

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.642 of 2013

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Smt. Pushpa Pathak

.... Appellant/s

Versus

Smt. Bhagmano Kuer & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Surendra Kumar Choubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 07-01-2015

Heard learned counsel Mr. Surendra Kumar Choubey

on behalf of the appellant under Order 41 Rule 11 of the Code of Civil Procedure.

2. This miscellaneous appeal has been filed by the plaintiff-appellant against the order dated 23.07.2013 passed by Subordinate Judge-I, Sasaram, Rohtas in Title Suit No.455 of 2005 whereby the application filed by the plaintiff-appellant under Order 40 Rule 1 of the Code of Civil Procedure has been rejected.

3. It appears that the plaintiff-appellant has filed the aforesaid suit for partition claiming 1/3rd share in Schedule-I and III property and 1/2 share in Schedule-II property. In the said suit the plaintiff also prayed for declaration that the deed of gift deed dated 31.10.2002 is absolutely illegal, void and nullity and further prayed for injunction. During the pendency of the suit an application under Order 40 Rule 1 of the Code of Civil Procedure

was filed praying for appointment of receiver on the ground that the appellant resides in Sasural and the respondents are not giving share to her and also the respondents are alienating the suit property. By the impugned order the court below has rejected the application recording the finding that none of the ingredients for appointment of receiver has been alleged.

4. The learned counsel for the appellant relied upon a decision of this Court in the case of **Smt. Jairani Devi and Ors. Vs. Ram Sanehi Singh and Ors., reported in 1997 (2) P.L.J.R. 1009** and submitted that when one co-sharer is in possession of the entire property and no share is given to the other then it is a fit case where the Receiver should be appointed. The learned counsel submitted that in this decision, the earlier Division Bench decision of this Court, i.e. **A.I.R. 1976 Patna 366 (Kamal Chaudhary and another v. Rajendra Chaudhary and others)** has been followed. Therefore, the learned court below should have appointed the Receiver in the present case also.

5. It is admitted fact that the plaintiff has filed the suit for partition. It is admitted fact that she is not in possession of the property. It is also admitted fact that the respondents are in possession of the property. It is also admitted fact that the plaintiff has not claimed any *mesne profit*. So far decision of **Kamal**

Chaudhary and another v. Rajendra Chaudhary and others (A.I.R. 1976 Patna 366) is concerned, in that case a decree had already been passed in favour of the plaintiff.

6. In the case of **Vijai Kumar v. Smt. Kiran Devi and Ors, reported in A.I.R. 2007 Patna 166** this Court considered the various decisions including Division Bench decision of Patna High Court (A.I.R. 1976 Patna 366) and held that so far that decision is concerned, it is *per incurium* as it has not considered the earlier Division Bench decision of Patna High Court.

7. In this decision it has been held that there are well settled five principles for consideration for appointment of Receiver known as 'Panch Sadachar' such as:

- (i) Appointment of a receiver pending a suit is a matter resting in the discretion of the Court.
- (ii) No receiver should be appointed except upon proof that plaintiff has a very excellent chance of succeeding in the suit;
- (iii) The plaintiff must show some emergency or danger or loss demanding immediate action;
- (iv) Receiver should not be appointed where it has the effect of depriving a defendant of his 'de facto' possession; and
- (v) The Court should look into the conduct of the party who makes application.

8. So far the first principle is concerned, it is well settled that the Court considering the matter of receivership is exercising an equity jurisdiction and in such cases, the discretion



of the Court should not be arbitrary or absolute, rather it should be 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 the parties and the subject-matter of the suit and also when there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding.

9. So far the second principle is concerned, the appointment of Receiver cannot be legally equated with the issuance of an order of injunction. For an order of injunction prima facie case has to be shown, but in case of appointment of Receiver a prima facie case would not be sufficient, rather the plaintiff has to show that he has a very excellent chance of succeeding in the suit without which no order of appointment of Receiver can be passed.

10. So far the third principle is concerned, merely showing a case of adverse and conflicting claims to property will not suffice, rather the plaintiff has to show some emergency or danger demanding immediate action. In such a case the right of plaintiff must be reasonably clear and free from any doubt and in addition to that the element of danger to the suit property is very important in such matters and the Court should appoint a Receiver

only when there is a great and imminent danger demanding immediate relief.

11. So far the fourth principle is concerned, if a Receiver is appointed with respect to a property in which the defendant has a de facto possession, it would naturally amount to deprive the defendant from his right which might cause irreparable wrong. Hence in case of title only the Court should be very reluctant to disturb possession of a party by appointment of a Receiver. Receiver can be appointed only when the property is exposed to imminent danger and emergency and the person in possession has obtained it through fraud or force requiring interposition by Receiver for the security of the property.

12. So far the fifth principle is concerned, the Court should usually refuse to interfere unless the conduct of the plaintiff is free from blame and he has come to the Court with clean hands and has not been disentitled to the equitable relief by his /her laches, delay, acquiescence etc.

13. In view of the above settled principles of law merely because the plaintiff has filed the suit claiming share in the property and the plaintiff is not in possession of the property, no Receiver should be appointed. Therefore, the Court below has rightly rejected the application. I, therefore, find no merit in this

miscellaneous appeal and accordingly, this miscellaneous appeal
is dismissed.

(Mungeshwar Sahoo, J)

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