

1952

Present : Gunasekara J. and Swan J.

M. T. VELUPILLAI, Appellant, and C. K. PALANYANDY
et al., Respondents

S. C. 91 Inty.—D. C. Batticaloa, 817 (Miscellaneous)

Civil Procedure Code, s. 671—“ Any party ”—Appointment of receiver—Powers of Court.

Under section 671 of the Civil Procedure Code a defendant may apply to Court for the appointment of a receiver against a co-defendant.

When a Court makes an order under section 671 it is not confined to the prayer of the applicant. It has jurisdiction to make any order it thinks necessary for the preservation or better custody or management of the property in question.

APPPEAL from an order of the District Court, Batticaloa.

C. T. Olegasegarem, for the first defendant appellant.

C. Renganathan, for the second defendant respondent.

No appearance for the plaintiffs respondents.

Cur. adv. vult.

October 7, 1952. SWAN J.—

This action was instituted by the plaintiffs-respondents who claimed to be regular worshippers of the Sinthayathirai Pillayar Kovil situated at Veeramunai in the Batticaloa District. They alleged that it was the custom to elect two trustees, one from among the worshippers belonging to the Vellala caste and the other from among those of the Seerapatha caste, and that accordingly in September, 1935, the congregation elected the first defendant-appellant and one S. P. H. Kalikuddy as trustees. They alleged further that upon the death of Kalikuddy the first defendant-appellant in defiance of the custom of appointing trustees and against

the wishes of the congregation purported to appoint the second defendant-respondent as his co-trustee. One of the prayers in the plaint was that this appointment should be declared null and void. The plaintiffs-respondents also alleged that the first defendant-appellant had neglected the temple and misappropriated its income, and they asked that he be removed from office and required to render an account of the income and expenditure of the temple from the year 1935. There was certain other relief claimed in the prayer of the plaint, namely, the election of new trustees and the settlement of a scheme of management.

The first defendant-appellant filed answer stating that the temple and its lands had been granted to his ancestors. He denied the manner of appointment of trustees as set out in the plaint and asserted that he was a hereditary trustee and functioned as such, and not by virtue of election by the Vellala members of the congregation. He stated that Kalikuddy was a Vannakku or trustee appointed by the Seerapatha members of the congregation and that his rights as trustee, as well as the rights of Kalikuddy as co-trustee, were recognized by the Court in D. C. Batticaloa 7,963. He denied that he had appointed the second defendant-respondent as trustee. He also denied the allegation of mismanagement and prayed that the action be dismissed.

The second defendant-respondent filed a separate answer more or less on the same lines as the answer of the first defendant-appellant. He alleged that he had been elected a trustee by the Seerapatha members of the congregation; and made common cause with the first defendant-appellant in denying the charge of mismanagement. He too prayed for the dismissal of the action.

It is clear that at the stage of filing answer the two defendants were on good terms. Thereafter, apparently, they fell out, for on September 25, 1951, the second defendant-respondent made the application which is the subject-matter of this appeal. He filed a petition, supported by affidavit, making the first defendant and the plaintiffs respondents thereto, and asked the Court to issue an injunction restraining the first defendant from selling the leasehold rights of the temple lands for the year 1951-1952, and praying that the Court should direct one of its officers to sell the said leasehold rights by public auction and deposit the proceeds of sale in Court.

The application was substantially for the appointment of a receiver and there can be no doubt that the first defendant-appellant regarded it as such, for, in his objections, he categorically states that the petitioner was not entitled in law to ask for the appointment of a receiver.

The learned District Judge in allowing the application of the petitioner made the following order:—

“ I do not agree with Mr. Adv. Kanagasunderam's contention that this is an application for an injunction and is therefore governed by section 87 of the Courts Ordinance. Accordingly I make order that the leasehold rights of the temple properties be sold by the Secretary of this Court and by nobody else *whenever the need arises for such sale* and the money deposited to the credit of this case after deducting expenses.”

Mr. Olegasegeram for the appellant contends (1) that the Court had no jurisdiction to make the order and (2) in any event the Court could not have made order for the sale of any leasehold rights other than for the year 1951-1952.

In my opinion the Court was empowered to make the order it made. It was, as I have already stated, substantially an application for the appointment of a receiver. Section 671 of the Civil Procedure Code provides that any party who can establish a *prima facie* interest in the property may apply to Court for the appointment of a receiver ; and the Court should make the appointment if it appears to be necessary *inter alia* for the preservation or better custody or management of the property. The right of the second defendant to function as trustee might be disputed but there can be no question that he has an interest in the property.

As regards the second point made by Mr. Olegasegeram, I do not think the Court exceeded its powers when it made order regarding the sale of all future rents pending the action. In my opinion when a Court makes an order under section 671 it is not confined to the prayer of the applicant. It has jurisdiction to make any order it thinks necessary for the preservation, or better custody or management of the property.

The only other matter urged on behalf of the appellant is that the Court should not have directed that the entire proceeds of sale should remain in Court, without any provision for the necessary expenses of the temple. As I read the order of the Court I can see nothing in it to preclude any party interested from applying to the Court to direct the Secretary to pay out such sums of money as may from time to time be needed for the upkeep and maintenance of the temple.

I would dismiss the appeal with costs.

GUNASEKARA J.—I agree.

Appeal dismissed.

