JPD-21
Ct No.01
30.07.2025
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

FMAT 15 of 2025
IA No: CAN 1 of 2025

Dilip Kr. Prasad @ Dileep Kr. Prasad and others
Vs
Dinesh Kumar Prasad @ Dinesh Prasad and others

Mr. Bikramaditya Ghosh
Mr. Abhilash Mittal
Mr. Mayank Bhandani
Mr. Ved Rai
.... for the appellants.

Mr. Arun Kr. Sarkar
Mr. Abhijit Sarkar
Mr. Kunaljeet Bhattacharya
Mr. Satyam Lama
Mr. Samundra Mani Pradhan
Mr. Navnit Yasg Lama
...for the respondents.

1. The present challenge arises out of an order appointing a receiver passed in favour of the plaintiff/respondent in a partition suit.

2. Learned counsel for the appellant argues that in the absence of any strong case of defalcation and/or misappropriation being made out in the receiver application and in support thereof, the learned Trial Judge was not justified in passing an order of receiver, thereby displacing the appellants from a running business of restaurant and bar, the licence in regard to which is held in the name of the appellant no. 1 alone.

3. Learned counsel further submits that the learned trial Judge was of the opinion that the jointness of the property is in doubt, but still, without considering the maintainability of the partition suit, which is a part of the *prima facie* case in grant of receiver, passed the order impugned herein appointing a receiver.

4. Learned counsel for the respondents places reliance on one of the annexures to the application filed in connection with the appeal, at page-214 thereof, indicating therefrom that the receipt for tax, rates and fees as assessed by the Gram Panchayat is in the name not only of the appellant no.1 alone but also in the name of " and others".

5. Thus, it is argued that the property is joint.

6. Learned counsel for the respondents next contends that the property was purchased by different sale deeds in the names of the different parties by their father, although such parties were minor at that point of time.

7. Thus, it is evident that a joint nucleus forms the premise of the purchases.

8. It is further argued that in paragraphs 26 and 27 of the receiver application, a categorical allegation that the appellants are siphoning off the profits and income of the bar-cum-restaurant being run from the suit property has been made.

9. As such, learned counsel seeks to justify the impugned order of appointment of receiver.

10. In view of the short conspectus of the appeal, as per our previous direction, the appeal and the application are taken up together for adjudication.

11. Upon a careful consideration of the materials-on-record and the submissions of parties, we find that the high ground for appointment of a receiver has not been made out.

12. The mere allegation in the application for receiver to the effect that the funds of the hotel business are being siphoned off by the appellants would not suffice, in the absence of any corroborative material for appointing a receiver.

13. Moreover, since *prima facie* the licence of the restaurant and bar business stands in the name of the appellant no. 1, although the tax receipts regarding the property might be in the joint name of the parties, we are of the opinion that the appellants could not be displaced from the running business by appointment of a receiver, which would be contrary to settled principles of law.

14. However, since an allegation has been raised with regard to the management and accounts of the said business, we choose to mould the relief as prayed for in the receiver application and grant the lesser relief of accounts in the present case which, in our opinion, would suffice to protect the interests of both parties.

15. Accordingly, FMAT 15 of 2025 is allowed, thereby modifying the impugned order bearing Order No.17 dated June 18, 2025 passed by the learned Civil Judge, Senior Division, Siliguri, District- Darjeeling in O.C. Partition Suit No. 180 of 2023 to the effect that the appellants shall maintain proper accounts of the restaurant cum bar business being run from the suit property during pendency of the suit and furnish quarterly audited statements of accounts verified by an approved chartered accountant in the trial court in connection with the suit.

16. It is made clear that the merits of the contentions of the parties in the suit have not been gone into by this court and it will be open to the learned trial Judge to dispose of the suit independently, in accordance with law and on its own merits.

17. CAN 1 of 2025 is consequentially disposed of.

18. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)