
(1995) 03 OHC CK 0020
In the Orissa High Court
Case No : Civil Revision No. 30 of 1995

Damodar Prasad Mohanty

APPELLANT

Vs

Narayan Prasad Mohanty and Others

RESPONDENT

Date of Decision : 30-03-1995

Acts Referred:

Citation : (1995) 1 OLR 654

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : S.K. Nayak and P.K. Mohanty, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—The only question that arises for consideration in this application u/s 115 of the Code of Civil Procedure, 1908, (in short, the "Code") is whether learned Second Addl. Civil Judge (Senior Division), Cuttack was justified in accepting prayer for discharge of Receiver after preliminary decree was passed in a suit for partition. Learned Civil Judge was of the view that there being no specific order in the judgment regarding continuance of the Revenue Inspector, Kanakpur who was appointed as Receiver during pendency of the suit, he was to be discharged from Receivership, According to learned counsel for petitioner, the impugned order is against principle governing Receivership.

2. There is no appearance on behalf of the opp. parties in spite of notice.

3. Where it appears to the Court to be just and convenient, it may appoint a receiver for any property. The circumstances and facts of each case have to be gone into for appointment of a receiver. No hard and fast rule can be laid down in so far as the question of appointment of a receiver is concerned. The underlying principle relating to the appointment of a receiver is that the subject-matter of the suit should be allowed to remain intact in order to see that at the end of the final adjudication the parties might be entitled to the benefit thereof. The

principles which normally guide the Courts to appoint receiver are as follows :

(i) The applicant for appointment of the receiver must show prima facie that he has strong case, or good title to the property or a special equity in his favour and that property in the hands of opp. party is in danger of being wasted.

(ii) Where the property is in *medic*, that is to say, in the possession of no one, a receiver can readily be appointed. But where any one is in possession under a legal claim, strong and compelling reasons are necessary for interfering with such possession.

(iii) An application for appointment of receiver should always be made promptly and delay in making it is a circumstance unfavourable to such an appointment.

(iv) The plaintiff must show a case of adverse and conflicting claims to property. He must show some emergency or danger or loss demanding immediate action. He must be reasonably clear and free from doubt of his own right.

(v) An order will not normally be made where it has the effect of depriving a defendant of a *de facto* possession since that might cause irreparable loss.

4. The receiver appointed by Court should as normal rule, be a person wholly disinterested in the subject-matter. But it is competent to the Court to appoint as receiver a person who is mixed up in the subject-matter of the litigation, if it is satisfied that the appointment will be attended with benefit to the estate. The selection and appointment of a particular person as receiver is a matter of judicial discretion to be determined by the Court according to the circumstances of the case. A receiver is an officer of the Court and is not an agent of a party to the suit, notwithstanding that in law his possession is ultimately treated as possession of the successful party on termination of the suit. It is within the discretion of a Court appointing a receiver in a suit to order that office should continue permanently after decree or for so long as it may be so. When no limit of time is fixed and the suit is dismissed, it will operate as discharge of receiver. But if suit is decreed it is not necessary to direct in the judgment that he may be continued.

5. In a partition suit, proceeding in the trial Court does not come to an end on passing of a preliminary decree. The suit continues till the passing of a final decree in the case, and till then the trial Court continues to be in seisin of the matter relating to the subject-matter of the suit. Therefore, it has jurisdiction to entertain an application for appointment of a receiver and dispose of the same. Even where a preliminary decree was subject-matter of appeal, trial Court has competence to deal with an application for appointment of a receiver. Learned Civil Judge was, therefore, not justified in directing discharge of the receiver. The receiver shall continue till disposal of the suit or till an order discharging him for reasons to be recorded, is passed by the trial Court.

The Civil Revision is allowed. No costs.