

**TOWFEEK**  
**v**  
**MARTIN**

COURT OF APPEAL  
AMARATUNGA, J.  
CALA NO. 165/2002  
D.C. GALLE 14512/P  
JULY 4, 2003

*Civil Procedure Code – Section 671 – Appointment of a Receiver – The circumstances to be considered?*

The plaintiff-petitioner instituted action to partition a particular land. The plaintiff-petitioner claimed that, there was a dispute between him and the 7th defendant-respondent with regard to the taking of the coconut yield and sought the appointment of a receiver for the purpose of collecting the coconut produce and crediting the income received therefrom to the credit of the case. The District Court refused the application.

**Held :**

- (i) The main object of appointing a receiver is the preservation and better management of the property.
- (ii) Plaintiff is not entitled to have a receiver appointed to protect his pecuniary interest.
- (iii) Order for appointment of a receiver cannot be made upon a consideration of the merits of the substantive claim – that in effect is an application to prejudge the case.

**APPLICATION** for leave to Appeal from the Order of the District Court of Galle.

**Cases referred to:**

1. *Rabbia Umma v Noordeen* - 41 NLR 102
2. *Corea v Amarasekera* – 1913 Vol. II Balasingham's Notes of cases, page 1.
3. *Corbet v The Ceylon Company Ltd.*, – 1981 SCC Vol. IV, 143

*Ghazali Hussain* with *Y.N.P. de Silva* for plaintiff-petitioner.

*Mahesh Katulanda* with *Rajendra Seneviratne* for 7th defendant-respondent.

*Cur adv vult*

October 14, 2003

**GAMINI AMARATUNGA, J.**

This is an application for leave to appeal against the decision 01  
of the learned Additional District Judge of Galle refusing to appoint  
a receiver for the land sought to be partitioned in this action. The  
plaintiff filed this action to partition the land called  
Gorakagahaliyadda 2R 33P in extent. According to the plaint, the  
plaintiff and the 1st to 6th defendants were the persons entitled to  
shares of this land as co-owners. According to the plaint, the 7th  
defendant-respondent was a person placed in the property as a  
watcher by a predecessor in title of the plaintiff. The plaintiff  
alleged that from about February, 2001, the 7th defendant forcibly 10  
and unlawfully commenced to construct a permanent building in the  
property. By the plaint the plaintiff prayed for an interim injunction  
preventing the 7th defendant-respondent from constructing a build-  
ing in the land. The Court in the first instance issued notice of  
injunction only but later issued an enjoining order restraining the  
7th defendant from constructing a building in the said land and cut-  
ting the coconut trees. Later, the plaintiff-petitioner filed an applica-  
tion seeking to have a receiver appointed for the corpus. The plain-  
tiff claimed that there was a dispute between him and the 7th defen-  
dant-respondent with regard to the taking of the coconut yield of the 20  
land and the appointment of a receiver was for the purpose of col-  
lecting the coconut produce and crediting the income received  
therefrom to the credit of the case.

Both parties agreed to the Court making an order with regard to the interim injunction and the appointment of a receiver after an inspection of the land by the Judge. After an inspection the learned Judge made order restraining the 7th defendant-respondent from further constructing the building. However the application for the appointment of a receiver was refused by the Judge. The plaintiff now seeks leave to appeal.

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In terms of section 671 of the Civil Procedure Code, whenever it appears to the Court to be necessary for the restoration, preservation or better custody or management of any property subject to an action or under sequestration, the Court may upon the application of any party who shall establish a *prima facie* right to or interest in such property, appoint a receiver of such property, remove any person in possession of such property and commit such property to the custody of the receiver. The main object of appointing a receiver is the preservation and better management of the property. In this case the plaintiff claimed that the 7th defendant did not have any right to the property. On the other hand the 7th defendant has stated that his predecessors in title came to occupy the land without any leave or license from any person and all plantations and improvements were made by them. When the Surveyor carried out the preliminary survey the 7th defendant has claimed all plantations.

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The plaintiff sought to have a receiver appointed as there was dispute between him and the 7th defendant with regard to the taking of coconut produce of the land. This simply is for the protection of the pecuniary interests of the plaintiff till the action is over. The principle laid down in *Rabbia Umma v Noordeen*<sup>(1)</sup> referred to by the learned Judge in his order was that a plaintiff was not entitled to have a receiver appointed to protect his pecuniary interests. The principle laid down in the early case of *Corea v Amarasekara*<sup>(2)</sup> was that an order for appointment of a receiver shall not be made upon a consideration of the merits of the substantive claim. In *Corea's* case the Court has cited with approval the earlier case of *Corbet v The Ceylon Company Ltd.*<sup>(3)</sup> where it has been stated where the plaintiff has asked for the appointment of a receiver on the merits of the case, it in effect is an application to prejudge the case.

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In this case the appointment of a receiver has been sought on the basis that the plaintiff was a lawful owner of the property and the 7th defendant was a trespasser who has no lawful right to the property and therefore a Grama Seva Niladhari should be appointed to collect the income of the property and credit it to the case. On the other hand the 7th defendant is in possession of the property and has claimed it and the plantations on his own right. The plaintiff has not shown that the appointment of a receiver was necessary for the preservation or the better management of the property. In those circumstances the appointment has been sought merely for the protection of the pecuniary interest of the plaintiff and that such appointment would become an act of pre judging the merits of the plaintiff's claim. The learned Judge has exercised his discretion on correct legal principles and this is not a fit case to grant leave to appeal. Accordingly leave to appeal is refused and the application is dismissed with costs in a sum of Rs. 5000/- 70

*Application dismissed*