Karnataka High Court
Kishorchand vs Karnataka Bank Ltd. on 8 November, 1985
Equivalent citations: ILR 1986 KAR 964
Author: C Urs
Bench: C Urs
ORDER Chandrakantaraj Urs, J.

1. This is a revision by the receiver appointed by the Court of the Civil Judge, Mangalore, in Execution Case No. 8.2/1977. It is directed against the legality and correctness of the order dated 13-9-1985 passed by the learned Civil Judge, Mangalore, in the said execution petition. Before stating the peculiar facts and circumstances leading to the present revision petition, it would be useful to set-out the order itself in toto :

"13-9-85;

Petitioner : Shri P. V. Shetty present.

I.A. No. IV Section 151 C.P.C.

A.L.S. Present. Shri P.V.S. Present Heard. As submitted by them. F.S. Recorded Receiver discharged. Deliver the properties in favour of the Jdr. by 30-9-85".

The receiver who is none other than the son of the judgment debtor in the above mentioned execution petition is aggrieved by that portion of the above order by which properties are to be delivered to the judgment-debtor. He has no quarrel or no grievance at all in respect of the other parts of the order. On 16-9-1985 there appears to have been some direction by the Court to break open the lock and render police help to give effect to its order by 30-9-1985 with which this Court in this case need not seriously concern itself.

2. The peculiar facts leading to this revision petition under Section 115 of the C.P.C. may be stated and they are as follows : The Karnataka Bank Ltd., obtained a decree against one Monappa for over Rs. 4 lakhs and sought its execution on more than one occasion, the last one being Execution Case No. 82/1977. The Bank made an application which was numbered as I.A. No. I. In that application it prayed that the decree-holder be appointed as receiver of Schedule A and B properties for the purpose mentioned in the petition. Apparently that purpose was to take over Schedule A and B properties in order to repay for itself the decretal amount together with the interest etc. The judgment debtor had no objection for the decree-holder-Bank being appointed as the receiver. Accordingly, I.A. No. I came to be allowed and the decree-holder-Bank was appointed receiver. When the receiver went to take possession of schedule A and B properties it was resisted by the present revision petitioner in this Court as be was in possession of those properties. That resistance was reported to the Court by the Bank, the receiver appointed under I.A. No. I. The Bank further prayed that the objector be notified and the objection removed. That is apparent from the order made on 22-6-1977 i.e., nearly two months after the appointment of the Bank as the receiver. The objector also entered appearance and tiled objections to the prayer. At that point of time there

appears to have been some sort of a compromise between the decree holder, the judgment-debtor and the objector, the son of the judgment-debtor. As a result of that compromise on 16-7-1977 the execution petition came to be allowed in terms of the joint memo tiled by the decree-holder, the judgment-debtor and the objector. The operative portion of the order is as follows :

"The Execution Petition is allowed and B. Kishore Chand, son of respondent-judgment-debtor B. Monappa is appointed receiver to decree schedule A and B properties in terms of the joint memo. The Execution Petition is directed to be closed giving liberty to the parties as stated above. The petitioner-decree-holder shall get the costs of this E.P. from out of the collections of the receiver. Closed Execution Proceedings.

Sd/- Venkatesh Patil, 16-7-77 I Additional Civil Judge."

The memo itself indicated that the objector should be appointed receiver with the sole power of management of the schedule A and B properties. He was even permitted to sell any part of the B schedule properties with the permission of the Court. He was, however, restricted from alienating any of the properties otherwise than the specific reservation made. He was directed to pay Rs. 5,000/- per mensum to the decree-holder-Bank and Rs. 1250/- to the judgment-debtor.

3. Thus, the obstructor continued in possession, control and management of the factories in question as receiver with effect from the date of the order. Undoubtedly, in the papers furnished by the revision petitioner, it is seen that there is a deed of partnership entered into between the receiver, his father, the judgment-debtor and his brother by which, some arrangement outside the terms of the order on I. A. No. III has been entered into. Particular attention was drawn specifically by the Learned Counsel for the judgment-debtor who is one of the respondents in this case to the fact that in the preamble to the partnership deed it is recited that the judgment-debtor, the father of the petitioner, is the sole owner of the two mills in question. I will refer to Learned Counsel's argument founded on this undisputed fact. But now to continue narration of events, the petitioner as receiver discharged in full the debt due to the decree holder Bank. It was in that circumstance that on 13-9-1985 the decree-holder and the judgment-debtor reported full satisfaction of the decree and sought the order to that effect. As already extracted the order went beyond merely entering full satisfaction discharging the receiver.

4. Mr. H. B. Datar, Learned Counsel for the revision petitioner, has pointed out that the direction given to put the judgment-debtor in possession was beyond competence and beyond the jurisdiction of the Executing Court, as possession inter se between the judgment-debtor and the obstructor was never in issue before the Executing Court. On the other hand, Mr. M. Gopalakrishna Shetty, Learned Counsel for the respondent contends that as admittedly the judgment-debtor was the absolute and sole owner of the properties in question, the Court neither exceeded its jurisdiction nor acted improperly in restoring to the real owner the properties that were with the receiver. Once the receiver is discharged, the thrust of the argument of the Learned Counsel for the respondent is that from the date of the appointment as receiver, the receiver was not in possession in any other capacity than as receiver and on his ceasing to be a receiver he has to part with his possession in favour of the real owner and therefore there cannot be a cause for grievance. Ordinarily the Learned

Counsel would be right in his submission. But I have already set out the facts in some detail and one more detail added will not be without its use. There appears to be some dispute in the family and there has been litigation between the judgment-debtor, the father and the obstructor the son and other sons, though itigations do not seem to have seen their logical end.

5. it is contended for the revision petitioner that the suit was dismissed and that another suit filed by the judgment-debtor father, also was withdrawn. Therefore, whatever may be the dispute in the family which has not reached any finality except as evidenced by the partnership deed the management of the two factories even during the subsistence of the receivership had been taken over by the three partners. I, therefore, do not attach much importance to the partnership document giving right of possession because inter se agreement between the partners cannot divest the authority of the Court's order in regard to possession by the receiver.

6. In that circumstance it would be an error to contend that the real owner is the one who should be put in possession at the discharge of the receiver.

7. Normally, the case is not free from doubt. It is under Order 40 of the C.P.C. that power of appointment of receivers to the Court is specifically given. But whatever is done by the receiver on his appointment as receiver under Order 40 of the C.P.C. will be as agent or officer of the Court and no more. In the Law of Receivers by N. D. Basu, Third Edition at page 747 we have this passage :

"Where a receiver appointed at the instance of an attaching creditor in respect of the properties of a judgment-debtor and misappropriated monies that came to his hands, and the question arose as to whether the payment by judgment-debtor to the receiver operated a valid discharge of the judgment-debtor, Muthuswami Ayyar, J , held that the receiver was an officer or representative of the Court and subject of its orders, and could not be considered as the judgment creditor's agent. In an appeal preferred against the aforesaid decision in Muthia Chetty V. Orr(3) Shephard, J., held that a receiver appinted to collect monies is not an agent of either party ; he is an officer of the Court deputed to collect and hold monies in accordance with the orders of the Court."

This is by and large the generally accepted view of the position of a receiver though on the facts of certain cases slightly divergent views have been expressed peculiar to the facts of those cases.

8. On the facts earlier narrated, this Court is not left in doubt that the judgment-debtor, the father, was not in possession of the two factories in question. If he was, then there would have been no obstruction. Because of the obstruction of the decree holder, request to the Court to notify the obstructor and to remove the obstruction is clearly indicative of the fact that the obstructor was not dispossessed of the schedule properties. I also should not fail to notice at this stage that receiver appointed in the instant case is not really the receiver appointed under Order 40 of the C.P.C., but receiver appointed under Section 51 of the C.P.C. and I should therefore make a cautious approach in accepting the decisions rendered in respect of the various rules under Order 40 of the C.P.C. The possession was undoubtedly with the obstructor. To prove contrary as contended by Mr. Gopalakrishna Shetty is a futile effort. If the obstructor was not in possession then there was no need for the Bank to move the Court to notify the obstructor and remove the obstructor in 1977.

There would also be no further tripartite consent joint memo a few days later binding the obstructor as the receiver of the Court for purpose of discharge not only the debt but also some kind of an allowance to the judgment-debtor.

9. My attention was drawn to several decisions. But it would be sufficient to refer to what the learned author of the Law and Practice Relating to Receivers supra has stated at page 749 :

"The receiver is appointed for the benefit of all concerned ; he is the representative of the Court, and of all parties interested in the litigation wherein he is appointed. He is the right arm of the Court in exercising the jurisdiction invoked in such cases for administering the property ; the Court can only administer through a receiver. For this reason all suits to collect or obtain possession of the property must be prosecuted by the receiver, and the proceeds received and controlled by him alone"(1). In every case when he is appointed as general receiver under Order 40. R. 1, he is receiver and officer of the Court in respect of the property, and when possession is passed to him either physically or legally, by operation of law as where the party himself is made the receiver, it is obvious that the Possession is no longer with the original party(1)."

(Underlining is mine) On the above view based on decided cases, it is clear that whatever may be nature of possession legal or otherwise before the appointment as receiver, obstructor had possession himself when he was appointed receiver. In the case of The Imperial Oil Soap and General Mills Company Ltd., Delhi v. Ram Chand, 1916 Indian Cases, (Vol. 36) 980 a question did arise as to whom the possession should revert after the receiver was discharged. Following an earlier decision of the Madras High Court in Orr v. Muthia Chetti, 17 Madras 501 the Court with approval extracted the passage from the Madras decision which is as follows and with which I am respectfully in full agreement.

"The appointment of a Receiver does not in any way affect the right to the property over -which he is appointed. The Court, in an action for a Receiver, deals with the possession only. until the right can be determined, if the right is the matter in dispute between the parties, or until the incumbrances have been cleared off, if the appointment has been made at the instance of an incumbrancer. Where the right is the matter in dispute, the Receiver merely holds the property for whoever may ultimately be held to be entitled to it. If the appointment has been made on the application of an incumbrancer, the Court, when the incumbrance has been cleared off, restores the possession to him from whom it was taken. The title is in no way prejudiced in theory or principle, by the appointment."

(Underlining is mine) (See Kerr on Receivers, Fifteenth Edition at page 130) In other words, even as late as now the dictum that if the appointment is made at the instance of incumbrancers, and the incumbrance is cleared off, the possession is restored to him from whom it was taken is the good law.

10. I have already held that receiver took possession from himself as obstructor and therefore normally the possession should have been returned to the obstructor when the receiver was discharged as title or right was not in dispute in the execution proceedings.

11. Unfortunately, the receiver was not even notified. On this aspect also Mr. Gopalakrishna Shetty strenuously argued that there was no need for the obstructor who was an officer of the Court to be notified. I do not want to raise controversy which was not raised at any time earlier as to possession before the Executing Court. But the fact that possession was with the obstructor cannot be seriously doubted. The compromise memo of the Bank, the judgment-debtor and the obstructor indicates that he no more than continued in possession as official receiver. In that sense receiver while being discharged ought to have been notified if he was to be dispossessed. Otherwise, it would be imposing penal consequence on a person though illegally in possession, of being dispossessed without an opportunity of being heard. Therefore, that part of the order under revision is also opposed to the rules of natural justice apart from being contrary to law.

12. In this way, the Executing Court which had never occasion to question the legality of the possession of the obstructor, could not have unilaterally assumed jurisdiction to give the same to the judgment-debtor as directed.

13. Therefore, that part of the order directing possession calls for interference and it has to be set aside on the ground that it has been made without jurisdiction.

14. In the result, the revision Petition is allowed. But in the circumstances of the case, there will be no order as to costs.