

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.264 of 2014

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Tej Narain Rai

.... Appellant/s

Versus

Shailendra Kumar Rai & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Harshwardhan Sahay

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 21-01-2015

Heard the learned counsel, Mr. Harshwardhan Sahay

for the appellant under Order 41 Rule 11 C.P.C.

This Miscellaneous Appeal has been filed by the plaintiff-appellant against the order dated 04.03.2014 passed by the learned Sub Judge 2nd, Danapur in title partition suit No.78 of 2000 whereby the learned court below rejected the application filed by the plaintiff under Order 40 Rule 1 C.P.C.

It appears that the plaintiff-appellant filed the aforesaid suit for partition of the suit property alleging that the Schedule I and Schedule II properties are joint family properties and there has been no partition between the parties. The father of the plaintiff namely, Sitaram Rai was defendant no.1 and the other brothers of the plaintiff are other defendants. The father, defendant no.1 filed the written statement alleging that the suit property i.e. Schedule I property is his self-acquired property and

so far Schedule II properties are concerned, he has purchased the same in the name of his sons from the second wife. Therefore, it is also his self-acquired property.

During the pendency of the suit, the defendant no.1 died. The plaintiff thereafter filed an application for appointment of receiver. The court below rejected the said application by the impugned order.

The learned counsel for the appellant submitted that the court below instead of deciding the question regarding appointment of receiver rejected the application only on the ground that the application has been filed to delay the matter and held that in spite of direction to the appellant to produce witnesses, he is not producing witnesses. According to the learned counsel, since the defendants are in possession of the entire property and are mismanaging the same without giving due share to the plaintiff, it is a fit case for appointment of the receiver for the purpose of giving account but the court below rejected the same without considering this aspect of the matter.

Perused the order passed by the court below. While rejecting the application under Order 40 Rule 1 C.P.C., the court below has considered the conduct of the plaintiff that the suit has been filed in the year 2000 wherein the written statement has been



filed in the year 2002. Thereafter, still, the date of passing the order, the plaintiff is not producing any witness. There is no material available on record to show that the defendants are damaging the suit property. Admittedly, in this case, the application for appointment of receiver itself was filed on 29.04.2004 and for ten years, plaintiff did not press the said application nor he produced any evidence in support of the case.

It is settled law that “a Receiver, having regard to the provisions contained in Order 40 Rule 1 of the Code of Civil Procedure, is appointed only when it is found to be just and convenient to do so. Appointment of a Receiver pending suit is a matter which is within the discretionary jurisdiction of the Court. Ordinarily the Court would not appoint a Receiver save and except on a prima facie finding that the plaintiff has an excellent chance of success in the suit. It is also for the plaintiff not only to show a case of adverse and conflict claims of property but also emergency, danger or loss demanding immediate action. Element of danger is an important consideration. Ordinarily, a Receiver would not be appointed unless a case has been made out which may deprive the defendant of a de facto possession. For the said purpose, conduct of the parties would also be relevant.” Reference may be made to the case of **Parmanand Patel(Dead)**

by LR.s. and another v. Sudha A. Chowgule and others, (2009)

11 Supreme Court Cases 127.

In the present case, there is no allegation at all regarding any danger to the suit property. The conduct of the plaintiff-appellant shows that there is no emergency in the present case as the application has been filed in the year 2004 which was pressed after ten years in the year 2014. In such circumstances, in my opinion, it is not a fit case where the receiver should be appointed. Therefore, the court below has rightly rejected the application.

Thus, this Miscellaneous application has got no merit and accordingly, it is dismissed at the admission stage itself.

(Mungeshwar Sahoo, J)

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