

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19175 of 2010

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1. Bachiya Devi @ Rani Kala Devi W/O Late Raj Nandan Singh @ Rajan Singh
R/O Vill.- Jordarpur, P.O.- Daili, P.S- Harnaut, Distt.- Nalanda(Bihar)

.... Petitioner/s

Versus

1. Smt. Munki Devi W/O Devendra Yadav R/O Vill.- Muhammedpur Balwa, P.O.-
Sirsi Dehra, P.S.- Harnaut, Dist.- Nalanda(Bihar)

2. Ranju Devi W/O Sanjay Yadav R/O Vill.- Balwa (Gonwa), P.O.- Gonwa, P.S.-
Harnaut, Distt.- Nalanda(Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar-Advocate

For the Respondent/s : Mr. Sudhir Kumar-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

Date: 12-07-2016

Heard learned respective counsels.

2. Petitioner, who happens to be defendant before the learned lower Court has challenged the successive order dated 01.07.2010 passed by the Subordinate Judge-II, Bihar Sharif at Nalanda in Title Suit No.28 of 2009 allowing the prayer of the respondent-plaintiff to appoint receiver as well as order dated 18.09.2010 passed by the 5th Additional District Judge, Bihar Sharif at Nalanda in Misc. Case No.11 of 2010 dismissing the same drawn at his instance.

3. It has been submitted on behalf of petitioner that respondent-plaintiff being an imposter, only to grab the property



exclusively belonging to them, filed partition suit. Hurriedly, before their appearance filed a petition for appointment of receiver. After their appearance they have objected, however, been not entertained by the learned lower Court and further, appointed receiver, which has been endorsed by the learned Appellate Court, illegally under Misc. Appeal. So, submitted that the successive orders be set aside.

4. Controverting the submission made on behalf of petitioner-defendant, it has been submitted on behalf of respondent-plaintiff that defendant who are in possession of the land are not only mis-utilizing rather adamant to digest the usufruct and so, to keep the interest of the plaintiff immune, it has become necessary to appoint receiver and that has rightly been done by the learned lower Court as well as confirmed by the Appellate Court. So, the concurrent finding should not be disturbed.

5. Appointment of receiver is basically to preserve the property from destruction, mismanagement. Furthermore, when a party is admittedly happens to be under possession, mere allegation will not justify the prayer unless and until having been substantiated. In the absence of any material on record to show that defendant was mismanaging the property and further, concealing and wasting the income, for want of prima facie material would not justify the

approach of the Court to appoint receiver.

6. Whenever there happens to be partition suit and the properties are landed property, then in that event, ordinarily there should not be indulgence of the Court by way of appointment of receiver. In ***Bhubaneshwar Prasad Narain Sinha-Appellant v. Rajeshwar Prasad Narain Sinha and others-Respondents reported in A.I.R. (35) 1948 Patna 195 (DB)***, it has been held:-

“4. This case has to be determined on the footing that there is no specific allegation of waste or mismanagement on the part of defendant 1, and that no prima facie case has been made out in support of the vague allegations in the plaint, or in the application for appointment of a receiver, that defendant 1 has been guilty, or may reasonably be suspected, of having committed acts of waste or mismanagement or any fraudulent acts which would justify the order for the appointment of a receiver. As already indicated, the lower Court also has not recorded any such finding. We have heard counsel at great length on behalf of all the parties concerned, and we have come to the conclusion that there is no justification in the



record for making any aspersions against the conduct of defendant 1 in relation to his management of the properties until the date of the institution of the suit. It is also clear that defendant 2 has been instrumental in embittering the feelings between the parties all the more as a result of his ill-advised move to take forcible possession of such portions of the family properties and houses as he would like to do in assertion, however bona fide, of the plaintiffs' right, or of his own right, to those properties. His ill-advised acts aforesaid led to the public authorities deputing a military force to preserve public peace and to give protection to defendant 1 who was apprehensive of danger to his life and property. For creating such a situation, the plaintiffs and defendant 2 have to thank themselves. Defendant 1 was acting all the time in defence of himself and his property, and, naturally, the public authorities had to give him such protection as the law entitled him to. But it cannot be said that for all these incidents defendant 1 is responsible or that they justify his being put out of possession by the appointment of a receiver. If those were the only grounds on

which the plaintiffs prayed for the appointment of a receiver, I would have no hesitation in rejecting the prayer.”

7. In ***Mostt. Patri Devi @ Girja Devi and another-appellant v. Ganesh Lal Pradhan and others—respondents reported in A.I.R. 2004 Patna 29***, it has been held:-

“7. The present appeal has been preferred against the order of rejection of prayer for appointment of Receiver. The learned Counsel for the appellants have submitted that when various deprivations of enjoyment of the properties to the plaintiffs are there then for such deprivations even if no case of wastage and decay could be proved, then also appointment of a Receiver can be done and in that way he has referred to the three judgments of this Court, namely, 1948 Patna, 195, 1976 BBCJ, 521 and 1978 Patna, 210. Before coming into the merit of the present case the principle behind appointment of Receiver is required to be stated. Practically, when a case is made out of decay and destroyance of the property in lis then from saving the property the Court is to take custody of the property and then as its representative a Receiver is to be appointed who remains answerable to the Courts, As provided under Order XL, Rule 1 C.P.C. by going through various decisions given by Courts in India and also the Apex Court the following principles may be enumerated when a Receiver can be appointed:

(i) it is the discretionary power of the Court, although, such discretion has to be applied

judiciously.

(ii) plaintiff must show that he has very excellent chances of success in the suit.

(iii) he must not only show a case of adverse and conflicting claims to property, but he must show some emergency or danger or loss demanding immediate action & of his own right he must be reasonably clear and free from doubt.

(iv) no order will be made to deprive the defendant of defacto possession. (v) the Court will usually refuse to interfere unless his conduct has been free from any blame. Regarding the discretionary power of the Court, I would discuss it afterwards.

9. Secondly, in a Partition suit neither injunction prayer nor prayer for Receiver are being entertained by the Courts because even if the contention of the plaintiffs that there is jointness of the property then till a partition is arrived at every co- sharer have got right over every inch of the land and in that way appointment of a Receiver Deprives from the peaceful possession of the parties. Only in the very limited cases even deprivation of enjoyment of a co-sharer in a Partition suit are considered to be good ground for appointment of a Receiver as has been done in the cases of Patna as mentioned in those rulings. But in those cases the property was always found by the Courts to be joint. Here, such finding was yet to be made out at least prima- facie.

10. In the case of Bhubneshwar Prasad Narain Sinha v. Rajeshwar Prasad Narain Sinha, reported in AIR 1948, Patna, 195, it was held that deprivation from enjoyment of joint family



properties can be a ground for appointment of a Receiver. It was also held that in a Partition suit regarding the joint family property Receiver can only be appointed by consent and the family property only consist of land unless special circumstances as waste or decay could be proved. In that case deprivation was held to be one of the grounds for appointment of a Receiver. In very stringent cases when during the pendency of a case the defendant was found to be scarce and suppressing the real fact from the Court and even when a Survey knowing Commissioner went from the Court's end then also the defendant made suppression and in such contingent circumstances when the intention was found to be bad, then a Receiver is allowed to be appointed that too in the special circumstances of that case. In the case of [Ram Kishore Das v. Balram Sah](#), reported in AIR 1978 Patna 210, the ingredients of appointment of a Receiver as mentioned above has been reiterated and it was held that only because the defendant was in peaceful possession of the property, can never be a ground for the purpose of rejection of appointment of a Receiver while other ingredients were present. In the case of [Kama/ Chowdhary and Anr. v. Rajendra Chowdhary and Ors.](#) reported in 1976 B.B.C.J. 521, the appointment of a Receiver was held to be proper when one of the co-sharers was found to be in possession of the whole of the property depriving other co-shareres. In that case it was observed that waste or mismanagement may not be proved. None of those cases fit in the present case.

8. After going through the successive order, it is evident that respective learned Courts have not discussed any of the

ingredients as indicated above nor there happens to be ample material to substantiate bald allegation. That being so, the successive orders are set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

Vikash/-

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