



**IN THE COURT OF THE 1<sup>st</sup> ADDITIONAL SENIOR CIVIL  
JUDGE AND JMFC, RAMANAGARA**

**Dated This 03<sup>rd</sup> day of August 2023**

**PRESENT:**

**Sri. Mahesh B.T.,**  
B.Com., LL.M.,  
1<sup>st</sup> Addl., Senior Civil Judge and JMFC,  
Ramanagara.

**OS.No.270/2021**

**Plaintiffs** :- Sree Seetha Lakshmana and Others

**V/s**

**Defendants** :- Sri.Kodanadarama Swamy Seva  
Samithi trust (R) & Others

\* \* \*

**I.A.No.IV**

**Applicants** :- Sri.T.S.Venkatesh Murthy  
- - (Plaintiff No.2  
On behalf of the plaintiffs)

**V/s**

**Opponents** :- Sri.Kodanadarama Swamy Seva  
Samithi trust (R) & Others  
- - (Defendant)

\* \* \* \*

**ORDER ON I.A.No.4 FILED U/O XL RULE 1 of CPC.,**

The applicant/plaintiff No.2 has filed the application



to appoint a receiver to collect the rents and other usufructs derived from the 'D' and 'F' schedule properties.

2. As per the affidavit of the applicant that, on behalf of the remaining plaintiffs the applicant/plaintiff No.2 authorized and stated that, the plaintiff No.2 is one of the Trustees of the plaintiff No.1 Trust, which is their private and family Trust. The plaintiff No.3, also one of the Trustee as per the registered trust deed. It is stated that, they have sought for the relief of declaration and consequential relief of permanent injunction with regard to the 'A' to 'C' and 'E' schedule properties and possession of the 'D' and 'F' schedule properties mentioned in the plaint as well as in the accompanying application. Further it is stated that, in the 'D' schedule land, which is the portion of the 'A' schedule land attached the 'B' schedule temple comprising three floors, consisting commercial shops and offices, which are totally in 27



numbers and deriving the rents of Rs.3,00,000/- every month. The defendants No.1 to 9 have admitted about the existence of the commercial complex and contended that the then Committee formed by the elders in the village constructed the said commercial complex for the benefit of the Temple and since then the said rental income derived from the 'D' schedule property have been utilizing for the improvement of the Temple and from 05.01.2008 defendant No.1 Trust came into existence and for which the defendants No.2 to 9 are the Trustees and from the date of the coming into existing of the Trust, they have been collected the rental income from it and utilizing it for the improvement and maintenance of the 'B' schedule Temple.

3. It is further stated that, they have recently about one week back came to know that the defendants No.2 to 9 have been collecting the rent of Rs.2,00,000/- and more



from the 15 shops constructed in the 'F' schedule, illegally and misusing the same by themselves without maintaining any account. That the defendants No.1 to 9 are not managing the 'A' to 'E' schedule properties in any manner and they have no manner of right, title or interest over the same either in their individual capacity or in the capacity of the Trustees of the defendant No.1, as the defendant No.1 Trust itself has no right over the suit schedule properties. In other words, the suit schedule properties are not the properties belonging to the defendant No.1 Trust. The defendants No.2 to 9 are trespassers in the 'D' and 'F' schedule properties and collecting the rents derived from it illegally by falsely contended that they have got authority under the Trust deed being its Trustees and they are utilizing the same for the improvement and maintenance of the temple.

4. It is further stated that, the defendants No.1 to 9 are



not at all utilizing the said rental income either for the improvement of the Temple or its maintenance and they are swallowing the same as if they have been received the income from their own properties. The very fact that they have not been maintaining any accounts with regard to the income and expenditure and payment of income tax and property tax paid to the 'A' to 'E' schedule properties, one can infer that the defendants No.1 to 9 have been misused the said amount or embezzled it. Under the circumstances, it is just and necessary to appoint a receiver to collect the rents and other usufructs derived from the 'D' and 'F' schedule properties in order to preserve the same without being allowed to waste it or deprive the said income to the public Temple.

5. It is further stated that, the schedule properties are not public properties and not meant for public services. Further, no villagers are maintaining the suit schedule



properties and no Committee was formed by the elders in the village and they have been looking after the Management of the Temple and no committee has passed any resolution to construct the commercial complex and so call Committee have no manner of right, title or interest over the 'A' to 'E' schedule properties including 'D' schedule property. The defendant No.1 Trust is not formed in respect of any of the suit schedule properties and also to maintain or improve the same. On the other hand, the documents and other circumstances narrated by them clearly show that the 'A' to 'E' schedule properties are belonging to their common ancestors and then their family Trust. If the defendants No. 1 to 9 further allowed to continue to collect the huge amount of rents derived from the 'D' and 'F' schedule properties, it is very difficult to recover it from them thereafter and therefore to preserve it, without allowing to waste it or mismanaging



by the defendants No.1 to 9, it is necessary to appoint the receiver immediately to avoid the further loss. If the application is not allowed great hardship and irreparable injury will be cause to the plaintiffs and on the other hand, same application is allowed no prejudice would be caused to the defendants. Hence, he has prayed for allow the application.

6. The defendants No.1 to 9 have filed the objections to the above application and contended that, at the first instance the plaintiffs have no locus standi to file in present application seeking to appoint a receiver to collect the rent and other usufructs derived from the suit schedule properties items No. 'D' and 'F' and to deposit the same in the court with account during the pendency of the above suit. Further contended that, the plaintiffs were not at all Trustees of the defendants Trust. When the plaintiffs are not the Trustees of defendants Trust, the question of filing



such an application by the plaintiffs would not arise at all. In view of the fact that, the plaintiffs are no where concerned to the defendants Trust.

7. It is further contended that, the plaintiffs will have to establish that, the suit schedule properties belongs to them, then only the plaintiffs have a right to make such an application. Further the plaintiffs will have to prove that, their alleged Trust contributed the funds to the defendants Trust for its improvements then only the plaintiffs have right to make such an application and until and unless they did not contribute the funds to the defendants Trust, they have no right to file such an application. Further, when the plaintiffs nowhere concerned to the defendants Trust or it's funds or it's income the plaintiffs have no right to seek such a relief.

8. Further it is contended that, the knowledge of the



public at large it is these defendants have developed and it's property and started to get income to the defendants Trust with an intention to maintain and manage the Temple of it's day to day affairs for which the plaintiffs have no contribution and as the plaintiffs have no right to the question the income arrived to the defendants Trust. If the application is rejected no hardship will be caused to the plaintiffs, on the other hand the application will be allowed great hardship will be caused to the defendants Trust. Therefore, along with other grounds they have prayed to reject the application with heavy cost.

9. The following points arise for my determination:

*(1) Whether the application deserved to allowed?*

*(2) What order ?*

10. Heard and perused materials on record.



11. My findings on the above points are as under:

**Point No.1** : *In the Affirmative;*

**Point No.2** : *As per final order  
for the following:*

### **REASONS**

**12. Point No.1** : It is stated that, plaintiff No.2 is one of the Trustees of the plaintiff No.1 Trust, which is their private and family Trust. The plaintiff No.3, also one of the Trustee as per the registered trust deed. It is stated that, they have sought for the relief of declaration and consequential relief of permanent injunction with regard to the 'A' to 'C' and 'E' schedule properties and possession of the 'D' and 'F' schedule properties mentioned in the plaint as well as in the accompanying application.

13. It is stated that, in the 'D' schedule land, which is the portion of the 'A' schedule land attached the 'B' schedule temple comprising three floors, consisting



commercial shops and offices, which are totally in 27 numbers and deriving the rents of Rs.3,00,000/- every month. Defendants No.2 to 9 have been collecting the rent of Rs.2,00,000/- and more from the 15 shops constructed in the 'F' schedule, illegally and misusing the same by themselves without maintaining any account. That the defendants No.1 to 9 are not managing the 'A' to 'E' schedule properties in any manner and they have no manner of right, title or interest over the same either in their individual capacity or in the capacity of the Trustees of the defendant No.1, as the defendant No.1 Trust itself has no right over the suit schedule properties. The defendants No.1 to 9 are not at all utilizing the said rental income either for the improvement of the Temple or its maintenance and they are swallowing the same as if they have been received the income from their own properties.

14. The defendants No.1 to 9 have filed the objections to



the above application and contended that, at the first instance the plaintiffs have no locus standi to file in present application seeking to appoint a receiver to collect the rent and other usufructs derived from the suit schedule properties items No. 'D' and 'F' and to deposit the same in the court with account during the pendency of the above suit. Further contended that, the plaintiffs were not at all Trustees of the defendants Trust. When the plaintiffs are not the Trustees of defendants Trust, the question of filing such an application by the plaintiffs would not arise at all. In view of the fact that, the plaintiffs are no where concerned to the defendants Trust.

15. So far as Appointment of receivers is concerned, it is dealt under Order 40 Rule 1 of CPC. Order 40 Rule 1 of CPC is reproduced for better understanding.

Rule 1 Order XL of Code of Civil Procedure 1908  
"Appointment of receivers"



(1) Where it appears to the Court to be just and convenient, the Court may by order-

(a) appoint a receiver of any property, whether before or after, decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management or the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

16. This Court would rely on the decision of Apex Court in

**Sherali Khan Mohamed Manekia Vs. State of Maharashtra and others (2015(3) SCJ 722) Hon'ble**



**Supreme Court** held that prime object of appointment of receiver is to preserve the property by taking possession or other-wise and to keep an account of rent and profits that may be realized by the receiver and to submit it before the court till the lis is finally decided. It was further observed that ordinarily function of receiver who is appointed comes to an end with the final decision of the case and however even after the final decision the court has discretion to take further assistance of the receiver as and when need arises. Under Order 40, Rule 2, C.P.C the court may by general or special order fix the remuneration of receiver for the services rendered by him.

17. By keeping the above principles in mind to the present case on hand, in the present case, the plaintiff No.2 and 3 are the Trustees of the plaintiff No.1 Trust, which is their private and family Trust as per the registered trust deed dated:30.10.1967. Now, defendants without having any



right, interest over the plaintiff No.1 Trust have formed the Trust in the name of the defendant No.1 and misusing the income arrived from the schedule 'D' and 'F' suit schedule properties. The defendants have taken the defence that, the suit schedule properties are the public properties and same meant for the public purpose by the then Maharaja of Mysore and the plaintiffs are stranger to the suit schedule properties, on 05.01.2008 the defendant No.1 Trust came into existence through the registered Trust Deed dated:05.01.2008 under the Karnataka Society Registration Act and since then the defendant No.1 Trust managing the affairs of the temple and maintaining the temple properties. On careful perusal of the application, objection and documents produced by the both the parties, it can be seen that as per the registered trust deed dated 30.10.197 schedule properties are the private family properties which was endowed to the temple and trust. Further it can be seen



that schedule properties endowed by the members of plaintiffs family.

18. Further it is to be noted here that, the defendant No.1 Trust is a public Trust for the public purpose and according to the defendants they formed the association in the year 2008 and maintaining the suit schedule properties. Now, plaintiff have come before the court for the relief of declaration and consequential relief of permanent injunction with regard to the 'A' to 'C' and 'E' schedule properties and possession of the 'D' and 'F' schedule properties. Further it is to noted here that, Hon'ble High court of Karntaka in MFA No.7317/2022 after considering the prima-facie case of the plaintiffs granted temporary injunction in favour of the plaintiffs. Again now plaintiffs have come up with the instant application stating that in the 'D' schedule land, which is the portion of the 'A' schedule land attached the 'B' schedule temple comprising three floors, consisting



commercial shops and offices, which are totally in 27 numbers and deriving the rents of Rs.3,00,000/- every month. Defendants No.2 to 9 have been collecting the rent of Rs.2,00,000/- and more from the 15 shops constructed in the 'F' schedule, illegally and misusing the same by themselves without maintaining any account. Further they also stated that, the defendants No.1 to 9 are not managing the 'A' to 'E' schedule properties in any manner and they have no manner of right, title or interest over the same either in their individual capacity or in the capacity of the Trustees of the defendant No.1, as the defendant No.1 Trust itself has no right over the suit schedule properties. The defendants No.1 to 9 are not at all utilizing the said rental income either for the improvement of the Temple or its maintenance and they are swallowing the same as if they have been received the income from their own properties.



19. It is to be noted here that, the defendants also produced trust audit report from 31.03.2008 to 31.03.2021 to show that, they are maintaining all the trust accounts. On careful perusal of the same it can be seen that M/s. D.R.Associates, auditors and tax consultants have issued the said documents but no documents produced, which is produced before the income tax authorities and also before the Registrars of Trusts. Hence, it appears prima-facie to this court that, their exist dispute with respect to the ownership and mismanagement of the defendant No.1 Trust. Therefore, it appears to this court that, for the protection of interest of the Temple among the general public at large and prevention of injury to the plaintiffs it is right and just and also just and convenient to appoint the receiver by this court for the management of the affairs of the Trust with respect to the collecting rents from the shops which



are situated in the suit schedule properties till disposal of the present case in the interest of justice and equity. Moreover it is to be noted here that, plaintiffs have come before this court stating that, schedule property are private properties endowed by the plaintiffs family. Hence, if application is not allowed then plaintiffs defiantly plaintiff will be put into hardship on the other hand if no harm will caused to the defendants, since amount will be deposited in court. Hence it is just and necessary to appoint court receiver to collect rents from the tenants occupying different portions in the suit schedule 'D' and 'F' property and to maintain accounts of all the collections and place the same before the court. Hence, based on above said reasoning, **Point No.1 is answered in the Affirmative.**

**20. Point No.2:** Based on findings in Point No.1, proceed to pass the following:



**ORDER**

IA.No.4 filed by the applicant/Plaintiff No.2 U/o XL rule 1 of CPC is allowed.

Call on for the suggesting the name of the Senior Advocate for appointment of the court receiver by the both the parties.

*(Dictated to the Stenographer in part and dictated directly on the computer and computerized by him, corrected, signed and then pronounced by me in the Open Court on this the 03<sup>rd</sup> day of August 2023.)*

**(Sri.Mahesh.B.T)**  
**1<sup>st</sup> Addl., Senior Civil Judge and JMFC.,**  
**Ramanagara.**