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Dec. 22.

KUTOOR VENGAYIL RAYARAPPAN NAYANAR

v.

KUTOOR VENGAYIL VALIA MADHAVI AMMA AND OTHERS.

[SIR HARILAL KANIA C.J., SIR FAZL ALI, PATANJALI SASTRI and MEHR CHAND MAHAJAN JJ.]

Civil Procedure Code (V of 1908), O. XL, r. 1 (a); O. XLIII, r. 1 (s)—General Clauses Act (X of 1897), s. 16, effect of—Order removing receiver—Whether appealable—Practice—Appealable cases—Duty of lower Court to decide all points involved.

Order XL, r. 1, of the Civil Procedure Code which empowers the Court to appoint a receiver must be read along with s. 16 of the General Clauses Act, 1897, which provides that the power to make an appointment includes the power to remove or dismiss the person appointed, and an order removing a receiver is therefore an order under r. 1 of O. XL, and appealable under the provisions of O. XLIII, r. 1 (s), of the Code.

Sripati Datta v. *Bhibute Bhusan* (I.L.R. 53 Cal. 319), *Abdul Kader* v. *R. M. P. Chettiar Firm* (A.I.R. 1938 Rang. 387), *Allahabad Bank Ltd.* v. *Maharaj Kishore Khanna* (I.L.R. 1945 All. 506), and *Bhimnath* v. *Kumar Shyamanand* (I.L.R. 1945 Pat. 457) approved.

Subramania Iyer v. *Muthulakshmi Ammal* (1912 M.W.N. 1208), *Ramaswami Naidu* v. *Ayyalu Naidu* (46 M.L.J. 196), *Eastern Mortgage and Agency Co. Ltd.* v. *Pramananda Saha* (20 C.W.N. 789), *Abdul Shakur* v. *Mst. Rafiquinnissa* (A.I.R. 1931 All. 72) not approved.

In appealable cases the Courts below should as far as may be practicable pronounce their opinions on all the important points so as to enable the appellate Court to decide the case finally.

APPEAL from the High Court of Judicature at Madras: Civil Appeal No. LXXXVII of 1949.

This was an appeal under the Federal Court (Enlargement of Jurisdiction) Act, 1947, from an order of the High Court of Judicature at Madras dismissing an appeal from an order dated 6th June, 1947, made by the Subordinate Judge of Tellicherry in O. S. No. 28 of 1945 removing the appellant from the office of receiver.

Sir Alladi Krishnaswami Aiyar (*Alladi Kuppuswami* and *A. Achutan Nambiar* with him) for the appellant.

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O. T. G. Nambiyar (*C. M. Balakrishna Kurup* with him) for the contesting respondents. [61 respondents did not enter appearance].

1949. Dec. 22. The judgment of the Court was delivered by

MAHAJAN J.—The appellant, the manager of a Malabar tarwad, was appointed a receiver in a suit for partition of the tarwad properties (O.S. No. 28 of 1945) on 14th August, 1946, by the Subordinate Judge of Tellicherry. On an application presented by respondents 1 to 7 on 6th June, 1947, an order was made for his removal from receivership and for the appointment of two other persons as receivers on 25th March, 1949. An appeal against the order of removal was dismissed by the High Court of Madras on the ground that it was not competent. No opinion was expressed on the merits of the case. This appeal is before us by special leave against that decision.

The only point for determination is whether an appeal lies against an order removing a receiver. The provisions of the Code of Civil Procedure relevant to this enquiry are contained in s. 104 and O. XLIII, r. 1 (s). It is provided therein that an appeal lies only from those orders which are made appealable in express terms and from no others. An order under r. 1 of O. XL is one of such appealable orders. An order removing a receiver is not expressly mentioned among the orders against which an appeal has been allowed by the Code, but it was contended that such an order falls under O. XL, r. 1, and therefore an appeal is competent against it.

Rule 1 (a) of O. XL runs thus:—

"Where it appears to the Court to be just and convenient, the Court may by order appoint a receiver of any property, whether before or after decree."

The High Court took the view that the rule in express terms empowers the Court to appoint a receiver and no mention is made in it authorizing it to remove him and hence no appeal lies from such an order as it is outside the ambit of the rule, and has not been made

otherwise appealable in express terms. Emphasis was laid on the words "from no other order" occurring in the concluding part of s. 104.

It appears to us that in expressing this opinion the learned Judges of the High Court did not fully apprehend the true meaning and intent of s. 16 of the General Clauses Act and did not take into consideration the general rules applicable to the construction of statutes expressed in language similar to the one employed in O. XL, r. 1. Section 16 of the General Clauses Act runs as follows:—

"Where, by any Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have the power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power".

The statute has codified the well understood rule of general law as stated by Woodroffe on Receivers, Fourth Edition, that the power to terminate flows naturally and as a necessary sequence from the power to create. In other words, it is a necessary adjunct of the power of appointment and is exercised as an incident to, or consequence of, that power; the authority to call such officer into being necessarily implies the authority to terminate his functions when their exercise is no longer necessary, or to remove the incumbent for an abuse of those functions or for other causes shown. It seems that it was because of this statutory rule based on the principles above mentioned that in O. XL, r. 1, of the Code of Civil Procedure no express mention was made of the power of the court in respect of the removal or suspension of a receiver. The General Clauses Act has been enacted so as to avoid superfluity of language in statutes wherever it is possible to do so. The legislature instead of saying in O. XL, r. 1, that the court will have power to appoint, suspend or remove a receiver, simply enacted that wherever convenient the court may appoint a receiver and it was implied within that language that it

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may also remove or suspend him. If O. XL, r. 1, of the Code of Civil Procedure is read along with the provisions above mentioned, then it follows by necessary implication that the order of removal falls within the ambit of that rule and once that decision is reached, it becomes expressly appealable under the provisions of O. XLIII, r. 1 (s).

In *Sripati Datta* v. *Bibhuti Bhusan* (1), a Bench of the Calcutta High Court disallowed a similar preliminary objection raised before it and held that an appeal was competent against an order removing a receiver. That decision, in our opinion, is sound and states the law on the point correctly. It may further be pointed out that the scheme of O. XLIII in making certain orders appealable is of a twofold character. In a number of cases an appeal has been allowed from all kinds of orders passed under a certain rule, while in other cases the right of appeal has been limited only to certain specific orders passed under a certain rule. Reference in this connection may be made to O. XLIII, r. 1 (v), and r. 1 (t). In these rules appeal has been allowed against certain specific orders but not against all the orders that could be made under these rules. Order XL, r. 1, falls in the category of cases where all orders made under it have been made appealable and it has not been said that the only order appealable is the one appointing a receiver. Whenever an order can be brought within the purview of O. XL, r. 1, it at once becomes appealable under the provisions of O. XLIII, r. 1 (s). The High Court of Madras was therefore in error in holding that the appeal against the order of removal of the first defendant from the receivership was not competent.

We are aware that the decisions of the High Courts in India on this point are not uniform. The High Court of Calcutta except in one case has taken the view that an order of removal of a receiver is appealable. This view was followed in *Abdul Kadar* v. *R. M. P. Chettiar Firm*(2) by the Rangoon High Court.

(2) (1926) I.L.R. 53 Cal. 319. (4) (1938) A.I.R. 1938 Rang. 387.

and in *Allahabad Bank Ltd.* v. *Maharaj Kishore Khanna*(1), by the Allahabad High Court. The Patna High Court in *Bhimnath* v. *Kumar Shyamanand*(2) was also inclined to favour this opinion. A different view has been taken in *Subramania Iyer* v. *Muthulakshmi Ammal*(3) by the Madras High Court and it was said that there being no specific provision in the Code allowing an appeal from the removal of a receiver no appeal was competent. It seems that the attention of the Court was not drawn to the rule of interpretation enacted in s. 16 of the General Clauses Act. In *Ramaswami Naidu* v. *Ayyalu Naidu*(4) a similar opinion was expressed. There the order appealed against was one refusing to remove a person from his position as receiver. This distinction, however, does not materially affect the question. In this case also no reference was made to s. 16 of the General Clauses Act. In *Eastern Mortgage and Agency Co. Ltd.* v. *Pramananda Saha*(5) this view was followed. The point, however, was decided without any discussion. In an earlier Allahabad case, *Abdul Shakur* v. *Mst. Rafiqunnissa*(6), it was held that no appeal was competent and the view of the Calcutta High Court in *Sripati Datta* v. *Bibhuti Bhusan Datta*(7) was dissented from on the following grounds :—

"This decision proceeds upon the ground that under s. 16, General Clauses Act, the power to appoint includes the power to remove or dismiss and that therefore the right to appeal from an order of appointment must be held to include the right of appeal from an order of dismissal. We cannot follow this reasoning and we do not see what the principle underlying s. 16, General Clauses Act, has to do with the right of appeal. Where a right of appeal has to be expressly conferred by statute it cannot be presumed to exist by recourse to a rule of analogy or a rule of logic."

It does not appear to have been appreciated that s. 16 of the General Clauses Act does not confer a new right

(1) (1945) I.L.R. 1945 All. 506.
(2) (1945) I.L.R. 1945 Pat. 457.
(3) (1912) M.W.N. 1208.
(4) (1924) 46 M.L.J. 196.
(5) (1916) 20 C.W.N. 789.
(6) (1931) A.I.R. 1931 All. 72.
(7) (1926) I.L.R. 53 Cal. 319.

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on the court to remove a receiver. It only furnishes a rule of interpretation and enacts that a power of appointment includes and implies within itself the power of removal and wherever a court is empowered to make a certain appointment automatically it gets authority to exercise the power of removal in respect of the person appointed. In *Surendra* v. *Nagar Chand*(1) the Patna High Court held that an order refusing to discharge a receiver was not appealable. No opinion was expressed on the point whether there was a right of appeal in respect of an order removing a receiver.

In our opinion the decisions that have expressed the opinion that no appeal has been allowed by the Code of Civil Procedure against an order of removal of a receiver have not given full effect to the provisions of s. 16 of the General Clauses Act and to the general rule of law as stated above. For that reason they are disapproved.

For the reasons given above we hold that the appeal preferred by the first defendant to the High Court of Madras was maintainable and the appellant is entitled to a decision on the merits.

Before concluding we wish to point out that it would have been appropriate if the learned Judges of the High Court in this case had expressed an opinion on the merits of the case also. That would have enabled us to decide the case finally instead of remanding it. We would like to draw attention to what Lord Justice Turner in delivering the judgment of the Judicial Committee in *Tarakant Bannerjee* v. *Puddomoney Dossee*(2), said as to the duty of High Court Judges to pronounce their opinions on all important points before them. He said:—

"The cause has not been decided in either Court on the principal point—whether the lands formed part of the *jote* tenure or of the *Talook*. Their Lordships are unfortunately unable to decide this appeal finally by reason of this defect. The Courts below, in appealable cases, by forbearing from deciding on all the issues

(1) (1946) I.L.R. 25 Pat. 779. (2) (1866) 10 M.I.A. 476.

joined, not infrequently oblige this Committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired, therefore, that in appealable cases the Courts below should, as far as may be practicable, pronounce their opinions on all the important points."

The result is that this appeal is allowed with costs and the case is remanded to the High Court for disposal on the merits.

Appeal allowed.

Agent for the appellant: *M. S. Krishnamoorthi Sastri.*

Agent for the respondents: *S. Subramaniam.*

DR. SATYA CHARAN LAW AND OTHERS

v.

RAMESHWAR PRASAD BAJORIA AND OTHERS.

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Dec. 22.

[SIR HARILAL KANIA C.J., SIR FAZL ALI, PATANJALI SASTRI and MEHR CHAND MAHAJAN JJ.]

Company—Directors—Mala fide *acts—Right of majority of shareholders to sue in company's name for redress—Provision in articles vesting management in directors and requiring special resolution for alteration of articles and removal of directors, effect of.*

Ordinarily the directors of a company are the only persons who can conduct litigation in the name of the company, but when they are themselves the wrongdoers against the company and have acted *mala fide* or beyond their powers, and their personal interest is in conflict with their duty in such a way that they cannot or will not take steps to seek redress for the wrong done to the company, the majority of the shareholders are entitled to take steps to redress the wrong, and if there is no provision in the articles of association to meet the contingency, the majority of the shareholders can sue in the name of the company even though the management of the company and the right to institute or defend legal proceedings by or against the company is rested in the directors by the articles of association and these articles could be altered and the directors could be removed only by special or extraordinary resolution.