Madras High Court
T. Krishnaswamy Chetty vs C. Thangavelu Chetty And Ors. on 6 December, 1954
Equivalent citations: AIR 1955 Mad 430
Author: Ramaswami
Bench: Ramaswami

JUDGMENT Ramaswami, J.

1. This is an application for the appointment of a Receiver.

2. The facts are: The applicant-plaintiff T. Krishnaswami Chetty has filed C. S. No. 295 of 1953 in the pauper form for a declaration that the alienations made in favour of defendants 1 to 3, respondents herein, of the suit houses described as items 1 and 2 of Schedule 'B' to the plaint are not valid and binding, for mesne profits, for possession and for other reliefs.

3. In this suit he has filed this interlocutory application for the appointment of a Receiver for these suit properties pending disposal of the suit on the foot of the following allegations:

"These properties originally belonged to one Rangiah Chetty, my grand-father who executed his last will and testament on 19-11-1910 of which probate was also obtained on 5-9-1913 in O. P. No. 29 of 1911 and T. O. S. No. 4 of 1911 on the file of this Hon'ble Court. Under the said will the testator made a provision for his heirs including his wife, daughters and daughters' children, so that, the properties may be enjoyed by them during their lifetime and subsequently by their children absolutely, but in spite of the intention of the testator and the best care he has taken to secure the enjoyment of properties for his relations, the properties have now fallen into the hands of strangers by malpractices of some of the heirs of the testator with the result while the relations of the testators suffering, strangers who are not thought of by the testator are in unjust and illegal enjoyment of the properties for a very long time....... If the respondents are allowed to enjoy the income of the properties during the pendency of the suit herein, it may be even impossible after the decree to recover anything from them. Further the respondents are not taking care of the properties on account of which the houses have fallen into disrepair and they am not fetching good rent."

4. The contesting respondent-defendant, viz., the auction-purchaser in possession of these properties contends as follows :

"This is the fourth suit filed by the plaintiff's family for agitating the rights now claimed. None of them have been pursued to the end and the latest one is in forma pauperis. The previous suit C. S. No. 751 of 1948 which was transferred to the City Civil Court was withdrawn and dismissed on his failure to pay the court-fee due to Government. Now the valuation has been exaggerated and the suit is filed in forma pauperis in this Hon'ble Court.

On the merits of the case the allegations made in the plaint are inconsistent and misleading. Under the will of Rangiah Chetty, which was probated, the members of the family were given definite rights and this was later on concluded by a family arrangement culminating in the consent decree dated

14-3-1935 in C. S. No. 403 of 1943 on the file of this Hon'ble Court the respective branches have been enjoying the properties accordingly and even alienating the same. I am the purchaser on foot of the mortgage decree and am in possession of the same. I have parted with Rs. 8,175/- and am in possession as a bona fide purchaser. I have also obtained rent decree against the plaintiff who is my tenant. Now this suit is brought to get over all these proceedings and to ignore the family settlement which has to be construed at the trial. I am advised that it is not necessary at this stage to enter into an argument on the merits of the legal construction of the will of Rangiah Chetty. It is enough to state that the parties comprising all the branches of the family have accepted the arrangement and have been enjoying the properties thereunder.

The application for the appointment of a Receiver is not sustainable. There are no acts of waste alleged and there is no danger to the property. Application for a similar order was made in C. S. No. 751 of 1948, and was dismissed by his Lordship Krishnaswami Nayudu J. I crave leave to refer to the said order at the time of the hearing of the application.

In any event the application has been brought two years after the filing of the suit and long after a similar application was filed in the previous suit. This application is not bona fide and is intended to cause loss to -me even before the plaintiff has made out a case. I shall suffer serious loss and prejudice if the application be ordered as against me."

5. The short point for determination in this application is whether on a consideration of the facts set out above a case has been made out for the appointment of a Receiver.

6. "A receiver", in the language of High, "is an indifferent (American expression for impartial) person between the parties to a cause, appointed by the Court to receive and preserve the property or fund in litigation "pendente lite', when it does not seem reasonable to the Court that either party should hold it. He is not the agent or representative of either party to the action, but is uniformly regarded as an officer of the Court, exercising his functions in the interest of neither plaintiff nor defendant, but for the common benefit of all parties in interest. Being an officer of the Court, the fund or property entrusted to his care is regarded as being in 'custodia legis', for the benefit of who-ever may finally establish title thereto, the Court itself having the care of the property by its receiver, who is merely its creature or officer, having no powers other than these conferred upon him by the order of his appointment, or such as are derived from the established practice of Courts of equity.

"A receiver" is frequently spoken of as the "hand of the Court", and the expression very aptly designates his functions, as well as the relation which he sustains to the Court."

(J. L. High. A Treatise on the Law of Receivers, Third Edition (1894), Callaghan & Co., Chicago page 2).

7. A Receiver has been defined by Kerr as follows :

"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 cither party should collect or receive, or for enabling the same to be distributed among the persons entitled." (Kerr on the Law and Practice as to Receivers appointed by the High Courts of Justice or order of Court, Twelfth Edition, Walton and Sarson, Special Edition for India, N. M. Tripathi & Co. (1932) P. L).

8. Two classes of receivers can be appointed by Courts, viz., (a) under the statutes and (b) under the Civil Procedure Code, the Specific Relief Act and the Original Side Rules of the High Court.

(a) Several statutes in India like the Provincial Insolvency Act (5 of 1920) (Sections 20, 57, 59 and 68), the Presidency Towns Insolvency Act (3 of 1909) (Section 16) the Transfer of Property Act (4 of 1882) (Section 69-A), the Trustees' and Mortgagees' Powers Act (28 of 1866) (Sections 12 to 19) and the Indian Companies Act (7 of 1913) (Sections 118, 119, 129 and 277E) authorise Courts for appointing receivers under the particular circumstances set out therein. In this case we are not concerned with these statutorily appointed Receivers.

The second class of Receivers arc included in these in which appointment is made to preserve the property pending litigation to decide the rights of parties. The powers to appoint a Receiver in such cases are comprised in the Civil Procedure Code of 1908 (Sections 51, 94 and Order 40), the Specific Relief Act of 1877 (Section 44), and the Original Side Rules of High Courts relating to Receivers.

9. The appointment of a Receiver being an equitable relief, the history of its development in Court of Chancery in England should be studied. In his monumental work relating to "the Law arid Practice relating to Receivers in British India" N. D. Basu has traced the creation and 'growth of the old Court of Chancery in England till the passing of the Old Judicature Act, and, has defined clearly the extent of equity jurisdiction of the three Presidency High Courts which inherited by the respective charters the old equity jurisdiction of the late Supreme Courts. Therefore, the best guides in the matter of interference by way of injunction and receiver have been judicially stated to be the principles which determine the action of Courts of Equity in England. It is in fact on these principles that the relief given in Indian Courts by injunction and Receiver is in the main founded, and, this relief is in substance the same as that granted by Courts in England. (See -- 'Jaikissondas v. Zenabai', 14 Bom 431 at p. 434 (A); --'Chandidat Jha v. Padmanand Singh Bahadur', 22 Gal 459 at p. 464 (B); -- 'Mt. Mikanbai v. Dassimal Gangaram', AIR 1918 Sind 61 at p. 63 (C) and -- 'Nasir Ahmed v. Lutf Ahmed, AIR 1949 Pat 496 (D)).

10. In addition the judgments of the superior Courts of the United States of America constitute also the best guides in the matter of interference by way of injunction and receiver because the Specific Relief Act was originally drafted by Dr. Stokes on the basis of the New York Code of 1862. It is not surprising, therefore, that the judgments of the Judges of the Indian High Courts are based on authoritative American works on injunction like High. These judgments of the superior Courts of England and the United States of America are however, only persuasive precedents. The Judges of this country are under no obligation to follow them, but, in many cases they have followed it, though they have not hesitated to differ from them when they conflict with our statutory provisions and

Civil Procedure Code: -- 'Shambhu Nath v. Balmukund Dikshit', AIR 1931 Oudh 307 (E); --Parmotha Nath v. II. V. Low & Co.', AIR 1930 Gal 502 (F); -- "Vythilinga Pandara Sannadhi v. Thiagarajaswami Devasthanam', AIR 1932 Mad 193 (G); -- Imambandi v. Haji Mutsaddi', AIR 1918 PC 11 (H) "In establishing new principles", says Sir John Salmond on Jurisprudence, Section 61, "they willingly submit themselves to various persuasive influences which, though destitute of legal authority, have good claim to respect and consideration. They accept a principle, for example, because they find it already embodied in some system, of foreign law. For since it is so sanctioned and authenticated, it is presumably a just and reasonable one."

11. The principles which, guide English Courts in regard to cases in which the appointment is made to preserve property can be culled out from the standard English text books and the case law on the subject as follows :

"the appointment is made to preserve property pending litigation to decide the rights of the parties, or to prevent a scramble among these entitled, as where a receiver is appointed pending a grant of probate or administration, or to preserve property of persons under disability, or where there is danger of the property being damaged or dissipated by these with the legal title, such as executors or trustees, or tenants for life, or by persons with a partial interest, such as partners, or by the persons in control, as where directors of a company with equal powers are at variance."

In all these cases, it is necessary to allege and prove some peril to the property; the appointment then rests on the sound discretion of the Court.

"In exercising its discretion the Court proceeds with caution, and is governed by a view of all the circumstances. No positive or unvarying rule can be laid down as to whether the Court will or will not interfere by this kind of interim protection of the property. Where, indeed, the property is as it were 'in medio', in the enjoyment of no one, it is the common interest of all parties that the Court should prevent a scramble, and a receiver will readily be appointed: as, for instance, over the property of a deceased person pending a litigation as to the right to probate or administration. But where the object of the plaintiff is to assert a right to property of which the defendant is in enjoyment, the case presents more difficulty; The Court by taking possession at the instance of the plaintiff may be doing a wrong to the defendant; in some cases an irreparable wrong. If the plaintiff should eventually fail in establishing his right against the defendant, the Court may by its interim interference have caused mischief to the defendant for which the subsequent restoration of the property may afford no adequate compensation. (See -- 'Marshall v. Charteris', 1920-1 Ch 520 (I)). Where the evidence on which the Court is to act is very clear in favour of the plaintiff, then the risk of eventual injury to the defendant is very small, and the Court does not hesitate to interfere. Where there is more of doubt, there is, of course, more of difficulty. The question is one of degree, as to which, therefore, it is impossible to lay down any precise or unvarying rule. (-- 'Owen v. Roman', (1853) 4 HLC 997 at p. 1032 (J), per Lord Cranworth,) If the Court is satisfied upon the materials it has before it that the party who makes the application has established a good prima facie title, and that the property the subject-matter of the proceedings will be in danger if left the trial in the possession or under the control (-- 'Cummins v. Perkins', (1899) 1 Ch 16 (K); -- 'Leney & Sons, Ltd. v. Callingham', (1908) 1 KB 79 (L) of the party against whom the receiver is asked for (-- 'Evans v.

Coventry', (1854) 5 Do G M & G 911 at p. 918 (M)) or, at least, that there is reason to apprehend that the party who makes the application will be in a worse situation if the appointment of a receier be delayed (-- 'Aberdeen v. Chitty', (1838) 3 Y & C 379 at p. 382 (N); -- 'Thomas v. Davies, (1847) 11 Beav 29 (O)), the appointment of a receiver is almost a matter of course (See -- "Middleton v. Dodswell', (1800) 13 Ves Jun 260 (P); -- 'Old-field v. Cobbett', (1835) 4 LJ Ch 271 (Q); --'Heal and Personal Advance Co. v. Macarthy, (1879) 27 WR 706 (R)). If there is no danger to the property, and no fact is in evidence to show the necessity or expediency of appointing a receiver, a receiver will not be appointed, unless there be some other urgent reason for making the appointment (See -- 'Whitworth v. Whyddon', (1850) 2 Mac & G 52 (S); -- 'Wright v. Vernon', (1855) 3 Drew 112 (T); -- 'Micklethwait v. Micklethwait', (1S57) 1 De G & J 504 (U)) "The duty of the Court upon a motion for a receiver is merely to protect the property for the benefit of the person or persons to whom the Court, when it has all the materials necessary for a determination, shall think it properly belongs (-- 'Blakeney v. Dufaur', (1851) 15 Beav 40 (V)). On a motion for a receiver the Court will not prejudice the action (-- 'Huguenin v. Baseley', (1806) 13 Ves Jun 105 at p. 107 (W)), or say what view it will take at: the trial (--'Fripp v. Chard. Rly. Co., (1853) 11 Hare 241 at p. 264 (X); -- 'Skinners' Co. v. Irish Society', (1836) 1 My & Cr 162 at p. 164 (Y)). Indeed, the Court will not appoint a receiver at the instance of a person whose right is disputed, where the effect of the order would be to establish the right, even if the Court be satisfied that the person against whom the demand is made is fencing off the claim (-- 'Greville v. Fleming", (1845; 2 Jo & Lat 335 (Z); (1920) 1 Ch 520 (1)). Nor will the appointment be made where it might affect legal rights; a receiver will not, for instance, be appointed merely to prevent an executor exercising his right of retainer (-- 'Re. Wells Molony v. Brooke', (1890) 45 Ch D 569 (Z1))"

The Court, on the application for a receiver, always looks to the conduct of the party who makes the application, and will usually refuse to interfere unless his conduct has been free from blame (See -- 'Baxter v. West', (1858) 28 LJ Ch 169 (Z2); -- 'Cf. Wood . Hitchings', (1840) 2 Beav 289 at p. 297 (Z3)). Parties who have acquiesced in property being enjoyed against their own alleged rights cannot except in special circumstances come to the Court for a receiver (-- 'Gray v. Chaplin', (1826) 2. Russ 126 at p. 147 (Z4); (1836) 1 My & Cr 162 (Y)) (Kerr on Receivers 12th edition pp. 5 to 7)".

12. In regard to American Courts, High sets out these principles in Chap. 1 on the Law of Receivers, Third Edition, 1894 at p. 13 as follows;

"The principal grounds upon which Courts of equity grant their extraordinary aid by the appointment of receivers 'pendente lite* are that the person seeking the relief has shown at least a probable interest in the property, and that there is danger of its being lost unless a receiver is allowed, the element of danger being an important consideration in the case. And a remote or past danger will not suffice as a ground for the relief, but there must he a well-grounded apprehension of immediate injury. The power of appointment is usually invoked either for the prevention of fraud, to save the subject of litigation from material injury, or to rescue it from threatened destruction. And to warrant the interposition of a Court of equity by the aid of a receiver, it is essential that plaintiff should show, first, either a clear legal right in himself to the property in controversy, or that he has some lien upon it, or that it constitutes a special fund out of which he is entitled to satisfaction of his demand. And, secondly, it must appear that possession of the properly was obtained by defendant

through fraud; or that the property itself, or the income from it, is in danger of loss from the neglect, waste, misconduct or insolvency of the defendant. Not only must the plaintiff show a case of adverse and conflicting claims to the properly, but he must also show some emergency or danger of loss demanding immediate action, and that his own right is reasonably clear and free from doubt. If the dispute is as to title only, the Court very relunctantly disturbs possession by a receiver, hut if the property is exposed to danger and to loss, and the person in. possession has not a clear legal right thereto, the Court will interpose by a receiver for the security of the property."

Earlier at p. 4 the learned author says, "The jurisdiction exercised by Courts of equity in administering relief by the extra-ordinary remedy of a receiver 'pendente lite' is a branch of their general preventive jurisdiction, being intended to prevent injury to the thing in controversy, and to preserve it for the security of all parties in interest, to be disposed of as the Court may finally direct. The power is justly regarded as one of a very high nature, and not to be exercised when it would be productive of serious injustice or injury to private rights. The exercise of the extra-ordinary power of a chancellor in appointing receivers, as in granting writs of injunction or 'ne exeat', is an exceedingly delicate and responsible duty, to be discharged by the Court with the utmost caution, and only finder such special or peculiar circumstances as demand summary relief.

Indeed, the appointment' of a receiver is regarded as one of the most difficult and embarrassing duties which a Court of equity is called upon to perform. It is a peremptory measure, whose effect, temporarily at least, is to deprive of his property, a defendant in possession, before a final judgment or decree is reached by the Court determining the rights of the parties. It Is therefore not to be exercised doubtingly, but the Court must be convinced that the relief is needful, and that it is the appropriate means of securing an appropriate end, And since it is a serious interference with the rights of the citizen, without the verdict of a jury and before a regular hearing, it should only be granted for the prevention of manifest wrong and injury. And because it divests the owner of property of its possession before a final hearing, it is regarded as a severe remedy, not to be adopted save in a clear case, and never unless plaintiff would otherwise be in danger of suffering irreparable loss."

13. The five principles which can he described as the "panch sadachar' of our Courts exercising equity jurisdiction in appointing receivers are as follows :

(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised-for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding : -- 'Mathusri v. Mathusri, 19 Mad 120 (PC) (Z5); -- 'Sivagnanathammal v. Arunachallam Pillai', 21 Mad LJ 821 (Z6); --'Habibullah v. Abtiakallah', AIR 1918 Cal 882 (27);

-- 'Tirath Singh v. Shromani Gurudwara Prabandhak Committee', AIR 1931 Lah 688 (28); --'Ghanasham v. Moraba', 18 Bom 474 (7.9); --'Jagat Tarini Dasi v. Nabagopal Chaki', 34 Cal 305 (Z10); -- 'Sivaji Raja Sahib v. Aiswariyanandaji', AIR 1915 Mad 926 (Z11); -- 'Prasanno Moyi Devi v.

Beni Madbab Rai', 5 All 556 (Z12); -- 'Sidheswari Dabi v. Abhayeswari Dahi', 15 Cal 818 (213);

-- 'Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das', AIR 1925 Lah 349 (Z14);

-- 'Bhupendra Nath v. Manohar Mukerjee', AIR 1024 Cal 456 (Z15).

(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit. -- 'Dhumi v. Nawab Sajjad All Khan', AIR 192.3 Uh 623 (Z16); -- 'Firm of Raghubir Singh' Jaswant v. Narinjan Singh', AIR 1923 Lah 48 (217);

-- 'Siaram Das v. Mohabir Das', 27 Cal 279 (Z18);

-- 'Mahammad Kasim v. Nagaraja Moopanar', AIR 1928-Mad 813 (Z19); -- 'Banwarilal Chowdhury v. Motilal', AIR 1922 Pat 493 (220).

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right, he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. -- "Manghanmal Tarachand v. .Mikanbai', AIR 1933 Sind 231 (221); -- 'Bidurramji v. Keshoramji', AIR 1939 Oudh 31 (Z22); -- 'Sheoambar Ban v. Mohan Ban', AIR 1941 Oudh 328 (223).

(4) An order appointing a receiver will not be.

made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through, fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less 'in medio' is sufficient to vest a Court with jurisdiction to appoint a receiver. -- 'Nilambar Das v. Mabal Behari', AIR 1927 Pat 220 (Z24); -- 'Alkama Bibi v. Syed Istak Hussain', AIR 1925 Cal 970 (Z25~.); -- 'Mathuria Debya v. Shibdayal Singh', 14 Cal WN 252 (Z26); -- 'Bhubaneswar Prasad v. Rajeshwar Prasad', AIR 1948 Pat 195 (Z27). Otherwise a receiver should not be appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disentitled himself to the equitable relief by laches, delay, acquiescence etc.

14. To sum up as stated in -- 'Crawford V. Ross', 39 Ga 44 (Z28), "The high prerogative act of taking property out of the hands of one and putting it in pound under the order of the Judge ought not to be taken except to prevent manifest wrong imminently impending."

In 'Dozier v. Logan', 101 ga 173 (Z29) Atkinson J. said "The appointment of a receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the creditors is exposed to manifest peril,"

Therefore, this exceedingly delicate and responsible duty will be discharged with the utmost caution and only when the 'panch sadachar' or five requirements embodied in the words just and convenient (Order 40, Rule 1) are fulfilled by the facts of the case under consideration -- ('Ramachandrayya v. Nethi Iswarayya', AIR 1952 Hyd 139 (Z30)).

15. Bearing these principles in mind, if we examine the facts of this case as set out in the contentions of the respective parties above, we find that none of the requirements for granting the appointment of a receiver is made out.

16. This application is dismissed with costs.