

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.931 of 2016**

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Syed Mehrul Huda

.... .... Appellant/s

Versus

The State of Bihar & Ors

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Brij Nandad Prasad

For the Respondent/s : Mr. Raj Kishore Roy- Gp18

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

4 23-11-2016

Heard the learned counsel for the petitioner, learned counsel for the State and the learned counsel for the respondent No.8.

Perused the impugned order passed by the lower appellate court dated 20.05.2016 by the learned 1<sup>st</sup> Additional District Judge, Sheikhpura in Misc. Appeal No.11 of 2014 whereby the lower appellate court has allowed the appeal and set aside the order passed by the trial court for the appointment of receiver in the suit property.

The learned counsel for the petitioner submitted that once a receiver is appointed by the trial court, the receiver should be allowed to continue till the disposal of the suit i.e. the decision of the Supreme Court in the case of M/s Sherali Khan Mohammad V. The State of Maharashtra, 2015(2) PLJR 433(SC). According to the learned counsel, the petitioner is intervener and he is in possession of the suit property which is a pond.

On the other hand, the learned counsel for the plaintiff-

respondent No.8 submitted that in fact, the present respondent No.8 is in possession of the pond and, therefore, appointment of receiver will amount to dispossessing the respondent No.8.

Perused the order passed by the lower appellate court and also the order passed by the trial court. From perusal of the orders passed by both the Courts below, it appears that none of the courts have considered the settled principles of law required to be considered at the time of hearing of the receivership application under Order 40 Rule 1 commonly known as Panch Sadachar. Reference may be made to the decision of the Madras High Court in AIR 1955 Madras 430 and 2007(3) PLJR 417.

It appears that both the Courts below only on the basis of application without considering the law have passed the order. Therefore, the orders passed by both the courts below are hereby set aside and the matter is remanded back to the trial court for passing a fresh order on the application under Order 40 Rule 1 C.P.C. filed by the plaintiff-respondent.

Thus, this Civil Miscellaneous application is allowed. The impugned order passed by the lower appellate court as well as trial court are hereby set aside and the trial court is directed to pass a fresh order after hearing the parties according to law.

Saurabh/-

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**(Mungeshwar Sahoo, J)**