

25th February,
2025
(AK)
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F.M.A. 729 of 2024
IA No: CAN 1 of 2024

Md. Belal and others
Vs.
Md. Iqbal

Mr. Subir Banerjee
Mr. Md. Hossain
Mr. N.N. Maity
...for the appellants/defendants.

Mr. Md. Nauroz Rahber
Mr. Md. Jawneul
Mr. Zafar Mobin
...for the respondent/plaintiff.

1. The present appeal has been preferred by the defendants in a suit for partition against an order whereby receiver has been appointed under Order XL Rule 1 of the Code of Civil Procedure for collection of rents in respect of the subject property.
2. Learned counsel appearing for the appellants submits that learned trial Judge failed to advert to Annexure-A of the written objection filed by the present appellants to the receiver application, which is a mutual arrangement, reduced to writing, whereby the suit property was distributed among the parties.
3. It is contended that the said document does not create or confer any right for the first time but

merely records that on a mutual discussion held previously, the parties had settled on such separate demarcations of the property, thereby debarring the partition suit.

4. It is next contended that the learned trial Judge overlooked the consequence of the said annexure, which would operate as estoppel against the plaintiff from filing the present suit for partition.
5. Learned counsel further submits that in the absence of any proof of misappropriation of income by the appellants, a receiver could not have been appointed by the learned trial Judge.
6. However, it is well-settled that if there is any wrong recording of facts or events which transpired before the learned trial Judge, such question has to be raised before and only before the same court, preferably the same Judge, and a superior forum cannot look into the veracity of the recording of the trial court regarding the same.
7. As such, applying the presumption of correctness attached to judicial acts, we cannot go beyond the specific recording in the impugned order that Annexure-A could not be found annexed to the written objection of the appellants filed to the receiver application in the court below, although a copy of the same has been annexed to the stay application filed before this court.

8. Even if we proceed on the premise that such document was there in the records but overlooked by the learned trial Judge, a perusal of the copy thereof shows that at best, an arguable case has been made out by the defendants/appellants on whether the said document operated as a valid partition by metes and bounds between the parties.
9. The first issue which is required to be decided in that regard would be whether the expression “after mutual discussion” in the said document overrides the subsequent future tense used in the self-same document regarding conferment of rights of separate possession on the parties.
10. Hence, both interpretations might be possible on the face of the document, since in the same breath, it refers to previous mutual discussion but purports to create rights *in praesenti*.
11. In the event of the latter, the said document would be compulsorily registrable to validly create or confer any title on the parties and effect a partition by metes and bounds valid in the eye of law.
12. Even if such question is germane for deciding the suit, the same forms a strong triable issue, which would entitle the plaintiff/respondent to an interim order of protection.
13. The next question which arises is whether the learned trial Judge was justified in appointing a

receiver, the parameters for which, as well-settled in law, have to be on a higher footing than an order of injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

14. However, in the present case, what has been vested in the receiver is not custody or title of the property but merely the right to collect rents, without ousting the parties to the suit from their respective possessions with regard to the suit property.
15. Of course, the learned Trial Judge could very well have granted a lesser relief of accounts being furnished by the defendants/appellants, since it is an admitted position that the defendants/appellants are collecting rent from their portion of the premises. However, there is no occasion for this court to interfere with such exercise of judicial discretion by the learned trial Judge, since the said exercise is not tainted by any illegality.
16. It is well-settled that the Appellate Court, merely because another view is possible, shall not supplement its own views for that of the learned trial Judge even if such a different view is possible in the facts and circumstances of the case.
17. In the present case, the appointment of a receiver to collect rent in order to protect the interest of the parties to the suit was in aid of the final relief

claimed in the suit and was one of the plausible options to be exercised by the learned trial Judge.

18. Hence, we do not find any reason to interfere with the impugned order.
19. Accordingly, FMA 729 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. CAN 1 of 2024 is dismissed accordingly.
20. There will be no order as to costs.
21. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)