

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.285 of 2015

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1. M/s Jest Liquor Private Limited, a Company incorporated under the provisions of the Companies Act having its registered office at Fraser Road, Patna through its Director Devendra Prasad Sinha, son of Uma Shankar Prasad Sinha, resident of Mithapur B Area, Police Station Jakkanpur, District Patna.
 2. Devendra Prasad Sinha, son of Uma Shankar Prasad Sinha, Director of M/s Jest Liquor Private Limited, Fraser Road, Patna, resident of Mithapur B Area, Police Station Jakkanpur, District Patna

.... Appellant/s

Versus

1. Smt. Arti Rathi, wife of Sri Arun Kumar Rathi, resident of Gurhatta Hamam Road, Patna City, Police Station Khajekala, Town Patna City, District Patna, one of the Directors of M/s Krishna Soft Extrusion (P) Limited, registered under 1956 of Companies Act situated at Nasriganj, P.S. Danapur, Digha, Patna 801012
2. Anil Kumar Bajaj, son of late Purshottam Lal, resident of Flat No.302, Venkatesh Pushpanjali Apartment, Budh Marg, Police Station-Kotwali, Town and District Patna, one of the Directors of M/s Krishna Soft Extrusion Pvt. Ltd. under the Companies Act.
3. Ashok Kumar, son of Shri Chandra Kishore Choudhary, resident of Salimpur Ahra, Gali No.1, Police Station Gandhi Maidan, Town and District Patna.
4. M/s Kush Plastic Pvt Limited, Plot No.1-64, Kasna Industrial Area Site V. Greater Noida 201306, UP.
5. Siliguri Poly Product Pvt. Limited, Plot No.34 P & 35 P, Dabgram Industrial Growth Centre, WBIIDC, Fulbarie, District Jalpaiguri, Siliguri-734005 (W.B.)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Garg, Advocate.

For the Respondent/s : Mr. S.P. Tiwari, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-01-2016

Heard the parties.

2. In the present appeal, the appellants are challenging the order dated 14.7.2015 passed in Title Suit No.375 of 2011 by Sub-ordinate Judge, Danapur by which the court below has considered the application for appointment of receiver as provided under Order 40 Rule 1 read with Section 151 of the

Code of Civil Procedure and appointed Sri Sahajanand, Advocate as Receiver.

3. Present appellants are added defendants. M/s Krishna Soft Extrusion (P) Limited (hereinafter referred to as Krishna Software Company) registered under the Companies Act, 1956. One of the Director, Smt. Arti Rathi filed a suit for the relief that resolution dated 1.8.2011 passed in the minutes book of the Company to be held illegal and void and signature of the plaintiff be declared forged and fabricated. Another relief has been sought to pass an ad interim injunction restraining the defendant from negotiating, alienating or damaging any part of Schedule- I property till the disposal of the suit.

4. M/s Krishna Software Company for the purposes of establishment acquired 37 Kathas of land bearing Survey Plot No.517, Khata No. 86 at Mohalla Nasriganj, Police Station Danapur, Digha, Patna. The Company took loan from the State Bank of India for establishment of Company and installed the machinery worth Rs. 6 Crore. The Company could not run fairly and properly, running in loss, loan amount was piling over the head of the Company, in order to settle the outstanding loan amount resolution was passed by the Board of Director dated 1.8.2011. According to the plaintiff-respondent Anil Kumar



Bajaj was only authorized to negotiate for sale of land and other fix assets of the Company and settle the outstanding dues whereas as per Anil Kumar Bajaj defendant-respondent no.2 created a resolution showing the Board of Director has authorized him for sell of land and other fix assets of the Company to the settle the Bank accounts. Anil Kumar Bajaj respondent no.2 negotiated and sold the land in consideration amount of Rs.1,85,00,000/-. Four Cheques of Rs. 24,00,000/- each was deposited in the Company account by the promoter of the appellants on 2.9.2011. Rest Rs.85,00,000/- was deposited by the Company on 21.1.2012. The entire amount of loan of Rs.6.5 crore including the interest was deposited in order to liquidate the outstanding dues and the State Bank of India vide letter no. 1382 dated 19.1.2012 has granted no objection. On the request of the appellants-Company a power of attorney was executed by Anil Kumar Bajaj in favour of Ashok Kumar by sale deed was affected by Anil Kumar Bajaj himself on 4.3.2012 and 20.4.2012. Similarly the machinery of the Company was sold in favour of Ms. Kush Plastic Pvt Ltd. and M/s Siliguri Poly Pvt. Ltd. in consideration amount of Rs.34,00,000/- and Rs.27,00,000 respectively. Plaintiff-respondent no.1 filed a suit vide Title Suit Noi.375 of 2011 in the court of Sub-ordinate



Judge II, Danapur and after execution of the sale deed an amendment petition was filed for amendment of plaint on 20.4.2012 whereby brought certain new facts including amended the relief sought in the suit to declare that sale deed dated 24.3.2012 and 26.3.2012 executed by Anil Kumar Bajaj to be illegal, void and ab-initio;. After the amendment of plaint, Advocate Commissioner was appointed, ultimately, the court below by the impugned order appointed the receiver of the fixed asset of the Company. Further case of the appellants is that the plaintiff-respondent no.1 has only 3.6% of share in sum total share in the Company is 8325. Further claim is that the suit has been filed in individual capacity without impleading Krishna Software Company as a party nor any resolution has been brought empowering the plaintiff to file the present suit. It was a bonafide sale with the sole purpose to liquidate the outstanding dues lying against the Company and Anil Kumar Bajaj respondent no.2 has given a personal guarantee and collateral of 7 Katha of land.

5. The appellants have raised the point that the court below has wrongly exercised the power without making proper consideration of the fact and law, by ex-chathedra recorded that the appellants have excellent case and appointed the Advocate



of the plaintiff as a receiver whereas receiver should have been an independent person having no interest with either party but would work as a trustee of the property during the pendency of the suit and submitted that the impugned order is not sustainable in law. The plea of the counsel for the appellant guideline which has been provided by long line of judgment delineating the guideline for the purpose of appointment of receiver has been ignored and over-looked by the court below and in derogation of the same appointed the receiver in such as the order passed by the court below is perse illegal and liable to be set aside. In support of the submission of learned counsel for the appellants has placed reliance AIR 1955 Md.430 (T. Krishnaswami Chetty v. C. Thangavelu and others) and AIR 2000 SC 3513 (S. Saleema Bi v. S.Pyari Begum and another) and (2009) 11 SCC 127, paragraph no.23 and 29. There is no consideration of prima facie case which ultimately affects the order for appointment of receiver, vitiates the order reliance has been placed on 2007(3) PLJR 417 (Vijay Kumar v. Smt. Kiran Devi and others), paragraphs 13 and 14, 2000(4) PLJR 810. 2000(2) PLJR 100 (Sheoji Singh V. Brijbansh Singh & Ors.) and 1978 BBCJ 288 (Smt. Hrideshwari Devi alias Hrideshwari Kumar v. Shri Priyabrat Kumar and others) and from HALSBURY'S LAWS

OF ENGLAND paragraph 822 and 848 on the point of case of disputed title and interested person respectively.

6. Case of the plaintiff-respondent no.1 is that the sale was effected on the basis of the resolution dated 1.8.2011 bears her forged and fabricated signature and claimed that authorization was given only for negotiation nor for the sale. It has further been said that the sale that has been affected has been done with an ulterior and bias motive as the huge amount of property of the Company has been alienated only on meager amount of Rs.1,85,00,000/- whereas the valuation of the land and property with fixed structure as per the present rate it is not less than Rs.10 lacs per Katha in lower side, after the year of 2009 the price of land in Patna and in surrounding area has gone astronomically high. When the plaintiff could know that Anil Kumar Bajaj was to alienate the property throw away the price on the basis of forged and fabricated resolution filed a suit vide Title Suit No.375 of 2011 thereby challenging the resolution dated 1.8.2011 itself. On 5.3.2012 notice was served to Anil Kumar Bajaj but after receipt of the notice hurriedly Anil Kumar Bajaj himself has executed two sale deeds on 24.3.2012/26.3.2012. Just thereafter Anil Kumar Bajaj appeared on 30.2.2012 and did not disclose the factum of execution of the



sale deed. On the same day the Court has passed the order of status quo as has been claimed that the appellant Company was incorporated on 13.9.2011 was not in existence on 2.9.2011 paid Rs. One crore was transferred. Plaintiff-respondent no.1 has submitted that she has also filed a criminal case vide Complaint Case No.173© of 2013 and for the act of fraud and cheating committed by Anil Kumar Bajaj the court of Magistrate vide order dated 24.5.2011 took cognizance under Sections 468, 469, 470. 471 and 420 of the Indian Penal Code.

7. Pleader Commissioner was appointed who submitted the specific and exhaustive report with respect to alienation of the property. The order passed by the court for appointing the receiver dated 14.7.2015 cannot be said to be unjust, improper and as such interference from this Court is not required.

8. He has further submitted that as the sale has been affected by Sri Anil Kumar Bajaj during pendency of the suit and as such the sale deed executed would be affected under lis pendency. He has also placed reliance on two judgments as aforesaid on the point of lis pendence, 2004(1) PLJR 66 (SC) (Bibi Zubaida Khatoon V. Nabi Hassan Saheb & Another) and 2002(3) PLJR 390. Further reliance has been placed on 1993 Delhi 293 (Hari Mohan Sharma and others v. CSR Poultry

Research & Breedign Farm), paragraph 5 and 1995 Delhi 175 (Ravi Kumar v. Misha Vadhera and others) paragraph nos.15 and 16.

9. Anil Kumar Bajaj after appearance filed an application challenging maintainability of the suit itself and the court below vide order dated 4.9.2012 refused to dismiss the Title Suit No.375 of 2011. Against that order Anil Kumar Bajaj has filed a writ petition vide C.W.J.C. No.17226 of 2012 which was rejected vide order dated 10.12.2012. Plaintiff has filed an amendment petition which was allowed vide order dated 14.5.2012 that too was challenged in C.W.J.C. No.15429 of 2012 and the said writ petition was also dismissed on 16.1.2013. Thereafter the plaintiff filed application for appointment of Advocate Commissioner which was allowed by order dated 27.5.2013 and against that order Anil Kumar Bajaj vide a writ petition vide C.W.J.C. No. 12762 of 2013 and that too was also rejected vide order dated 17.9.2014. Again appointment of Advocate Commissioner was challenged by the present appellants vide C.W.J.C. No.16112 of 2013 and that too was rejected on 20.8.2014. In the meantime, on appearance of Anil Kumar Bajaj the court below has passed the order of status quo on 30.3.2012.

10. The question of appointment of receiver has been gone into on many occasions by different Courts, Privy Council Supreme Court of India and different High Courts.

11. As per Law Lexicon P. Ramanatha Aiyar it has been defined meaning that a Receiver is indifferent person standing between the parties to a case, appointed by the court to receive and preserve the property or funds in litigation pendente lite when it does not seem reasonable to the court that either party shall hold it. A receiver is not an agency of either party.

12. According to the Black's Law Dictionary receiver means a disinterested person appointed by a court, or the corporation or other person, for the protection or collection of property that is the subject of diverse claims (for example, because it belongs to a bankrupt or is otherwise being litigated.)

13. As per Stroud's Judicial Dictionary of 8th Edition Receiver means a receiver "is indifferent person between the parties appointed by the court to receive the rent and profits of real estate, or to act in and collect personal estate or things in question pending the suit, where it does not seem reasonable to the court that either party should do so or where the party is incompetent to do so as in the case of an infant.

14. As per HALSBURY'S LAWS OF ENGLAND (Fourth



Edition) a receiver is a person appointed for the collection or protection of property. He is appointed either by the court or out of court by individuals or corporations. If he is appointed by the court, he is an Officer of the Court deriving his authority from the court's order. If he is appointed out of court, he is an agent and has such powers, duties and liabilities as are defined by the instrument or statute under which he is appointed and derive from the general law of the agency.

15. In terms of the English Judgment the Court of Justices were passing the order to preserve a property for the benefit of the creditors of the plaintiff. In case of **Holmes vs. Millage**, reported in 1893 (1) Law Reports 551 the Court has held that appointment of a receiver of a property is a serious interference with its business and it should be passed after considering whether it would be equitable, just or convenient to pass an order appointing a receiver specially at the instance of a judgment creditor against the judgment debtor.

16. In case of **P.C.L. Choudhuri v. K. Singha and H.C. Dutt**, reported in 1922 Patna 318 the Court has held that appointment of receiver is an equitable relief and if the applicant does not establish a special equity in his favour, it is impossible to say that it is "just and convenient" that a receiver should be

appointed.

17. The **Privy Council in case of Benoy Krishna Mukherjee and others v. Satish Chandra Giri**, reported in 1927, 28 (LV) Law Reports of Indian Appeals 131, held that an interim appointment of a receiver of property in the possession of, and claimed by, the defendant in the suit, should be made only if there is a well funded fear that in the absence of protection, the property will be dissipated or irreparably injured. But that power should be exercised with great care and circumspection as power of the Court to appoint a receiver is limited to only to cases where it appears just and in convenient for protection of the property from any imminent danger of being wasted.

18. In a leading judgment Madras High Court in the case of T. Krishnaswamy Chetty (supra) has delineated five points providing ingredients, situation and circumstances for exercise of power for the appointment of receiver. The said five principles has been described as Panch Sadachar. It will be relevant to quote paragraph nos. 13 to 15 of the aforesaid judgment:

“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. Abtiakalah', AIR 1918 Cal 882(Z7);- 'Tirath Singh v. Shromani Gurudawara Prabandhak Committee', AIR 1931 Lah 688 (Z8);- 'Ghanasham v. Moraba', 18 Bom 474 (Z9);- 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 Madhab Rai', 5 All 556 (Z12);- 'Sidheswari Dabi v. Abhayeswari Dabi', 15 Cal 818 (Z13);- 'Shromani Gurudwara Prabhandhak Committee, Amritsar v. Dharam Das', AIR 1925 Lah 349 (Z14);- 'Bhupendra Nath v. Manohar Mukherjee', AIR 1924 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 Ali Khan', AIR 1923 Lah 623 (Z16);- 'Firm of Raghbir Singh Jaswant v. Narinjan Singh', AIR 1923 Lah 48 (Z17);- 'Siam Das v. Mohabir Das', 27 Cal 279 (Z18);- 'Muhammad Kasim v. Nagaraja Moopnar', AIR 1928 Mad 813 (Z19);- 'Banwarilal Chowdhury v. Motilal', AIR 1922 Pat 493 (Z20)

(3) No only must the plaintiff show a case or 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', AIR1933 Sind 231 (Z 21);- 'Bindurramji v. Keshoramji', AIR 1939 Oudh 61 (Z22);- 'Sheoambar Ban v. Mohan Ban', AIR 1941 Oudh 328 (Z23).

(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 any one 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', AIR1927 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 suppression of a bona 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 the Court with clean

hands and should not have disentitled himself to the equitable relief by laches, delay, acquiescence etc.

(14) To sum up as stated in – ‘Crawford v. Ross’, 39 Ga 44 (Z28),

“The high prerogative act of taking property out of the hands of one and putting it in pound under the order of the Judge ought not to be taken except to prevent manifest wrong imminently impending.”

In – ‘Dozier v. Logan, 101 ga 173 (Z29) Atkinson J. said

“The appointment of a receiver is recognized as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the creditors is exposed to manifest peril.”

Therefore, this exceedingly delicate and responsible duty will be discharged with the utmost caution and only when the ‘panch sadachar’ or five requirements embodied in the words just and convenient (O.40, R.1) are fulfilled by the facts of the case under consideration- (‘Ramachandrayya v. Nethi Iswearayya’, AIR 1952 Hyd 139 (Z30)).

15. Bearing these principles in mind, if we examine the facts of this case as set out in the contentions of the respective parties above, we find that none of the requirements for granting the appointment of a receiver is made out.”

19. The issue of appointment of receiver came for consideration before this Court in the case of Vijay Kumar (supra). The Court approved the application of Punch Sadachar added two more ingredients for the purposes of appointment of receiver. It will be relevant to quote paragraph nos. 20 to 23 of the aforesaid judgment:



“20. In another decision of a Division Bench of this Court dated 7.11.1974 in case of (Smt) Hrideshwari Devi @ Hrideshwari Kumar & Ors. Vs. Shri Priyabrat Kumar and others, reported in 1978 BBCJ 288, the aforesaid decisions of this High Court and of the Madras High Court in cases of Bhubaneshwar Prasad Narain Singh (supra) and T. Krishnaswamy Chetty (supra) were relied upon and it was held as follows”

“An analysis of the case laws on the point clearly brings out the duty of the court to be very cautious in allowing an application for appointment of a receiver in a case where the defendant is in actual possession of the property. In such a case it has to require special reasons to be proved for interfering with such possession. At the same time the court has to bear in mind that this is a remedy which may be the only remedy open to a plaintiff for the maintenance and preservation of the property in suit. It is true that a court will require a plaintiff to show a very strong case of title and his right to possession as also that the property is in danger of being wasted.”

21. It further transpires that later another Division Bench of this Court passed an order dated 12.5.1976 in case of Kamal Choudhary and another vs. Rajendra Choudhary and others, reported in 1976 BBCJ 521 in which earlier two judgments of the Division Benches of this Court mentioned above were completely ignored and a different view was taken holding that for appointment of receiver there should be a good prima facie case and not strong prima facie case and that one co-owner occupying the whole property excluding other co-owner from the shares of rent and profit is sufficient for appointment of receiver even if no waste or mismanagement is proved.

22. All the aforesaid three decisions of the Division Benches of Patna High Court were considered by this Court in case of Mostt. Patri Devi @ Girja Devi and another vs. Ganesh Lal Pradhan and others, reported in 2003(2) PLJR 864

and it was held that in Bihar Subordinate Judiciary in almost all the partition suits a petition is invariably filed for appointment of a receiver, but most of them do not meet the above mentioned five ingredients required for the purpose of appointment of receiver, due to which precious time is wasted. Appointment of receiver is a stringent matter and it becomes more stringent in a partition suit.

23. Since the case of (Smt.) Hrideshwari Devi @ Hrideshwari Kumar (supra) was decided first by a Division Bench of this Court on 7.11.1974 relying upon the earlier Division Bench judgment of this Court in case of Bhubaneshwar Prasad Narain Sinha (supra), whereas the case of Kamal Choudhary and others (supra) was decided subsequently by another Division Bench of this Court on 12.5.1976 without considering the five basic ingredients as well as aforesaid two earlier decisions of this court in case of (Smt) Hrideshwari Devi @ Hrideshwari Kumar (Supra) and Bhubaneshwar Prasad Narain Sinha (supra), the law laid down by the earlier decisions would hold good for being followed as precedence and not the subsequent one.”

20. The question for appointment of receiver has again came for consideration before this Court in the case of (Smt) Hrideshwari Devi @ Hrideshwari Kumar (supra). This Court has gone deep into the matter with respect to appointment of Receiver. The Court has held that receiver should not be appointed unless the plaintiffs make out a good prima facie title for the purposes of obtaining the order for appointment of a receiver. The Court may be doing wrong to the defendant if he is ousted therefrom by the appointment of a receiver. Further held



that appointment of a receiver is one of the harshest remedies which the law provides and is allowable only in extreme cases and in circumstances where the interest of the person seeking the appointment of a receiver is exposed to manifest peril. The Court may appoint a receiver where the plaintiff's title is prima facie good title and that the property is in danger of being wasted or dissipated or being so dealt with as to get irretrievably out of reach of the plaintiff. It will be relevant to quote paragraph nos. 22 and 23 of the aforesaid judgment:

“22. Learned counsel for the respondents has placed reliance on a number of decisions in the case of Balbir Anand and others v. Ram Jawaya Kapoor and others for the proposition that while passing an order in respect of appointment of a receiver the court should in view that the rights of the parties are not jeopardized and the ends of justice not defeated; in the case of Chandidat Jha v. Padmanand Singh Bahadur and others for the proposition that the plaintiff must make out a good prima facie title for the purpose of obtaining an order for appointment of a receiver: in the case of Gulamjan Khan and others v. Zainubunnissa Begum for the proposition that a court may be doing wrong to the defendant if he is in enjoyment of the property and is ousted therefrom by the appointment of a receiver; in the case of Rasi Dei V. Bikail Maharana and others in support of the proposition that the appointment of a receiver is one of the harshest remedies which the law provides and is allowable only in extreme cases and in circumstances where the interest of the person seeking the appointment of a receiver is exposed to manifest peril and hence in a partition suit a receiver should not be appointed unless the plaintiff can show prima facie that he has a strong



case and good title to the property; in the case of Tara Singh v. Surajdeo Singh and others for the proposition that where there is no evidence to show that anything jeopardizing the plaintiff's interest had happened or that there was mismanagement and concealment and wastage, no receiver could be appointed; in the case of Bokaro and Ramgur Ltd. v. State of Bihar for the proposition that the court will appoint a receiver if it is satisfied on two matters, namely, that the plaintiff's title is prima facie good title and that the property is in danger of being wasted or dissipated or being so dealt with as to get irretrievably out of reach of the plaintiff; in the case of Sitaram Kundanlal and others, v. Pannalal Kundanlal and others for the same proposition that in a case of partition a receiver cannot be appointed unless the plaintiff proves that he has a good chance of succeeding in establishing the case made out in the plaint and that the property in possession of the opposite party is in danger of being wasted; and in the case of T. Krishnaswamy Chetty v. C. Thanagavolu Chetty and others for the proposition that an order appointing a receiver will not be made where it has the effect of depriving the defendant of de facto possession.

23. There is no dispute with any of the propositions of law stated in the aforesaid cases. An analysis of the case laws on the point clearly brings out the duty of the court to be very cautious in allowing an application for appointment of a receiver in a case where the defendant is in actual possession of the property. In such a case it has to require special reasons to be proved for interfering with such possession. At the same time the court to bear in mind that this is a remedy which may be the only remedy open to a plaintiff for the maintenance and preservation of the property in suit. It is true that a court will require a plaintiff to show a very strong case of title and his right to possession as also that the property is in danger of being wasted.”

21. The Hon'ble Supreme Court in the case of *S. Saleema Bi (supra)* has held that receiver can only be appointed when it is just and convenient and also where prima facie case is made out in favour of the plaintiff-respondent and the calls for taking of urgent measure like appointment of a receiver.

22. This Court in the case of **the Church of North Indian and others v. The Anglican Church of India & Ors.**, reported in 2000(4) PLJR 810 has held that an order appointing a receiver will not be appointed where it has the effect of depriving a defendant even of a defacto possession. It will be relevant to quote paragraph 8 of the aforesaid judgment:

“8.On behalf of the appellants reliance was placed upon judgments of Madras High Court reported in A.I.R. 1955 Madras 430 (*Krishnaswamy Chetty v. Thangavelu Chetty & Ors.*) and A.I.R. 1962 Madras 458 (*Issar Das S Lulla vs. Smr. Hari*). Reliance was also placed upon a Division Bench judgment of this Court reported in A.I.R. 1964, Patna 362 (*Tara Singh vs. Surjadeo Singh and ors*), 1978 B.B.C.J. 288 (*Hrideshwari Devi vs. Priyabrat*) and upon a judgment of single judge reported in 1997 (1) All P.L.R. 604 (*Radhey Krishna Prasad vs. Amrika Devi*). Some other judgment of Mysore and Delhi High Court were also relied upon by the appellants but no useful purposes will be served by adding to the long list of precedents because the proposition governing appointment of receiver as laid down in those judgments specially in the case of *T. Krishnaswami Chetty (supra)* which has been approved and followed by a Division Bench of this Court in the case of *Tara Singh (supra)* is not under dispute at all. A salient principles laid down in the aforesaid



judgment is that an order appointing a receiver will not be made where it has the effect of depriving a defendant even of a defacto possession. In the present case in the very first paragraph of petition for appointment of receiver the possession and management of the defendants over the properties concerned is admitted by the plaintiffs. Further, that the plaintiffs case that in spite of unification of Churches in 1970 they maintained a separate identity cannot be accepted as a good case in view of a Division Bench judgment of Bombay High Court dated 19.1.1999 in Appeal No. 1211/98 arising out of Company Appeal 3/97 (Nitin Mahadeo Pawar v. United Church of Northern India). Hence after giving anxious consideration to all the facts and circumstances of the case this Court finds that no good ground has been made out by the plaintiffs/respondents for appointment of a receiver in the suit. Accordingly, the order under appeal in Misc. Appeal No.68/2000 ® is set aside and the appeal is allowed.”

23. Delhi High Court has gone into the matter for appointment of a receiver in the case of Hari Mohan Sharma (supra) and the Court has provided five guidelines in the matter of appointment of receiver which is as follows:

“5...(1)The appointment of a receiver pending a suit is a matter resting in the discretion of the court,

(2) The court should not appoint a receiver except upon proof by the plaintiff that prima facie he has a very excellent chance of succeeding in the suit.

(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.

(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. It would be different where the property is shown to be in medio that is to say, in the enjoyment of no one.

(5) The court on the application made for the appointment 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.”

24. Delhi High Court has considered this issue again in the case of Ravi Kumar (supra) where the Court has said that receiver cannot be appointed merely because it is expedient or convenient to one of the parties to do so or because it will do no harm to do so. A bona fide possessor of property should not be dispossessed pending suit unless there is some substantial reason, such as, well founded fear that the property in question being dissipated or that some other irreparable mischief may occur unless the court gives its protection. The application for appointment of receiver should not be disposed of summarily. The matter should be considered judicially in all its aspects. The plaintiff must show prima facie that he has a strong case i.e. either a good title to the property or a special equity in his favour requiring immediate dispossession of the defendant or that the property in the hands of the defendant is in danger of being wasted.



25. In view of the aforesaid judgment, the crux of the matter that normally the Court should not pass an order appointing a receiver, thereby dispossessing the defendant from the possession of the suit property unless extra ordinary situation arises, such as it has been found that the property in question requires immediate protection of danger being wasted or dissipated. and so much so the plaintiff must show his excellent chance of success having a strong prima facie case in his favour and the discretion must be exercised based on proper consideration of attending facts and circumstances and the power should not be exercised in arbitrary or un regulated manner but should be exercised cautiously, judicially and according to the legal principle.

26. Let us examine the impugned order in the present case. In the present case the plaintiff is one of the Director has filed present suit claiming the relief that resolution dated 1.8.2011 passed in the minutes book of the Company to be held illegal and void and signature of the plaintiff be declared to be forged and fabricated and later on amendment petition was filed, brought various changes in the plaint, brought on record different facts related to the sale of the property. It is an admitted fact that the property in question is in possession of the



defendants-appellants.. Claim has been made that the sale is completely unethical and Anil Kumar Bajaj has gone beyond the resolution thereby the valuable land of the Company has been sold in a very lower price. Pleader Commissioner's report also shows the possession of the defendants-appellants, the machineries that were installed have been removed. In the southern eastern portion of the property in question three big houses are standing. Some new construction has been made, certain portion has been covered by asbestos roof. The Pleader Commissioner has found some sign showing the removal of the machine. Though the court below has recorded a finding of excellent case in favour of plaintiff, requires emergent protection but while arriving such finding he has not discussed in what basis and manner arrived to such finding, mere unilateral declaration of excellent chance success without proper consideration will not be treated to proper exercise of discretion of the court. Appointment of receivership is an exercise of equitable jurisdiction. The Court should not exercise the power in arbitrary and opaque manner rather it should be based on sound judicial discretion looking to the entire facts and attending circumstances. At the same time the Court has nowhere dealt with issue of imminent danger to the property of being wasted or



dissipated protection of property urgently required, appointing a receiver, defendant cannot be dispossessed but exercise should be done with proper care and circumspection. But the court below, in the opinion of this Court, has not exercised jurisdiction in proper and equitable manner rather abruptly declared that plaintiff has an excellent case and the property requires imminent protection.

27. In the present case, it is one of important factor to be looked into that the plaintiff is one of the Director of the Company. Property in question belongs to the Company. The suit has not been filed by the Company nor the Company has been impleaded as party in the suit. These factors were required to be looked into for a proper perspective and so much so in a situation when the court below has already passed an order of status quo added with the fact that receiver should be an independent person having no connection with the party rather in the present case the Advocate of the plaintiff has been appointed as a receiver who has to act as a trustee, but in the present case by the appointment of advocate of the plaintiff leads to irresistible inference of plaintiff is coming in possession before the final judgment in the suit.

28. In such view of the matter, the order dated 14.7.2015

passed by the court below suffers from illegality as pointed out above and same is set aside. The court below is directed to decide the case without unnecessary delay preferably within a period of one year from the date of receipt/production of a copy of this order. The parties are directed to co-operate in the disposal of the case.

29. Accordingly this appeal is allowed.

(Shivaji Pandey, J)

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