

## APPOINTMENT OF A RECEIVER - GUIDING PRINCIPLES

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I deem that it is seminal aspect to reminisce about guiding principles for appointment of a receiver in the light of **Krishnaswamy Chetty v. C. Thangavelu Chetty**. My central thesis of this article is to put forth the principles laid in the above cited land mark ruling and other relevant case-law. Generally, it is apt to say that "Receiver", is an independent person, who is appointed by a Court, to manage property or money during a lawsuit.

A fortiori, the receiver is an officer of the Court and so he is responsible for good faith and diligence.

RECEIVER<sup>1</sup>, chancery practice. A person appointed by a court possessing chancery jurisdiction to receive the rents and profits of land, or the profits or produce of other property in dispute.

2. The power of appointing a receiver is a discretionary power exercised by the court. the appointment is provisional, for the more speedy getting in of the estate in dispute, and scouring it for the benefit of such person as may be entitled to it, and does not affect the right. 3 Atk. 564. 3. It is not within the compass of this work to state in what cases a receiver will be appointed<sup>2</sup>;

4. The receiver is an officer of the court, and as such, responsible for good faith and reasonable diligence. When the property is lost or injured by any negligence or dishonest execution of the trust, he is liable in damages; but he is not, as of course, responsible because there has been an embezzlement or theft. He is bound to such ordinary diligence, as belongs to a prudent and honest discharge of his duties, and such as is required of all persons who receive compensation for their services<sup>3</sup>.

**-receiver n.** 1) a neutral person (often a professional trustee) appointed by a judge to take charge of the property and business of one of the parties to a lawsuit and receive his/her rents and profits while the right to the moneys has not been finally decided. Appointment of a receiver must be requested by petition of the other party to the suit, and will only be authorized if there is a strong showing that the moneys would not be available when a decision is made. The funds are held for the prevailing party. 2) a person appointed to receive rents and profits coming to a debtor either while a bankruptcy is being processed or while an arrangement is being worked out to pay creditors, so that funds will be paid for debts and possibly available for distribution to creditors. 3) shorthand for one who commits the crime of receiving stolen goods knowing they were obtained illegally<sup>4</sup>.

– "The process by which one who has a provable right or interest in certain property or a fund may obtain a receivership thereof in a proper case<sup>5</sup>. The only person who can have a receiver is one who has some title or right to, interest in, or lien or claim on the property in question<sup>6</sup>. Generally, the appointment of a receiver is discretionary, and not a matter of right<sup>7</sup>. 8"

– **2010 (2) LS 73, The Trust Assn of the Convention of the Baptist Churches of Northern Circars (CBCNC) Vs Smt J.Malini Tyagaraj & Ors.** (see to know five requirements ordinarily have to be followed in a case where a receiver can be

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1 A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856.

2 on this subject, see 2 Madd. Ch. 233.

3 Story, Bailm. Sec. 620, 621; and the cases there cited. Vide, generally, 2 Mudd. Ch. 232; Newl. Ch. Pr. 88; 8 Com. Dig. 890; 18 Vin. Ab. 160; 1 Supp. to Ves. jr. 455; 2 Id. 57, 58, 74, 75, 442, 455; Bouv. Inst. Index, h.t.

( see to know more : <http://legal-dictionary.thefreedictionary.com/Receiver>)

4 [Gerald N. Hill and Kathleen T. Hill.](#)

5 51 N.E. 2D 844, 847. <http://www.answers.com/topic/appointment-of-receiver>

6 99 S.W. 2d 28, 30. <http://www.answers.com/topic/appointment-of-receiver>

7 <http://www.answers.com/topic/appointment-of-receiver>

8 289 U.S. 479, 504; <http://www.answers.com/topic/appointment-of-receiver>

appointed to manage property pending disposal of the suit); 1989 (10 LS 30 K.MANGAMMA VS K.BRAHMA REDDY; STATE BANK OF INDIA VS JAYSHREE CEREMICS PVT. LTD<sup>9</sup>

**-Srinivasa Rao Vs Baburao and Anr<sup>10</sup>**. It was observed that "He also submitted that it would not be enough to make mere general averments relating to the acts of waste or damage to the property. It must be established by affidavits setting out the grounds upon which such petition was based. In addition to the above circumstances, the conduct of the parties would also become relevant. In support of this proposition, which, was not disputed by Sri Muralidhar Rao, reliance has been placed on the decisions in Iswara Shastry v. Ramakrishna Shastry, 1965-1 Mys LJ 342, Bore Gowda v. K. Channegowda, 1965-2 Mys LJ 548, Saraswathi Bai v. Kamala Bai, 1964-1 Mys LJ 551 Krishnaswamy v. Thangavelu, In the last of the above decisions, after a detailed examination of the several cases bearing on the subject, Ramaswamy, J. has enunciated five principles, which have been described by him as the 'panch sadaachar', which should be borne in mind by the Courts while exercising equity jurisdiction in appointing receivers. The principles are; that the question of appointing a receiver is a matter resting in the discretion of the Court; that a receiver should not be appointed unless the party has an excellent chance of succeeding in the suit; that plaintiff himself shall show that there was some emergency or danger or loss that may be caused to the right involved in the suit; that an order appointing a receiver shall not be made if it has the effect of depriving a defendant of de facto possession; that, however, the position would be different if the property is shown to be 'in medio' that is to say, in the enjoyment of no one, and that the Court should always look into the conduct of the parties who seek for the appointment of a receiver."

"A receiver", in the language of High, "is an indifferent (American expression for impartial) person between the parties to a cause, appointed by the Court to receive and preserve the property or fund in litigation 'pendente lite', when it does not seem reasonable to the Court that either party should hold it. He is not the agent or representative of either party to the action, but is uniformly regarded as an officer of the Court, exercising his functions in the interest of neither plaintiff nor defendant, but for the common benefit of all parties in interest. Being an officer of the Court, the fund or property entrusted to his care is regarded as being in 'custodia legis', for the benefit of who-ever may finally establish title thereto, the Court itself having the care of the property by its receiver, who is merely its creature or officer, having no powers other than these conferred upon him by the order of his appointment, or such as are derived from the established practice of Courts of equity<sup>11</sup>.

"A receiver" is frequently spoken of as the "hand of the Court", and the expression very aptly designates his functions, as well as the relation which he sustains to the Court.<sup>12</sup>

**-In Krishnaswamy Chetty v. C. Thangavelu Chetty<sup>13</sup>**, it was observed that A Receiver has been defined by Kerr as follows :

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9 AIR 1987 Calcutta 194

10 AIR 1970 Kant 141; AIR 1970 Mys 141

11 This was observed in AIR 1955 Mad 430

12 (J. L. High. A Treatise on the Law of Receivers, Third Edition (1894), Callaghan & Co., Chicago page 2). (To know more, see the ruling AIR 1955 Mad 430)

"A receiver in an action is an impartial person appointed by the Court to collect and receive, pending the proceedings, the rents, issues and profits of land, or personal estate, which it does not seem reasonable to the Court that either party should collect or receive, or for enabling the same to be distributed among the persons entitled." (Kerr on the Law and Practice as to Receivers appointed by the High Courts of Justice or order of Court, Twelfth Edition, Walton and Sarson, Special Edition for India, N. M. Tripathi & Co. (1932) P. L).

-**Krishnaswamy Chetty v. C. Thangavelu Chetty**<sup>14</sup>, it was further observed that "Two classes of receivers can be appointed by Courts, viz., (a) under the statutes and (b) under the Civil Procedure Code, the Specific Relief Act and the Original Side Rules of the High Court.

(a) Several statutes in India like the Provincial Insolvency Act (5 of 1920) (Sections 20, 57, 59 and 68), the Presidency Towns Insolvency Act (3 of 1909) (Section 16) the Transfer of Property Act (4 of 1882) (Section 69-A), the Trustees' and Mortgagees' Powers Act (28 of 1866) (Sections 12 to 19) and the Indian Companies Act (7 of 1913) (Sections 118, 119, 129 and 277E) authorise Courts for appointing receivers under the particular circumstances set out therein. ..."

The second class of Receivers are included in these in which appointment is made to preserve the property pending litigation to decide the rights of parties. The powers to appoint a Receiver in such cases are comprised in the Civil Procedure Code of 1908 (Sections 51, 94 and Order 40), the Specific Relief Act of 1877 (Section 44), and the Original Side Rules of High Courts relating to Receivers."

-In **Krishnaswamy Chetty v. C. Thangavelu Chetty**<sup>15</sup>, it was further observed that The principles which, guide English Courts in regard to cases in which the appointment is made to preserve property can be culled out from the standard English text books and the case law on the subject as follows :

"the appointment is made to preserve property pending litigation to decide the rights of the parties, or to prevent a scramble among these entitled, as where a receiver is appointed pending a grant of probate or administration, or to preserve property of persons under disability, or where there is danger of the property being damaged or dissipated by these with the legal title, such as executors or trustees, or tenants for life, or by persons with a partial interest, such as partners, or by the persons in control, as where directors of a company with equal powers are at variance."

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14 AIR 1955 Mad 430

15 AIR 1955 Mad 430

In all these cases, it is necessary to allege and prove some peril to the property; the appointment then rests on the sound discretion of the Court.

"In exercising its discretion the Court proceeds with caution, and is governed by a view of all the circumstances. No positive or unvarying rule can be laid down as to whether the Court will or will not interfere by this kind of interim protection of the property. Where, indeed, the property is as it were 'in medio', in the enjoyment of no one, it is the common interest of all parties that the Court should prevent a scramble, and a receiver will readily be appointed: as, for instance, over the property of a deceased person pending a litigation as to the right to probate or administration. But where the object of the plaintiff is to assert a right to property of which the defendant is in enjoyment, the case presents more difficulty; The Court by taking possession at the instance of the plaintiff may be doing a wrong to the defendant; in some cases an irreparable wrong. If the plaintiff should eventually fail in establishing his right against the defendant, the Court may by its interim interference have caused mischief to the defendant for which the subsequent restoration of the property may afford no adequate compensation. (See -- 'Marshall v. Charteris', 1920-1 Ch 520 (I)). Where the evidence on which the Court is to act is very clear in favour of the plaintiff, then the risk of eventual injury to the defendant is very small, and the Court does not hesitate to interfere. Where there is more of doubt, there is, of course, more of difficulty. The question is one of degree, as to which, therefore, it is impossible to lay down any precise or unvarying rule. (-- 'Owen v. Roman', (1853) 4 HLC 997 at p. 1032 (J), per Lord Cranworth,)

If the Court is satisfied upon the materials it has before it that the party who makes the application has established a good prima facie title, and that the property the subject-matter of the proceedings will be in danger if left the trial in the possession or under the control (-- 'Cummins v. Perkins', (1899) 1 Ch 16 (K); -- 'Leney & Sons, Ltd. v. Callingham', (1908) 1 KB 79 (L) of the party against whom the receiver is asked for (-- 'Evans v. Coventry', (1854) 5 Do G M & G 911 at p. 918 (M)) or, at least, that there is reason to apprehend that the party who makes the application will be in a worse situation if the appointment of a receiver be delayed (-- 'Aberdeen v. Chitty', (1838) 3 Y & C 379 at p. 382 (N); -- 'Thomas v. Davies, (1847) 11 Beav 29 (O) ), the appointment of a receiver is almost a matter of course (See -- "Middleton v. Dodswell', (1800) 13 Ves Jun 260 (P); - - 'Old-field v. Cobbett', (1835) 4 LJ Ch 271 (Q); --'Heal and Personal Advance Co. v. Macarthy, (1879) 27 WR 706 (R)). If there is no danger to the property, and no fact is in evidence to show the necessity or expediency of appointing a receiver, a receiver will not be appointed, unless there be some other urgent reason for making the appointment (See - - 'Whitworth v. Whyddon', (1850) 2 Mac & G 52 (S); -- 'Wright v. Vernon', (1855) 3 Drew 112 (T); -- 'Micklethwait v. Micklethwait', (1857) 1 De G & J 504 (U)) "The duty of the Court upon a motion for a receiver is merely to protect the property for the benefit of the person or persons to whom the Court, when it has all the materials necessary for a determination, shall think it properly belongs (-- 'Blakeney v. Dufaur', (1851) 15 Beav 40

(V)). On a motion for a receiver the Court will not prejudice the action (-- 'Huguenin v. Baseley', (1806) 13 Ves Jun 105 at p. 107 (W)), or say what view it will take at: the trial (--'Fripp v. Chard. Rly. Co., (1853) 11 Hare 241 at p. 264 (X); -- 'Skinners' Co. v. Irish Society', (1836) 1 My & Cr 162 at p. 164 (Y)). Indeed, the Court will not appoint a receiver at the instance of a person whose right is disputed, where the effect of the order would be to establish the right, even if the Court be satisfied that the person against whom the demand is made is fencing off the claim (-- 'Greville v. Fleming", (1845; 2 Jo & Lat 335 (Z); (1920) 1 Ch 520 (1)). Nor will the appointment be made where it might affect legal rights; a receiver will not, for instance, be appointed merely to prevent an executor exercising his right of retainer (-- 'Re. Wells Molony v. Brooke', (1890) 45 Ch D 569 (Z1))"

The Court, on the application for a receiver, always looks to the conduct of the party who makes the application, and will usually refuse to interfere unless his conduct has been free from blame (See -- 'Baxter v. West', (1858) 28 LJ Ch 169 (Z2); -- 'Cf. Wood . Hitchings', (1840) 2 Beav 289 at p. 297 (Z3)). Parties who have acquiesced in property being enjoyed against their own alleged rights cannot except in special circumstances come to the Court for a receiver (-- 'Gray v. Chaplin', (1826) 2. Russ 126 at p. 147 (Z4); (1836) 1 My & Cr 162 (Y)) (Kerr on Receivers 12th edition pp. 5 to 7)".

-In **Krishnaswamy Chetty v. C. Thangavelu Chetty**<sup>16</sup>. it was held that "The five principles which can be described as the "panch sadachar' of our Courts exercising equity jurisdiction in appointing receivers are as follows :

(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised-for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding : -- 'Mathusri v. Mathusri, 19 Mad 120 (PC) (Z5); -- 'Sivagnanathammal v. Arunachallam Pillai', 21 Mad LJ 821 (Z6); --'Habibullah v. Abtiakallah', AIR 1918 Cal 882 (27); -- 'Tirath Singh v. Shromani Gurudwara Prabandhak Committee', AIR 1931 Lah 688 (28); - -'Ghanasham v. Moraba', 18 Bom 474 (7.9); --'Jagat Tarini Dasi v. Nabagopal Chaki', 34 Cal 305 (Z10); -- 'Sivaji Raja Sahib v. Aiswariyanandaji', AIR 1915 Mad 926 (Z11); -- 'Prasanno Moyi Devi v. Beni Madbab Rai', 5 All 556 (Z12); -- 'Sidheswari Dabi v. Abhayeswari Dahi', 15 Cal 818 (213); -- 'Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das', AIR 1925 Lah 349 (Z14); -- 'Bhupendra Nath v. Manohar Mukerjee', AIR 1024 Cal 456 (Z15).



(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit. -- 'Dhumi v. Nawab Sajjad All Khan', AIR 192.3 Uh 623 (Z16); -- 'Firm of Raghubir Singh' Jaswant v. Narinjan Singh', AIR 1923 Lah 48 (217); -- 'Siaram Das v. Mohabir Das', 27 Cal 279 (Z18); -- 'Mahammad Kasim v. Nagaraja Moopnar', AIR 1928-Mad 813 (Z19); -- 'Banwarilal Chowdhury v. Motilal', AIR 1922 Pat 493 (220).

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right, he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. -- 'Manghanmal Tarachand v. .Mikanbai', AIR 1933 Sind 231 (221); -- 'Bidurramji v. Keshoramji', AIR 1939 Oudh 31 (Z22); -- 'Sheoambar Ban v. Mohan Ban', AIR 1941 Oudh 328 (223).

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through, fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less 'in medio' is sufficient to vest a Court with jurisdiction to appoint a receiver. -- 'Nilambar Das v. Mabal Behari', AIR 1927 Pat 220 (Z24); -- 'Alkama Bibi v. Syed Istak Hussain', AIR 1925 Cal 970 (Z25~.); -- 'Mathuria Debya v. Shibdayal Singh', 14 Cal WN 252 (Z26); -- 'Bhubaneswar Prasad v. Rajeshwar Prasad', AIR 1948 Pat 195 (Z27). Otherwise a receiver should not be appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disintegrated himself to the equitable relief by laches, delay, acquiescence etc."

- In the following cases, T. Krishnaswamy Chetty Vs C. Thangavelu Chetty case was referred:

1. Sarada Dei Vs Khirod Kumar Sahu and Ors. 17,

2. Abani Kumar Mukherjee and Ors. Vs Nand Kishore and Ors. 18

3. Nihalchand L. Jai Narain and Ors. Vs Ram Niwas Munna Lal and Ors. 19

4. Tilak Chand Jain Vs Darshan Lal Jain and Anr. 20

5. Ram Kishore Das Vs Balram Sah. 21

6. Prestolite Of India Limited Vs Union Of Bank Of India and Ors. 22

7. Krishna Bhagwan Agarwal and ... Vs Ist Additional District Judge. 23

**Some other relevant cases as to "Receiver":**

8. Banwari Lal v. Moti Lal<sup>24</sup>.

9. Kunhan Menon v. Kannan Menon<sup>25</sup>.

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17 AIR 1983 Ori 155

18 AIR 1981 Raj 160

19 AIR 1968 P H 523

20 AIR 1985 J K 50

21 AIR 1978 Pat 210

22 AIR 1986 P H 64

23 1999 (2) AWC 1753

24 AIR 1922 Pat 318

25 AIR 1922 Pat 492

- 10. Nihalchand L. Jai Narain and Ors. Vs Ram Niwas Munna Lal and Ors**26
- 11. Maharaj Jagat Singh Vs Sawai Bhawani Singh and Ors**27.
- 12. Tilak Chand Jain Vs Darshan Lal Jain and Anr**28. on 31 May, 1985 (To know guiding principles for appointment of a Receiver in a suit for dissolution of partnership were considered ... receiver. This ruling also lays down principles for appointment of a Receiver in a partnership business )
- 13. Yusuf Vs Hamidulla**29
- 14. M/S Shin Satellite Public Company ... Vs M/S Jain Studios Limited; (2008)**
- 15. Sachin Barick General ... Vs Sm. Parul Barick & Ors**30 ( To know well settled principles of law that although an order appointing Receiver can be passed for the purpose of preservation)
- 16. Santoshthakur Vs Allahabad Bank Of India**31 (To know whether the second application for appointment of Receiver is barred by the principle of res Judicata or not ),
- 17. Priyambada Debi Birla (Deceased ... Vs Ajoy Kumar Newar and Ors**32 (To know the principle of appointment of Receiver in civil action)
- 18. Narayan Chandra Garai and Ors. Vs Matri Bhandar Pvt. Ltd. and Anr**33
- 19. Sudhansu Kanta Vs Manindra Nath**34
- 20. Duncan Agro Industries Ltd. Vs Union Of India**35
- 21. Usha Harshadkumar Dalal Vs M/S. Org Systems & Others**36. on 6 January, 2000
- 22. Mrs. K.P.M. Saheed and Ors. Vs The Aluminium Fabricating**37
- 23. The Podar Mills Limited Vs State Bank Of India and Others**38
24. Mumtaz Yunus Mulani Vs State Of Maharashtra & Others (2008)

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26 AIR 1968 P H 523

27 ILR 1991 Delhi 475

28 AIR 1985 J K 50

29 1982 WLN 172

30 (2000) 3 CALLT 265 HC

31 (1998) 1 CALLT 408 HC

32 AIR 2006 Cal 259

33 AIR 1974 Cal 358

34 AIR 1965 Pat 144

35 1988 (18) ECC 358

36 JT 2000 (1) SC 33

37 AIR 1986 Ker 209

38 AIR 1992 Bom 277



25. The East India Hotels Ltd. Vs Jyoti (P) Ltd.39

**26. Corporation Of Calcutta Vs Sudhamoy Bose40**

**27. T.S. Sailappan Vs Subbiah Pillai and Others**

Mulling over the above aspects, it is vividly known how much care has to be taken to appoint a receiver.

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39 1996 IIIAD Delhi 242

40 1960 CriLJ 902