

The ratio of this judgment was again followed by the apex Court in *Modern Hotel, Gudur, represented by M. N. Narayanan v. K. Radhakrishnaiah and others* (15). Thus, it was wholly illegal to say that the lessee was in arrears of rent.

(22) For the reasons stated above, the revision petition fails and is dismissed, but with no order as to costs.

R.N.R.

Before : A. P. Chowdhri, J.

MURTI DURGA MAAI JI THROUGH SHRI HARPHOOL SINGH & OTHERS,—Petitioners.

versus

HAR NARAIN AND OTHERS,—Respondents.

Civil Rev. No. 2647 of 1991

March 12, 1992.

Code of Civil Procedure (V of 1908)—Order 40—Rule 1—Appointment of Receiver—Can be appointed where Court finds it just and convenient—Plaintiff must show good prima facie case for justifying such appointment—Where plaintiff unable to prima facie show exclusive possession it cannot be considered just & convenient to appoint receiver.

(Para 6 &7)

A. P. Chawdhri.

Held. that a receiver can be appointed under order 40 Rule 1 of the Code where the Court finds that it is just and convenient to do so. It follows by necessary implication that the plaintiff must show a good *prima facie* case to justify the application of Order 40 Rule 1 for purposes of appointment of receiver.

Held. that where the plaintiff is unable to make out a strong *prima facie* case with regard to its exclusive possession, broadly speaking it cannot be considered just and convenient to appoint a receiver.

Petition under Section 115 C.P.C. for revision of the order of the Court of Shri S. N. Chadha, Additional District Judge, Narnaul dated 30th May, 1991 reversing that of Shri S. K. Dhawan, H.C.S., Additional Senior Sub-Judge, Narnaul dated 5th September, 1990 accepting the appeal and setting aside the order of learned trial court dated 5th September, 1990 and however directing the appellants shall keep the proper accounts date-wise under a committee in order to avoid misuse of the fund as already ordered,—vide order dated 13th September,

(15) 1989 H.R.R. 273.

Murti Durga Maai Ji through Shri Harphool Singh and others 445
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1990 and directing the trial court to decide the case expeditiously and directing the parties to appear before the learned trial court on 3rd June, 1991.

Claim : Application U/O 40 Rule 1 C.P.C.

Claim in Revision : For reversal of the order of lower Appellate Court.
R.A. No. 1-CII-of 1992

Application under Section 114 C.P.C. praying that the application be allowed and in view of the facts stated in the application the order dated 17th December, 1991 be reviewed in the interest of justice and the petition of the petitioner be dismissed.

S. K. Mittal, Advocate, for the Applicants.

K. S. Grewal, Advocate, for the Respondent.

JUDGMENT

(1) The facts giving rise to this review application under section 114 of the Code of Civil Procedure (hereinafter referred to as 'the Code') are that Murti Durga Mai Jai, a deity, through a worshipper and two others, instituted a civil suit against 13 persons in the Civil Court at Narnaul. The claim made in the suit was that the temple of the deity was constructed in *Shamlat* land vesting in the Gram Panchayat. A fair was held twice every year in which huge offerings were made. The plaintiffs sought a declaration with the relief of perpetual injunction restraining the respondents from appropriating the offerings to their personal use. During the pendency of the suit, the plaintiffs made an application under Order 40 Rule 1 of the Code for appointment of a receiver to collect the offerings and to keep an account thereof to be dealt with in accordance with the decision in the suit. The application was resisted. The trial Court found a good *prima facie* case in favour of the plaintiffs and reached the conclusion that it was just and convenient to appoint the receiver and accordingly a receiver was appointed. The defendants preferred an appeal against the order. The appeal was allowed by the learned Additional District Judge by holding that Order 40 Rule 1 of the Code did not authorise the Court to remove from the possession or custody of property any person whom any party to the suit had not a present right so to remove within the meaning of sub-rule (2) of Rule 1 of Order 40. The plaintiffs preferred Civil Revision No. 2647 of 1991, which was heard and allowed by order dated December 17, 1991. The defendants, who were respondents in the said revision petition, feel aggrieved by the order passed in the

revision petition and seek a review thereof mainly on three grounds. These are :—

- (i) In R.S.A. No. 1988 of 1991 arising out of a previous suit between the parties, a learned Single Judge of this Court had restrained the Gram Panchayat, its Sarpanch Harphool Singh and Ram Saroop Panch from interfering in the possession of the property of the deity represented by the legal representatives of the Mohatmims Har Narain and others till the decision of the said appeal.
- (ii) The suit filed by the plaintiffs was misconceived as the temple itself was not situated in the land vesting in the Gram Panchayat but in the land belonging to the deity itself.
- (iii) The question of rights between the parties stood concluded in several rounds of litigation and the same could not be reagitated.

(2) Notice having been issued in the review application, I have heard learned counsel for both the parties.

(3) Coming to point No. (i) it may be stated that in R.S.A. No. 1988 of 1991 the respondents i.e. Gram Panchayat, Harphool Singh Sarpanch and Ram Saroop Panch were restrained from interfering in the possession of the appellants i.e. Murti Durga Mai Ji through Mohatmims Har Narain, now represented by his LRs, and others. The said stay order is in force till today. The contention of Mr. K. S. Grewal, learned counsel for the Gram Panchayat etc., is that the grant of injunction against the Gram Panchayat, its Sarpanch and another Panch, does not present an insurmountable difficulty and it was open to the Court in all appropriate cases to appoint a receiver. He has placed reliance on the following three authorities :—

- (1) *M/s Kothari Plantations & Industries Ltd. v. Dakshinpat Satra and others* (1);
- (2) *Sree Venkataramana Temple Board of Education, Karkala v. C. Manijunatha Kamath and others* (2); and
- (3) *S. B. Industries, Freegunj and another v. United Bank of India and others* (3).

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- (1) A.I.R. 1973 Gauhati 74.
 - (2) A.I.R. 1974 Karnatak 59.
 - (3) A.I.R. 1978 Allahabad 189.

The proposition of law laid down in these authorities has not been disputed by Mr. S. K. Mittal, learned counsel for the Mohatmims. He has, however, strenuously contended that the suit instituted by the Gram Panchayat etc. was totally misconceived, in that the temple was not constructed on land vesting in the Gram Panchayat but in another piece of land which vested in the deity itself. It was further contended by Mr. S. K. Mittal, that that being so, it could not be possibly held by the Court that it was just and convenient to appoint a receiver as required under Order 40 Rule 1 of the Code. In this connection, learned counsel also invited my attention to the earlier rounds of litigation in which the Gram Panchayat and its present Sarpanch besides Ram Saroop, father of Ved Parkash, who was plaintiff No. 3 in the present suit, had been restrained from interfering in possession of the property of the deity as managed by the Mohatmims, Har Narain, now represented by his L.Rs, and others.

(4) In reply, the contention of Mr. K. S. Grewal is that the only ground on which review application had been filed was that the existence of the stay order in R.S.A. No. 1988 of 1991 had not been taken notice of, which objection he has clearly made by producing authorities in favour of the view that the grant of injunction did not debar the Court from appointing a receiver in appropriate cases. With regard to the merits as to the *prima facie* case, Mr. K. S. Grewal, stated that it was so found by the trial Court and it was affirmed by the lower appellate Court as well as this Court by allowing the revision petition by order under review. In any case, according to Mr. K. S. Grewal, in the totality of facts and circumstances of the case, it was eminently just and convenient to preserve the offerings which are collected twice a year and to hand over the amount to whosoever is ultimately found entitled thereto.

(5) After hearing learned counsel for both the parties. I am constrained to hold that the order in question deserves to be reviewed.

(6) A receiver can be appointed under Order 40 Rule 1 of the Code where the Court finds that it is just and convenient to do so. It follows by necessary implication that the plaintiff must show a good *prima facie* case to justify the application of Order 40 Rule 1 for purposes of appointment of receiver. In the plaint, the Mandir of the deity was alleged to be situated on Khasra No. 77, 77/1 and 77/2 vesting in the Gram Panchayat as *Shamlat Deh*. A perusal of the *Jamabandi* for the year 1987-88 shows that the temple is situated in

Khasra No. 83 which according to the same *Jamabandi* is in possession of the Mohatmims of Mandir Durga Mai Ji. According to the *Jamabandi* for the year 1961-62 Khasra No. 77 (OK—8M), 77/1 (4K—7M) and 77/2 (1K—7M), which belongs to the Gram Panchayat, is described as “*Gair Mumkin Mela Ground Mandir Devi Ji*”. Mr. S. K. Mittal explained that whereas the temple of the deity was situated in Khasra No. 83, certain lands comprised in Khasra No. 77, 77/1 and 77/2 were also in possession of the temple. The Gram Panchayat sought eviction of the Mohatmims of the deity under section 7(2) of the Village Common Lands (Regulation) Act 1961. The Assistant Collector 1st Grade, Narnaul, by order dated December 26, 1966, dismissed the application of the Gram Panchayat. The above explanation *prima facie* goes to explain that the temple of the deity does not appear to be situated in Khasra numbers vesting in the Gram Panchayat but in another Khasra number, namely, Khasra No. 83, which vests in the Murti itself.

It is not factually correct to say that review was sought only on the ground that the Court did not take notice of the injunction order granted in the R.S.A. In fact, the other grounds, namely, relating to *prima facie* case and the previous litigation, were also taken in the review application. Where the plaintiff is unable to make out a strong *prima facie* case with regard to its exclusive possession, broadly speaking it cannot be considered just and convenient to appoint a receiver. In the present case, extraordinary circumstances have not been made out justifying the appointment of receiver even though *prima facie* the plaintiffs had not been found to be in possession.

(7) For the foregoing reasons, the order dated December 17, 1991, in Civil Revision No. 2647 of 1991 is recalled and the revision petition dismissed. The trial Court shall, however, dispose of the suit expeditiously.

J.S.T.

Before : G. R. Majithia, J. and A. S. Nehra, J.

RAGHU NATH,—Petitioner.

versus

BHAG MAL,—Respondent.

Contempt Appeal No. 4 of 1983.

9th July, 1992.

Contempt of Courts Act—(70 of 1971)—Section 19—Appellant filed suit for possession—Suit decreed by Appellate Court—Application moved by respondent for temporarily staying dispossession till