

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1041 of 2016**

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Jharkandey Tiwary & Ors

.... Appellant/s

Versus

Rajendra Prasad Tiwary

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Satyendra Pandey

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**
ORAL ORDER

3 10-11-2016 Heard learned counsel Mr. Om Prakash Pandey for the
petitioners and learned Senior Counsel Mr. Ganpati Trivedi for the
sole respondent.

2. Perused the judgment dated 06.06.2016 passed by the
learned District Judge, Rohtas at Sasaram in Civil Miscellaneous
Appeal No.62 of 2016 whereby the learned lower appellate court
has allowed the appeal and set aside the trial court order dated
27.01.2016 passed in Title Suit No.12 of 2014 by 2nd Munsif,
Sasaram rejecting the application for appointment of receiver
under Order 40 Rule 1 CPC.

3. It appears that the plaintiff-respondent filed the
aforesaid Title Suit No.12 of 2014 claiming partition of half share
in the suit property described in Schedule A and B. The
defendants-petitioners herein filed contesting written statement
alleging that in fact the suit properties are the properties purchased

by Keshav Tiwari in the year 1955 and, therefore, it is self acquired property of Keshav Tiwari, who was the ancestor of the petitioners. Thereafter the application for appointment of receiver was filed by the plaintiff-respondent on the ground that the defendants are not giving due share of the plaintiff as there are many shops, which are rented and the defendants are getting rent from tenants. The defendants in collusion with the tenants are mismanaging the property and they are letting the suit premises in very low rent. The share of the plaintiff is not given since 2004.

4. The petitioners filed rejoinder to the application for appointment of receiver alleging that the petitioners are the exclusive owner of the property and there had already been partition between the parties which is admitted by the plaintiff himself.

5. The trial court rejected the application for appointment of receiver recording prima facie finding that there had already been partition between the parties. On appeal the lower appellate court held that the market is in the name of Rajendra Tiwari & Brothers which prima facie indicates that the plaintiff has interest in the property and also held that the joint decree has been passed in favour of the petitioners and the respondent with respect to the suit property. The lower appellate court also held that the plaintiff is not being given the share in the rent and that the plaintiff is even

agreed that one of the defendants be appointed as receiver and, therefore, the lower appellate court found that the plaintiff has got good prima facie case for appointment of receiver. According to the learned lower appellate court, the petitioners are mismanaging the property.

6. The learned counsel appearing for the petitioners relied upon the decision of Madras High Court, **A.I.R. 1955 Madras 430 (T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty)** and the decision of this Court in **A.I.R. 2007 Patna 166 = 2007 (3) P.L.J.R. 417** and submitted that for appointment of receiver some principles have been laid down by the Madras High Court which is being followed even by the Supreme Court and various other High Courts including Patna High Court in the aforesaid decisions. According to the learned counsel, while allowing the appeal and setting aside the order passed by the trial court the lower appellate court has not considered any of the conditions/principles laid down which are called "Panch Sadachar". The suit has been filed for partition and, therefore, if at all he will be entitled to a share in the property, he will get it but on the ground that due share in the rent is not given to the plaintiff, no receiver can be appointed. Further according to the learned counsel only because the plaintiff agreed that let the defendant be appointed as receiver, the receiver could not have been appointed

by the lower appellate court merely on the ground of prima facie case. The learned counsel further submitted that the conditions for passing order of injunction and conditions for appointment of receiver are distinct and only on the ground of good prima facie case no receiver can be appointed. On these grounds the learned counsel submitted that the impugned judgment passed by the lower appellate court is liable to be set aside and the order passed by the trial court be restored.

7. On the other hand, the learned Senior Counsel for the respondent submitted that in the present case it is admitted fact that joint decree has been passed in favour of the plaintiff and the defendants with respect to Schedule A property. The defendant no.1 has been appointed as receiver, therefore, there is no question of dispossession of the defendant arises. After appointment of receiver the defendant will only be liable to account before the court. The learned Senior Counsel further submitted that the lower appellate court considering the joint decree and also other materials clearly recorded finding that the plaintiff has got good prima facie case and by appointment there will be no dispossession, therefore, the receiver has been appointed.

8. This court in **A.I.R. 2007 Patna 166 (Vijay Kumar Vs. Smt. Kiran Devi)** at paragraph 11 relying on

the decision of the Madras High Court quoted five Panch Sadachar which are as follows:

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- (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.

Thereafter each and every sadachar has been elaborately considered from paragraph 12 to 16.

9. So far good prima facie is concerned, at paragraph 13 it has been held that 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 he has a very excellent chance of succeeding in the suit without which no order of appointment of receiver can be passed. So far conflicting claim of title is concerned, at paragraph 14 it has been held that 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 matter and the court should appoint a receiver only when there is a great and imminent danger demanding immediate relief. Likewise the other conditions have been elaborately discussed in various paragraphs. These decisions have been followed by this Court in **2016 (4) P.L.J.R. 287**.

10. As stated above from perusal of the impugned judgment of the lower appellate court, I find that the lower appellate court has not considered any of the “Panch Sadachar” required to be considered in case of appointment of receiver. Therefore, the judgment/order passed by the lower appellate court is unsustainable in the eye of law.

11. In the result, this civil miscellaneous application is allowed. The impugned judgment/order passed by the lower appellate court is hereby set aside and the matter is remanded back to the lower appellate court for passing a fresh order after considering the law laid down by the Madras High Court and this Court in the decisions referred to above after hearing the parties.

(Mungeshwar Sahoo, J)

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