariyaratne*⁽⁵⁾ it is essential that letters of administration should be obtained for the plaintiffs to proceed further with this action.

In view of this order the connected leave to Appeal application (bearing No. C. A./L. A. 63/84) is also allowed and the order dated 7.5.1984, which is the order appealed from, is hereby set aside.

I order the plaintiffs-respondents to pay the defendant-petitioner the costs of this application.

WIJETUNGA, J. – I agree.

Leave to appeal granted and appeal allowed.
