

CASE NO.:
Appeal (civil) 1466 of 2001

PETITIONER:
KASTURI BAI & ORS.

Vs.

RESPONDENT:
ANGURI CHAUDHARY

DATE OF JUDGMENT: 23/02/2001

BENCH:
D.P. Mohapatra & S.N. Variava

JUDGMENT:

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Leave granted.

The defendant in the civil suit No.2-A of 1993 of the Court of Additional District Judge, Shahdol, has filed this appeal assailing the order passed by the Madhya Pradesh High Court on 20th June, 2000 in miscellaneous appeal No.1191 of 1998. In the said order the High Court ordered appointment of a Receiver to be in charge of the suit properties with other consequential directions. The relevant portion of the order reads as follows:

As a result of the aforesaid discussion, this appeal succeeds and is allowed. The impugned order dated 14.8.1998 is hereby set aside. The Trial Court is directed to require both the parties to suggest an agreed name of a person within fifteen days from the receipt of the record and a copy of this order, for his appointment as a receiver in the case. In case, they fail to do so, within the time fixed by the Trial Court, the Trial Court shall be free to appoint a person of integrity as the receiver of the suit property, who is well conversant with the legal procedures and is capable of maintaining true and honest accounts of the suit property during the pendency of the suit. The said appointment of the receiver shall be made initially for a period of two years and it shall be extended by the Trial Court on an application being filed by the receiver or the appellant, in case, by that time the civil suit remains pending before it. The trial court is further directed that it shall, after the appointment of the receiver, try to dispose of the Civil Suit within a period of one year from the date of receipt of copy of this order. The Trial Court shall, from time to time, call for the accounts from the receiver so appointed and supervise his work and in case, the work or accounts of the receiver is found unsatisfactory by the Trial Court, it shall be free to appoint a new receiver.

The respondent herein filed the aforementioned suit

impleading the appellants herein as defendants. The plaintiff prayed for a decree for partition and separate possession of the suit properties. The suit properties are structures in occupation of tenants.

The case of the plaintiff, shortly stated, was that the suit properties were the exclusive properties of late Kishore Chand her father and husband of appellant No.1. Appellants 2 and 3 are the sons of Virender Kumar, a nephew of Kishore Chand. According to the plaintiff neither Virender Kumar nor his sons (appellants 2 and 3 herein) have any right title and interest in the suit properties. Taking advantage of the old age of her mother they have kept her under their clutches and have been enjoying the suit properties. The plaintiff further alleged that defendants 2 and 3 have been collecting and appropriating the rent paid by the tenants without giving her any share therein. They are also inducting new tenants and collecting premium money from them. The plaintiff also alleged that defendants 2 and 3 are making new constructions spending the money collected from the tenants as rent. On these allegations the plaintiff filed the application under Order XL Rule 1 C.P.C. for appointment of a receiver. She had also filed an application seeking interim injunction against the defendants not to change the status quo of the suit property and not to alienate the same.

The defendants refuted the allegations made in the petition for appointment of receiver mainly on the ground that they have been in possession and enjoyment of the properties since long, for more than 50 years. It was their contention that they have not caused any loss or damage to the suit properties and therefore, no case for appointment of receiver is made out. They agreed not to alienate any part of the suit property during pendency of the suit.

The trial court rejected the prayer for appointment of receiver and dismissed the application filed by the plaintiff. On appeal being filed under Order 43 Rule 1 (s) C.P.C. the High Court by the order passed on 20th June, 2000 ordered of a receiver and directed the trial court to appoint a proper person. The said order is under challenge in this appeal.

[illegible]

On the facts and circumstances of the case the main duty to be discharged by the receiver is to collect rent from the tenants occupying different portions of the suit property; to maintain accounts of all the collections and place the same before the Court. The question whether the suit property is the exclusive property of late Kishore Chand; whether defendants 2 and 3 are entitled to have any share in the suit property will be decided in the suit. The fact remains that appellant No.1 who is the widow of Kishore Chand and mother of the plaintiff is a very old lady who cannot take upon herself the task of collecting rent from the tenants regularly; of maintaining accounts of the

collections and to ensure proper maintenance of the structure etc. The defendants 2 and 3, keeping in view the allegations made by the plaintiff against them, cannot be entrusted with the work. In such circumstances the High Court rightly ordered appointment of a third party as receiver.

The learned counsel for the appellants strenuously contended that the High Court was impressed with the statement of fact that the suit property fetches Rs.20,000/- per month as rent which is incorrect and misleading. Referring to the statement submitted by the receiver on 14.8.2000 the learned counsel pointed out that only a sum of Rs.6,800/- was the collection during the month of July.

In such circumstances the High Court erred in ordering appointment of a receiver on monthly remuneration of Rs.10,000/-. In reply to the said contention learned counsel for the respondent fairly stated that Rs.25,000/- per month is an exaggerated figure. He submitted that the receiver has voluntarily fixed a sum of Rs.1,000/- per month as his remuneration and has been drawing such amount after taking charge of the suit properties.

On consideration of the matter we are of the view that the order of appointment of a receiver does not call for interference. The order under challenge is modified only to the extent that the receiver shall receive a sum of Rs.1,000/- per month instead of Rs.10,000/- as his remuneration. Since hearing of the suit has already commenced the trial court shall dispose of the same expeditiously hearing it from day to day. The appeal is disposed of on the above terms. No cost.

(D.P.MOHAPATRA)
(S.N. VARIAVA)
February 23, 2001