

(1964) 09 OHC CK 0010
In the Orissa High Court
Case No : M.A. No. 141 of 1964

Chaitanya Naiko

APPELLANT

Vs

Kandhino Naiko and Others

RESPONDENT

Date of Decision : 11-09-1964

Acts Referred:

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

Citation : AIR 1965 Ori 217

Hon'ble Judges : S. Barman, Acting C.J.; G.K. Misra, J

Bench : Division Bench

Advocate : G. Rath and P.V. Ramdas, for the Appellant; B. Mohapatra, Y.S.N. Murty and P.V.B. Rao, for the Respondent

Final Decision : Allowed

Judgement

Barman, Ag. C.J.

1. In what circumstances a third-party should not be appointed as Receiver is the point involved in the appeal from an order by which the learned Subordinate Judge of Cuttack, appointed an Advocate as Receiver of the entire joint family properties in a suit for partition filed by a widowed mother against her sons and daughters.

2. In December 1962 one Laxminarayan Naiko died leaving him surviving his widow the plaintiff Kandhuni Naikani, his natural born son defendant No. 1 Chaitanya (alleged to be adopted son of Laxminarayan's uncle Nityananda) defendants 2, 3 and 4 his other sons and defendants 5 to 10 his daughters. The deceased Laxminarayan is said to have died leaving properties valued in the suit at Rs. 75,000.

3. Defendant No. 1 Chaitanya claims to have been adopted by Chitra, widow of Laxminarayan's uncle Nityananda, and as such Chaitanya claims half share in the suit properties. It is said that in 1948 in settlement operations Laxminarayan put certain objections and made a statement that Chaitanya had been adopted

as son of his paternal uncle Nityananda; accordingly Chaitanya was recorded and recognised as adopted son of Nityananda; and certain items of properties measuring 30 acres of land some of which were purchased by Laxminarayan were recorded in the name of Chaitanya. In 1946 Chitra, widow of Nityananda is also said to have made a statement that Chaitanya is the adopted son of her husband Nityananda Chaitanya relied on the admission by Laxminarayan that he (Chaitanya) is the adopted son of Nityananda, and contends that the plaintiff is bound by such admission of her husband Laxminarayan.

4. The plaintiff's case is that the alleged adoption of Chaitanya as son of Nityananda is not genuine; that the statement made by Laxminarayan in the settlement proceedings is not correct. The plaintiff's further case is that defendant No. 1 Chaitanya is entitled to only 1/6th share in the suit properties.

5. On the application of the plaintiff mother for receiver, the Subordinate Judge appointed an Advocate as receiver of the entire properties mainly on the allegations that defdt. No. 1 Chaitanya a young man of 19 years had fallen in bad association, removed valuable properties worth Rs. 10,000 from the house and at times was beating his mother the plaintiff. As regards Chaitanya's claim by virtue of alleged adoption, the learned Sub-Judge took the view that adoption not being a natural course of succession the person claiming adoption has to prove it; that a mere entry in the record-of-rights or the order of Settlement Officer or village Karnam cannot raise any presumption of adoption; that the plttf. appears to have made a prima facie case. The learned Subordinate Judge also took the view that defdt. No. 1 Chaitanya will not be prejudiced by appointment of receiver in respect of the entire properties.

6. What are the guiding principles for appointment of receiver in such cases? It is necessary to allege and prove some peril to the property; the appointment then rests on the sound discretion of the Court. In exercising its discretion the Court proceeds with caution and is governed by a view of all the circumstances. No positive or unvarying rule can be laid down as to whether the Court will or will not interfere by this kind of interim protection of the property.

The Court will not as a general rule appoint a receiver in a partition suit between members of a joint family especially where the family property consists of immovable property; to appoint a receiver in such a case, special circumstances must be proved; a receiver may be appointed in a suit for partition of joint Hindu family property where there is a prima facie case of misappropriation by the manager of the family.

7. That apart, in dealing with an application for appointment of receiver, the Court has to keep in view the legal principle that the Court should not appoint a receiver of property in possession of the defendant who claims it by legal title, unless the plaintiff can show prima facie that he has a strong case and good title to the property. The Court must also consider whether special interference with the possession of a defendant is required, there being a well founded fear that

the property in question will be dissipated or other irreparable mischief may be done unless the Court gives its protection. The mere circumstance that the appointment of a receiver will do no harm to anyone is no ground for appointing a receiver. Moreover the Court should be cautious about putting a third party as a receiver of properties in the possession and enjoyment of members of a joint family and thereby disturbing their possession.

8. What is the position here? The suit properties are 100 acres in area out of which 30 acres and odd are recorded in the name of defendant No. 1 Chaitanya. It is said that Chaitanya has employed his own Halias and cultivated the lands in his possession in his own right, title and interest. His claim is that the plaintiff or other defendants have no right, title and possession in respect of those portions of the suit lands which are recorded in his name; that he is entitled to one-half share of the entire suit properties as the adopted son of Nityananda, besides other lands in his exclusive possession. His point is that on the admitted case of the plaintiff that he (Chaitanya) is entitled to 1/5th share of the suit properties, he has right of ownership in respect of 22 acres out of the total 100 acres. He claims that his existing possession of 30 acres and odd out of the total 100 acres of suit lands should not be disturbed. The plaintiff, on the other hand, does not accept the alleged adoption of Chaitanya as genuine; and she denies Chaitanya's alleged right, title and interest in the lands in his possession.

9. Without expressing any view as to the merits of the respective contentions of the parties, we are of opinion that defendant No. 1 Chaitanya should not be dispossessed from the said 30 acres and odd of the suit lands said to be in his exclusive possession and under his sole cultivation. Even so, we think that he should be made accountable for these 30 acres and odd of the suit lands to remain in his possession as receiver. Similarly with regard to the rest 70 acres of the suit lands, the plaintiff be allowed to remain in possession thereof also accountable as receiver. With regards to the grain pits and the paddy contained therein which is said to have been collected from the entire joint family lands and put in hotchpot, we also make an appropriate order for their distribution in the manner hereinafter stated.

10. In this view of the case we order and direct as follows:--

(a) The order of appointment of receiver made by the Subordinate Judge is set aside and the Receiver appointed by him is discharged from such receivership.

(b) Defendant No. 1 Chaitanya Naiko is to remain in possession as receiver of 30 acres and odd which are already under his sole cultivation, and that the plaintiff Kandhuni Naikani is to remain in possession as receiver of the remaining 70 acres:

(c) It is hereby recorded that both plaintiff and defendant No. 1 Chaitanya Naiko, through their respective counsel, gave an undertaking to court herein that they will not alienate any of the properties in their respective possession as receiver, and further that they will not interfere with each other's possession.

(d) The trial court is directed to appoint a Commissioner for the purpose of completing the inventory of all the moveables including ornaments if, the receiver hereby discharged has not already completed the same in accordance with our Order dated August 14, 1964.

(e) If on such inventory made, any bonds are found, the plaintiff as receiver is directed to file suits on such bonds on behalf of herself deftd. 1 Chaitanya Naiko and other defendants (who are said to be all minors) and to take all other necessary steps according to law.

(f) As regards the 5 grain pits, the trial Court is to direct the Commissioner to be appointed herein to take out the paddy from, the grain pits and distribute the said paddy or the sale proceeds thereof in the ratio of 3: 7, after the distribution of the paddy in the manner aforesaid, out of the 5 empty, grainpits, 2 are to be given to the defendant No. 1 Chaitanya Naiko, and 3 are to be given to the plaintiff.

(g) With regard, to any other matter, the trial court will give all necessary directions as and when occasion may arise--all according to law. The trial Court will expedite the disposal of the suit.

(h) We must make it clear that this order is made without prejudice to the rights and contentions of all parties.

11. The miscellaneous appeal is accordingly allowed. There will be no order for costs of this appeal.

Misra, J.

12. I agree.