

11.02.2022
SL No.11
Court No.8
(gc)

**FMAT 840 of 2018
With
CAN 1 of 2018
(Old No. CAN 6829 of 2018)**

**Sri Jyotirindra Chattopadhyay
Vs.
Sri Gyanendra Chandra Chattopadhyay & Ors.**

(Via Video Conference)

Mr. Tapash Kr. Bhattacharya,
Mr. Aviroop Bhattacharya,
...for the Appellant.
Mr. Kalipada Chakraborty,
...for the Respondent No.1.
Mr. Sudipto Panda,
...for the Respondent No.3.

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The appellant is aggrieved by an order passed by the learned Civil Judge (Senior Division), Katwa, Burdwan in connection with a petition under Order 40 Rule 1 of the Code of Civil Procedure. The plaintiff filed a suit for partition. The plaintiff alleged that after filing the suit on 14th September, 2015, the application was filed for appointment of Receiver in respect of the suit property on the ground that taking advantage of the physical disability of the plaintiff, the defendant No.1, who is a full blood brother of the plaintiff, is mismanaging the suit property and for proper preservation of the suit property as well as the shares of the co-owners, it is essential, a Receiver is

required to be appointed till the disposal of the suit. It is further alleged that the defendant No.1 and the other defendants treating the suit properties as their own and used the properties for personal cultivation. They are not distributing crops and usufructs of the property and thereby the right to enjoy the suit property by the plaintiff is seriously prejudiced. In short, the plaintiff was deprived of enjoyment of the suit property. The learned Trial Judge considering the submission made on behalf of the defendant No.1 that the plaintiff and other defendants have sold their respective shares to the defendant No.1, refused to exercise its discretion for appointment of Receiver. The Trial Court observed that the plaintiff has to show some urgency and danger demanding immediate action. There are unsatisfactory materials to satisfy the Trial Court for allowing the said application for Receiver.

The criteria applied that the plaintiff would win the case is not the criteria which the Trial Court in the instant case has applied for the purpose of refusing to appoint a Receiver. The Court is required to find out from the available materials whether the plaintiff was able to make out an arguable case on merits as at the interlocutory stage, it is not to be assessed whether the plaintiff would ultimately be successful in the suit. The Court has also taken into consideration that if an arguable case is made out in a partition suit, it is a duty of the Court to preserve the joint properties till the suit is disposed of. There is no

finding, *prima facie*, that the share of the plaintiff in the suit property was sold to the defendants. The Trial Court has also not arrived at a finding that the plaintiff on the basis of the documents and available record has failed to prove *prima facie* that he is a co-owner.

In fact, a Coordinate Bench while admitting the appeal on 12th November, 2018 appointed the plaintiff and the defendant No.1 as joint Receivers with a direction that joint Receivers shall jointly look after the cultivation and divide the proportionate shares of the proceeds as per their admitted shares which arrangement shall continue for a period of two weeks after reopening of the Court. This interim order was extended from time to time and is still in operation. The Coordinate Bench has made a pertinent observation that the defendant no.1 alone cultivating the land and enjoying the benefits thereof. It was on such consideration, the plaintiff and the defendant No.1 was appointed as joint Receivers.

Mr. Tapash Kr. Bhattacharya, learned Counsel appearing on behalf of the appellant has submitted that in spite of the aforesaid order, the defendant No.1 has refused to share the crops and the usufructs and prevent the appellant to act as joint Receiver. The appellant has filed a supplement affidavit giving particulars of such interference.

The learned Counsel for the respondent No.1 and respondent No.3 are present.

The learned Counsel for the respondent No.3, Mr. Sudipto Panda, has supported the case of the appellant.

The learned Counsel for the respondent No.1, Mr. Kalipada Chakraborty, submits that there is no such interference.

However, considering the fact that the parties are at loggerhead and in spite of appointment of joint Receivers, the dispute still remains, we direct the Trial Court to appoint a Receiver in terms of this order. The Trial Court in appointing a Receiver shall ensure that a competent person is appointed as a Receiver who shall preserve and manage the suit properties including the usufructs and submit quarterly accounts in the suit before the Trial Court.

All the parties are directed to assist the Receiver to be appointed by the Trial Court. The cultivation shall be under the supervision of the Receiver or a Manager to be appointed by the Receiver. Such power should be conferred upon the Receiver in the appointment itself with proper remuneration to be borne by the parties according to their shares.

All other directions that are necessary for proper management and preservation of the suit property shall be passed by the learned Trial Judge after hearing the parties. The terms of appointment as mentioned by us are merely illustrative and not exhaustive. The learned Trial

Judge shall be at liberty to modify the terms according to the needs and exigencies of the situation.

The parties shall apply before the Trial Court with a copy of this order for appointment of a suitable person as a Receiver.

The order under challenge is, accordingly, set aside.

The parties are restrained from dealing with and/or disposing of their properties till the disposal of the partition suit except with the leave of the Trial Court.

In view of the fact that the partition suit is pending for almost seven years, we request the learned Civil Judge (Senior Division), Katwa, Burdwan to dispose of the suit as expeditiously as possible preferably within a period of one year from the date of communication of this order subject to the convenience of the learned Trial Court.

The appellant and the respondent No.1 are hereby discharged as Receiver without requiring them to file any accounts.

With the aforesaid observation, the appeal being FMAT 840 of 018 and the application being CAN 1 of 2018 (Old No. CAN 6829 of 2018) stand disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)