

## REVISIONAL CIVIL

Before R. S. Narula, C. J.

PRAHLAD KUMAR,—Petitioner.

versus

SHRI AMAR KUMAR, etc.,—Respondents.

Civil Revision No. 826 of 1976

June 3, 1977

*Code of Civil Procedure (Act V of 1908)—Order 40, Rule 1(b) and Order 43, Rule 1(s)—Order granting permission to sue—Receiver appointed by the Court—Whether appealable.*

*Held*, that it is settled law that no appeal lies unless it is provided by statute. The Order against which an appeal lies under Order 43 Rule 1(s) of the Code of Civil Procedure 1908 is confined to "an order under Rule 1 or Rule 4 of Order 40". Clause (b) of sub-rule (1) of Rule 1 of Order 40 of the Code authorises the Court to "remove any person from the possession or custody of the property". An order permitting a party to sue the Receiver does not deprive the Receiver of the possession and custody of property which has been vested in him and of which possession has been taken by him as Receiver appointed by the Court under clause (a) of Rule 1 of Order 40. Permitting a suit to be filed has nothing to do with the object with which the suit is filed so far as the question of the order being appealable or not is concerned. It is the actual order of removal of any person from possession or custody of the property by the Receiver that is appealable. The permission granted to a third person for suing the Receiver for whatever purposes it may be, cannot amount to removing any person from the possession and custody of the property; even if "any person" in clause (b) of sub-rule (1) of rule 1 of Order 40 of the Code could include the Receiver within its ambit. An order granting permission to sue the Receiver is, therefore, not appealable. (Paras 3 and 6).

*Petition under Section 115 Cr. P. C. for revision of the order of the Court of Shri Gurdial Singh, Senior Sub-Judge, Bhatinda (Exercising the Enhanced Appellate Powers) dated the 5th May, 1976 dismissing the appeal of the plaintiff-petitioner and affirming that of Shri Hardev Singh, Sub-Judge 1st Class, Bhatinda dated 5th November, 1974, permitting respondent No. 4 to file a suit against respondent No. 3, the Receiver appointed by the Court under Order 40 Rule 1 of the Code of Civil Procedure during the pendency of the civil suit between the parties and the appellate Court left the parties to bear their own costs.*

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Harbhagwan Singh, Senior Advocate, S. K. Ahluwalia, Advocate with him, *for the Petitioner.*

Harcharan Singh, Advocate of Patiala, *for Respondent No. 4.*

### JUDGMENT

R. S. Narula, C.J. (Oral).—(1) This is a petition for revision of the order of the Court of Shri Gurdial Singh, Senior Subordinate Judge, Bhatinda (exercising enhanced appellate powers), dated May 5, 1976, dismissing the appeal of the plaintiff-petitioner against the order of the trial Court, dated November 5, 1974, permitting respondent No. 4 to file a suit against respondent No. 3, the Receiver appointed by the Court under Order 40 Rule 1 of the Code of Civil Procedure during the pendency of the Civil suit between the parties.

(2) In the suit for the dissolution of partnership and rendition of accounts filed by the plaintiff-petitioner respondent No. 3 was appointed the Receiver of the partnership property. On August 9, 1974, respondent No. 4 made an application to the trial Court for directing the Receiver to hand over to her the possession of certain movie film with its negative, etc. That application was dismissed by the trial Court. Another application was filed by respondent No. 4 in the trial Court on July 18, 1974, for granting her permission to sue the Receiver appointed by the Court by impleading the Receiver as a defendant in the suit she proposed to file against the firm and its partners before the Bombay High Court on its original side. That application was allowed by the order of the trial Court, dated November 5, 1974. It is against the above-mentioned order of the trial Court granting permission to respondent No. 4 to sue the Receiver that the appeal had been filed by the plaintiff before the learned Senior Subordinate Judge which has been dismissed as being not maintainable.

(3) It is settled law that no appeal lies unless it is provided by statute. Shri Harbhagwan Singh, the learned senior counsel for the plaintiff-petitioner, submits that the appeal before the lower appellate Court was maintainable under Order 43 Rule 1(s) of the Code. The order against which an appeal lies under that provision is confined to "an order under rule 1 or rule 4 of Order XL" of the Code. Admittedly rule 4 of Order 40 has no application to the case. The submission of Shri Harbhagwan Singh is that the order of the trial

Court, dated November 5, 1974, had been passed under clause (b) of sub-rule (1) of rule 1 of Order 40 of the Code. That sub-rule authorises the Court to "remove any person from the possession or custody of the property." Admittedly the application of respondent No. 4 for removing the Receiver from the possession and custody of the property in dispute (the picture and its negative, etc.) was dismissed by the trial Court. The plaintiff-petitioner was aggrieved against that order. What counsel submits is that even the order, dated November 5, 1974, passed by the trial Court is virtually for the same purpose inasmuch as the object of respondent No. 4 for filing the suit and appeal against the receiver is to deprive the Receiver of the possession and custody of property which has been vested in him, and of which possession has been taken by him as Receiver appointed by the Court under clause (a) of Rule 1 of Order 40. I am unable to agree with the learned counsel in this behalf. Permitting a suit to be filed has nothing to do with the object with which the suit is filed so far as the question of the order being appealable or not is concerned. It is the actual order or removal of any person from possession or custody of the property by the Receiver that is appealable. I am doubtful if the order removing the Receiver from the possession or custody of the property would be appealable or not, but that is not the question that calls for decision in the present proceedings. This doubt has been created in me by the phraseology of clause (b) which refers only to the removal of "any person" from the possession and custody of the property which *prima facie* refers to the removal by the Receiver. Be that as it may, the permission granted to a third person for suing the Receiver for whatever purposes it may be, cannot amount to removing any person from the possession and custody of the property, even if "any person" in clause (b) of sub-rule (1) of rule 1 of Order 40 of the Code could include the Receiver within its ambit.

(4) Mr Harbhagwan Singh has relied on the judgment of Sodhi, J. (as he then was) in *Raj Kumar, etc. v. General Public etc.* (1). The question that came up for decision in that appeal was whether an appeal lay to this Court against the order of the District Judge refusing the enhanced compensation allowed to one of the heirs of the deceased for maintenance of her minor children during the course of pendency of a petition under section 276 of the Indian Succession Act, 1925, for the grant of letters of administration in respect of the

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(1) 1971 Cur. L.J. 760.

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estate of the deceased. The preliminary objection against the maintainability of the appeal was repelled by the learned Judge on the ground that every order passed by the Court under the Succession Act was appealable under section 299 of that Act to the High Court, and inasmuch as the order passed by the trial Court was obviously under clause (d) of rule 1 of Order 40 (direction to the Receiver), it was specifically appealable under Order 43 Rule 1(s) of the Code. The order passed in the instant case by the learned Subordinate Judge on November 5, 1974 admittedly does not amount to a direction issued to the Receiver, and does not fall under clause (d) of rule 1 of Order 40. The judgment of Sodhi, J., is, therefore, of no avail to the petitioner.

(5) The only other case on which learned counsel for the petitioner has relied is the judgment of a learned Single Judge of the Kerala High Court in *Parvathi Chellamma and another v. Hussan Pillai Mohammed Abdul Khader and others* (2). An appeal against certain order had been entertained and allowed by the first appellate Court and the appellate order was set aside in revision by the High Court on merits, without going into the question of maintainability of the appeal, as no such objection was raised before the High Court. The judgment of the Kerala High Court does not, therefore, throw any light on the proposition before me.

(6) On the other hand Mr. Harcharan Singh, learned counsel for respondent No. 4, has invited my attention to the judgment of a Division Bench of the Bombay High Court in *Shrinivas Kuppuswami Mudaliar v. M. C. Waz* (3) wherein it was specifically held, that an order giving leave to sue a Receiver is not appealable under Order 43 Rule 1 of the Code. The judgment of the Bombay High Court is on all fours with the case before me so far as the point in issue is concerned. For the reasons already recorded above I am in respectful agreement with the judgment of the Division Bench of the Bombay High Court in *Shrinivas Kuppuswami Mudaliar's case* (supra). As a result of the above discussion I hold that the order of the trial Court, dated November 5, 1974, was not appealable under Order 43 Rule 1(s) of the Code, and, therefore, the judgment and order of the lower appellate Court dismissing the appeal of the plaintiff-petitioner as not maintainable is correct, and cannot be interfered with.

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(2) A.I.R. 1973 Kerala 208.

(3) A.I.R. 1921 Bombay 427.

(7) This petition must, therefore, fail and is accordingly dismissed with costs.

H.S.B.

CRIMINAL MISCELLANEOUS

*Before Gurnam Singh, J.*

RAJ KUMARI,—*Petitioner*

*versus*

YASHODHA DEVI and another,—*Respondents.*

*Criminal Misc. No. 986-M of 1977*

July 20, 1977.

*Code of Criminal Procedure (2 of 1974)—Section 125—Daughter—Whether liable to maintain her parents.*

*Held*, that the words used in section 125 of the Criminal Procedure Code 1973 show that if a person having sufficient means neglects or refuses to maintain his father or mother, he can be made liable to pay maintenance allowance to them. The words “any person” and “such person” show that the liability to provide maintenance to the father and mother is that of the son and not of the daughter. Under section 125 of the Code, it has not been specifically provided that a daughter is also liable to maintain her parents who are unable to maintain themselves. Under the Hindu Marriage Act a specific provision has been made under which a husband having no independent income sufficient for his support, has a right to claim maintenance *pendente lite* and expenses of proceedings from his wife but no such provision has been made in the Code. Under section 125 of the Code, the father or a husband or a son as the case may be, is the only person that can be proceeded against. The section does not contemplate proceedings against the mother for maintenance of her illegitimate child. Similarly a father-in-law has not been made liable to maintain the daughter-in-law. Moreover, the scheme of section 125 of the Code, for providing maintenance to the father and mother seems to be that of a son, who is possessed of sufficient means and he can be directed to maintain his father and mother, if they are unable to maintain themselves. A daughter, however, cannot be made liable to maintain her parents. (Paras 3, 4, 5 and 6).