

(2011) 11 UK CK 0007

In the Uttarakhand High Court

Case No : Appeal from Order No. 164 of 2010

Baldev Singh Man and four Others

APPELLANT

Vs

Bahadur Singh Man (deceased) and three Others

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : (2012) 3 UC 2287

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : M.S. Tyagi, for the Appellant; Lok Pal Singh, for the Respondent

Final Decision : Dismissed

Judgement

Brahma Singh Verma, J.—This appeal has been preferred against the order dated 30-03-2010, passed by II Additional Civil Judge (S.D.), Haridwar, in O.S. No. 136 of 2008, Baldev Singh Man and others versus Bahadur Singh Man and others, whereby the application of plaintiffs/appellants for appointment of receiver has been rejected. Briefly stated the facts of the case giving rise to this appeal are that plaintiff/appellant Baldev Singh Man and defendant/respondent Bahadur Singh Man were real brother. Defendant/respondent Ajit Singh is the father of Baldev Singh and Bahadur Singh. Plaintiffs/appellants 2 to 5 are sisters of Baldev Singh Man and Bahadur Singh. During the pendency of appeal, Bahadur Singh Man had died and in place of him his widow Smt. Sharanjeet Kaur was impleaded as respondent. The other respondents Pradeep Man and Navdeep Man are sons of late Sri Bahadur Singh Man.

2. According to plaintiffs/appellants, their mother Smt. Gurudayal Kaur purchased the disputed land vide lease deed dated 3-5-1976. After purchase of property Smt. Gurudayal Kaur with the help of plaintiffs/appellants got constructed a building on the said land, which is called "Gurudayal Niwas" and on the said building hotel business is going on. Because plaintiff Baldev Singh Man used to reside outside India and other plaintiffs are sisters, therefore, the hotel

business was being looked after by the defendants. The defendants gave accounts of hotel upto the year 2005 and thereafter they were not rendering accounts of the hotel to the plaintiffs. The defendant No. 2 Ajeet Singh, father of plaintiff Baldev Singh and defendant Bahadur Singh, in order to grab the share of plaintiffs, got executed a sale-deed dated 27-12-2007 through which the ownership of property was given in favour of defendants 3 and 4 (sons of defendant Bahadur Singh), whereas Ajeet Singh had no right to execute the sale deed. After the death of Gurudayal Kaur, the plaintiffs had 5/7 share in the disputed property. Smt. Gurudayal Kaur also did not execute any will in favour of defendants. Therefore, the plaintiffs filed a suit for partition to get 5/7 share as well as to give accounts of the income from the disputed property.

3. Along with the suit the plaintiffs also filed an application 30-C under Order 40 Rule- 1 C.P.C. for appointment of receiver and prayed that the accounts of disputed property be filed in the court. The defendants filed objection 35-C and alleged that the total area of disputed property is 1800 square feet, in which defendant Ajeet Singh Man and Smt. Gurudayal Kaur were owner of the property in equal ? share. Defendant Ajeet Singh got constructed house in half portion of land and he is owner in possession of that property. Smt. Gurudayal Kaur in her life time on 25-6-1990 had handed over her half share to Ajeet Singh by will-deed. Hence after the death of Gurudayal Kaur, Ajeet Singh had got exclusive ownership of the total property in dispute. It is also alleged by the defendants that plaintiff Baldev Singh son of Ajeet Singh for the last about 20 years is living in Canada along with his family and he has no concern with the disputed property. On 27.12.2007 Ajeet Singh sold the half share of hotel Man to defendant Pradeep Man and Navdeep Man. Hence there is no question of appointment of receiver in respect of property in dispute.

4. The learned II Additional Civil Judge (S.D.), Haridwar after hearing the parties and perusing the entire evidence on record rejected the application of plaintiffs/appellants for appointment of receiver vide impugned order dated 30-03-2010.

5. Being aggrieved the plaintiffs/appellants have preferred this appeal before this Court.

6. I have heard learned counsel parties and perused the entire material available on record.

7. Learned counsel appearing on behalf of appellants has submitted that the defendant No. 2 Ajeet Singh had no right to execute the sale-deed dated 27-12-2007, by which about half portion of hotel Man was sold out to defendants Pradeep Man and Navdeep Man and the said document is void ab initio, but the learned court be-low has completely overlooked this important aspect of the case while rejecting the application for appointment of receiver. He also contended that the appellants are entitled to get 5/7 share in the disputed property and rejection of application for appointment of receiver would frustrate the cause of the civil suit. As the defendants/respondents are not maintaining accounts of

income of the hotel and in the suit it would be decided whether the plaintiffs/appellants have any share in disputed property, therefore, the learned trial court has committed a manifest error by rejecting the application. In support of his contention learned counsel for appellants has relied upon the case of Kasturi Bai and Others Vs. Anguri Chaudhary, .

8. I have gone through the above cited case. In para-8 it has been observed as under:-

8. On the facts and circumstances of the case the main duty to be discharged by the receiver is to collect rent from the tenants occupying different partitions of the suit property, to maintain accounts of all the collections and place the same before the court. The question whether the suit property is the exclusive property of late Kishore Chand; whether defendants 2 and 3 are entitled to have any share in the suit property will be decided in the suit. The fact remains that appellant No. 1 who is the widow of Kishroe Chand and mother of the plaintiffs is a very old lady who cannot take upon herself the task of collecting rent from the tenants regularly; of maintaining accounts of the collections and to ensure proper maintenance of the structure etc. The defendants 2 and 3, keeping in view the allegations made by the plaintiff against them, cannot be entrusted with the work. In such circumstances the High Court rightly ordered appointment of a third party as receiver.

9. The facts of the case in hand are different. In the case at hand the plaintiffs claim 5/7 share in property in dispute. It is also admitted to plaintiff that the property in dispute was being looked after by the defendants as the plaintiff reside abroad along with his family. The suit has been filed for partition as well as rendering accounts of the income of the suit property. It is the case of defendants that Smt. Gurudayal Kaur had ? share in the property and ? share was of defendant Ajeet Singh and Smt. Gurudayal Kaur had made will of her ? share in favour of Ajeet Singh. Undisputedly the defendants are in possession of Hotel, and the dispute is of 5/7 share and rendering of accounts which would very well be decided in the suit. No purpose would be served by taking urgent measure like appointment of the receiver.

10. On the other hand learned counsel for defendants/respondents has submitted that receiver could only appointed if there occurs a prima facie case in favour of plaintiffs/appellants requiring such an appointment as an urgent measure. In support of his contention learned counsel has cited before me the case of S. Saleema Bi Vs. S. Pyari Begum and Another, .

11. I have gone through the above cited case. In the above cited case partition suit was pending and plaintiff had filed application for appointment of receiver in respect of property in possession of the defendant-appellant, which was rejected by the trial court but allowed by the High Court. The Hon''ble Apex Court has held that receiver could only be appointed if there occurs a prima facie case in favour of the plaintiff-respondent requiring such an appointment as an urgent

measure. It was observed that the High Court ended in failing to consider the said conditions and appointment of receiver by the High Court was not legally justified.

12. In the case of Kailash Pati Sugar Industries Kapsenda Vs. Smt. Kamla Gupta and Others, , it has been held by Division Bench of Allahabad High Court that where it appears to the court to be just and convenient, the court may, by order, appoint a receiver of the property. The words "just and convenient" give a wide discretion to the court. As the plaintiff was not in possession, there is no justification to appoint receiver on the application of the plaintiff respondent. The receiver acts as an agent of the court and he preserves the property as if any party to the suit could have preserved and keeps it either in the similar form or tries to improve the same till the disposal of the suit.

13. I have also perused the impugned order. The trial court has recorded a categorical finding that prima facie it is proved that Smt. Gurudayal Kaur and her husband defendant No. 2 Ajeet Singh had purchased the land ? share each in their name. Smt. Gurudayal Kaur had died in the year 1990 and the defendants are in possession of property. The plaintiffs did not file any evidence in order to prove that Smt. Gurudayal Kaur had raised construction over the land in dispute with the help of plaintiffs and after the death of Gurudayal Kaur if there had been partition that would have been of ? share of Gurudayal Kaur, but the same had not been done. The allegation of plaintiffs that the will of Gurudayal Kaur is a fabricated document, has also not been proved by adducunt prima facie evidence and this issue is to be decided by evidence in suit. The plaintiffs also did not take any step for rendering the accounts of Hotel after the death of Smt. Gurudayal Kaur in the year 1990. The suit has been filed in the year 2008 after about 18 years of death of Smt. Gurudayal Kaur. The suit property is one and the share of parties, if any, is to be decided in suit after adducing evidence.

14. Admittedly, the defendants are in possession of disputed property; plaintiffs reside outside the country and the defendants are looking after the business of Hotel; the plaintiffs did not take any step for rendering of accounts of Hotel after the death of Smt. Gurudayal Kaur and according to defendants Smt. Gurudayal Kaur was owner of ? share in the property that too was given to Ajeet Singh by executing a will by Smt. Gurudayal Kaur and the share of parties is to be decided in the suit after evidence is adduced by parties, therefore, there is no prima facie case in favour of plaintiffs/appellants requiring appointment of receiver as an urgent measure. The learned trial court was justified in not appointing the receiver in the case. I do not find just and convenient to appoint a receiver in the case as an urgent measure. I do not find any manifest error or law in the impugned order, and the same does not require interference by this court.

15. For the discussion made above the appeal lacks merit and is liable to be dismissed. The appeal is dismissed.