

13th January,
2025
(AK)
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F.M.A. 1453 of 2024

IA No: CAN 1 of 2024

Nasim Ara Latif
Vs.
Md. Zahir and others

Mr. Dipak Kumar Mookerjee

...for the appellant.

1. The present appeal has been preferred against an order whereby the plaintiff's/appellant's application under Order XL Rule 1 of the Code of Civil Procedure, for appointment of a receiver to collect rents of the subject property, was rejected.
2. The learned Trial Judge proceeded on the basis that the defendants submitted that the share of the plaintiff is not admitted by the defendants.
3. Moreover, it was observed that the defendant nos.1 and 2 claim that during the lifetime of the predecessor-in-interest of the parties, the said predecessor namely Md. Nazir had executed an oral

Hiba thereby transferring the property in favour of the said defendants.

4. The learned Trial Judge proceeded on the premise that the respective contentions of the parties cannot be substantiated unless the suit goes on trial and evidence is adduced by the parties.
5. Learned counsel appearing for the appellant submits that in terms of the Faraiznama obtained from the concerned Shahi Imam, the parties have joint shares in the property-in-dispute.
6. Learned counsel also relies on a list of the alleged tenants as per Schedule-B of the receiver application, to indicate that the rent of the property is required to be collected by the receiver.
7. We find from the impugned order that the learned Trial Judge has taken one of the plausible views possible in the facts and circumstances of the case.
8. It is well-settled that the appellate court does not substitute its own views for that of the trial court, merely because another view might be possible in the factual matrix of the case.
9. That apart, it would be premature at this juncture to appoint a receiver to take control of the rent collected from the subject premises only on the basis of the Faraiznama and in the absence of any evidence being led to corroborate such Faraiznama and the contents thereof.

10. Also, the tests for grant of receiver stand on a much higher footing than injunction and the plaintiff, as a matter of right, is not entitled to get an order of appointment of receiver, displacing the existing persons who might have control over the property.
11. No strong case of mismanagement and/or siphoning off of the rents has also been made out sufficient to appoint a receiver at this stage.
12. Hence, we are of the opinion that there is no scope of interfering with the impugned order.
13. Accordingly, F.M.A 1453 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
14. Consequentially, CAN 1 of 2024 is also dismissed.
15. It is made clear that we have not entered into the merits of the disputes between the parties and it will be open to the learned trial Judge at all further stages of the suit, including interlocutory stages, to decide all issues independently in accordance with law without being unduly influenced by any of the observations made above.
16. There will be no order as to costs.
17. Nothing in our order shall prevent the appellant to approach the learned Trial Court to seek other reliefs such as injunction, accounts etc.
18. If such relief is sought, the learned Trial Judge shall dispose of the same in accordance with law

upon giving adequate opportunity of hearing to the
contesting defendants.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)