

(2016) 03 SHI CK 0168
In the High Court Of Himachal Pradesh
Case No : LPA No. 19 of 2011

Dr. Yashwant Singh Parmar University Horticulture and
Forestry

APPELLANT

Vs

Sh. Narender Dhand

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

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

Citation : (2016) ILRHP 610

Hon'ble Judges : Mansoor Ahmad Mir, CJ. and Sureshwar Thakur, J.

Bench : Division Bench

Advocate : Ms. Ranjana Parmar, Senior Advocate, with Mr. Karan Singh Parmar, Advocate, for the Appellant; Mr. J.S. Bhogal, Senior Advocate, with Mr. Pramod Negi, Advocate, for the Respondent Nos. 1 to 4; Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.—;This Letters Patent Appeal is directed against the order, dated 23rd July, 2010, passed by the learned Single Judge in Civil Suit No. 72 of 2008, titled as Dr. Yashwant Singh Parmar University of Horticulture and Forestry, Nauni v. Narender Dhand and other, whereby and where under miscellaneous application, being OMP No. 403 of 2008, for appointment of Receiver in terms of mandate of Order 40, Rule 1 of the Code of Civil Procedure (for short "CPC") came to be dismissed (for short "the impugned order").

2. Appellant/plaintiff/applicant has assailed the impugned order on the grounds taken in the memo of appeal which are almost the same grounds as taken in the plaint and OMP No. 403 of 2008.

3. The question is - whether the impugned order is legal or otherwise, is to be decided while taking note of the pleadings of the parties and the mandate of the provisions of Section 94 and Order 40 CPC.

4. Before we deal with the facts of the case, one has to understand what is the object of Order 40 CPC.

5. The aim and object of Order 40 CPC is to protect, preserve and manage the suit property during pendency of a suit. The said power is subject to the controlling provision of Section 94 CPC and is to be exercised for preventing the ends of justice from being defeated.

6. It would be profitable to reproduce Section 94 CPC herein:

"94. Supplemental proceedings. - In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed, -

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient."

7. The said provision of law mandates that the Court may pass order(s) to prevent the ends of justice from being defeated, if it is so prescribed.

8. What does the word "prescribed" mean? Section 2 (16) CPC defines the word "prescribed", in terms of which, "prescribed" means prescribed by Rules.

9. In view of the above, Section 94 CPC can be pressed into service and orders can be passed if it is provided by the Rules.

10. In the case in hand, we are dealing with Section 94 (d) and (e) read with Order 40 CPC.

11. It is profitable to reproduce Order 40 CPC herein:

"Order XL

Appointment of Receivers

1. Appointment of receivers. - (1) Where it appears to the Court to be just and convenient, the Court may by order -

(a) appoint a receiver of any property, whether before or after decree;

- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver, and
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove."

12. The mandate of Order 40 CPC is that the Court may appoint a Receiver of suit property, whether before or after the decree, if it appears to the Court to be just and convenient.

13. The crux of the matter is - whether it is "just and convenient" to appoint the Receiver?

14. "Just and convenient", to us, mean that order(s) is/are not to be made arbitrarily, whimsically or illegally. It cannot be made on any ground which has effect of defeating the equity. The mandate is what is right and just according to the judicial notion.

15. It has to be kept in mind that appointment of a Receiver deprives a person from enjoyment of suit property during the tenure of receivership, that is why it is known to be a harshest remedy.

16. In terms of the English law and the law developed in the Indian Courts, the applicant, who seeks appointment of Receiver, has to carve out a strong prima facie case, balance of convenience and irreparable loss.

17. Before we discuss all these issues, law and judgments occupying the field, it is necessary to understand what are the pleadings of the parties.

18. Appellant/plaintiff/applicant invoked the original jurisdiction of this Court by the medium of Civil Suit No. 72 of 2008 for decree of possession, mandatory injunction and money decree for an amount of Rs. 2,16,00,000/- with 12% interest in respect of the immovable property situated in Mauza Nanganji, Pargana Kiutan, Tehsil and District Solan, H.P. (for short "the suit property"), the description of which has been given in the plaint.

19. It has been admitted in para 3 of the plaint that the appellant/plaintiff/applicant invited several Trusts, Societies and Institutions, which were dealing and engaged in providing education and establishing educational institutions at school level - grass root level, for upgrading the junior level school, the details of which have been given in para 2 of the plaint, and one of the Trusts, known as

Delhi Chinmaya Seva Trust, New Delhi (for short "the Trust") came forward and offered to provide such services to the appellant/plaintiff/applicant. It granted 99 years" lease to the said Trust and the arrangement/memorandum of understanding was reduced into writing on 4th March, 1992, and possession of the suit property was handed over to the said Trust, as has been mentioned in paras 4 and 5 of the plaint.

20. It has been averred that the lease deed was not registered and the possession to the Trust as well as defendants/respondents/non-applicants No. 1 to 3 was illegal, as pleaded in paras 6 to 8 of the plaint.

21. The defendants/respondents/non-applicants No. 1 to 4 have filed the written statement and have specifically admitted that the Trust is in possession and they have made the school functional, running the same and have not caused any damage to the property or the building. Further averred that the defendants/respondents/non-applicants are manning the same, but, it is the property of the Trust.

22. It is admission on the part of the appellant/plaintiff/applicant that the possession of the Trust was permissive, not illegal one and it was at the request, rather, on the persuasion and initiation of the appellant/plaintiff/applicant that the Trust came forward and entered into the possession of the suit property and made the Chinmaya Educational Society, Nauni, Tehsil and District Solan, H.P., functional. The said Society was registered on 22nd July, 1992.

23. In OMP No. 403 of 2008, the foundation of the application is that the defendants/respondents/non-applicants are in illegal possession of the suit property in breach of the mandate of H.P. Tenancy and Land Reforms Act, 1972 (for short "the Act") and the suit property is in danger of being wasted. The purpose of the school was to do and provide social service rather than to be a source of income to the defendants/respondents/non-applicants and the Receiver is required to be appointed for effective management, preservation, improvement and control of the suit property. Further that the defendants/respondents/non-applicants are bent upon to alienate the suit property, which will cause irreparable loss to the appellant/plaintiff/applicant and the appointment of the Receiver is just for preservation of the entire property.

24. The defendants/respondents/non-applicants No. 1 to 4 resisted the same by the medium of objections. Virtually, the grounds taken in the objections to the application are the same grounds, which have been taken by them in the reply.

25. There is no prima facie proof on the file to the effect that the defendants/respondents/non-applicants have damaged the suit property or they have done or are doing such an activity, which has effect of depriving of the appellant/plaintiff/applicant from its legal right, rather, it has been pleaded that these proceedings are aimed at to dispossess the defendants/respondents/non-applicants and defeat their vested interests and rights.

26. Admittedly, the appellant/plaintiff/applicant has handed over the possession of the suit property to the Trust in the year 1992. It has not raised any finger about the possession, raising of construction, constitution of Society in order to establish the school and running of the school till the year 2008. It is not an illegal possession, but, the possession with consent, rather, permissive possession.

27. Can a Receiver be appointed to dislodge the defendants/respondents/non-applicants and take over the possession, that too, from an institutional society, which is running a school imparting education to so many students? The answer is in the negative for the following reasons:

28. The Madras High Court in the case titled as T. Krishnaswamy Chetty v. C. Thangavelu Chetty and others, reported in AIR 1955 Madras 430, has laid down five tests and requirements, known as "panch sadachar", for appointment of Receiver, while interpreting what is "just and convenient". It is apt to reproduce paras 13 and 14 of the judgment herein:

"13. The five principles which can be described as the "panch sadachar" of our Courts exercising equity jurisdiction in appointing receivers are as follows :

(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised-for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding:- "Mathusri v. Mathusri, 19 Mad 120 (PC) (Z5); - "Sivagnanathammal v. Arunachallam Pillai", 21 Mad LJ 821 (Z6); - "Habibullah v. Abtiakallah", AIR 1918 Cal 882 (Z7); - "Tirath Singh v. Shromani Gurudwara Prabandhak Committee", AIR 1931 Lah 688 (Z8); - "Ghanasham v. Moraba", 18 Bom 474 (Z9); - "Jagat Tarini Dasi v. Nabagopal Chaki", 34 Cal 305 (Z10); - "Sivaji Raja Sahib v. Aiswariyanandaji", AIR 1915 Mad 926 (Z11); - "Prasanno Moyi Devi v. Beni Madbab Rai", 5 All 556 (Z12);- "Sidheswari Dabi v. Abhayeswari Dahi", 15 Cal 818 (Z13);- "Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das", AIR 1925 Lah 349 (Z14); - "Bhupendra Nath v. Manohar Mukerjee", AIR 1024 Cal 456 (Z15).

(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit. - "Dhumi v. Nawab Sajjad Ali Khan", AIR 1923 Uh 623 (Z16); - "Firm of Raghubir Singh" Jaswant v. Narinjan Singh", AIR 1923 Lah 48 (Z17); - "Siaram Das v. Mohabir Das", 27 Cal 279 (Z18); - "Mahammad Kasim v. Nagaraja Moopanan", AIR 1928-Mad 813 (Z19);- "Banwarilal Chowdhury v. Motilal", AIR 1922 Pat 493 (Z20).

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right, he must be reasonably clear and free

from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. - "Manghanmal Tarachand v. .Mikanbai", AIR 1933 Sind 231 (221); - "Bidurramji v. Keshoramji", AIR 1939 Oudh 31 (222); - "Sheoambar Ban v. Mohan Ban", AIR 1941 Oudh 328 (223).

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a "de facto" possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through, fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be "in medio", that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less "in medio" is sufficient to vest a Court with jurisdiction to appoint a receiver. - "Nilambar Das v. Mabal Behari", AIR 1927 Pat 220 (224); - "Alkama Bibi v. Syed Istak Hussain", AIR 1925 Cal 970 (225~.); - "Mathuria Debya v. Shibdayal Singh", 14 Cal WN 252 (226); - "Bhubaneswar Prasad v. Rajeshwar Prasad", AIR 1948 Pat 195 (227).

Otherwise a receiver should not be appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have dis-entitled himself to the equitable relief by laches, delay, acquiescence etc.

14. To sum up as stated in - "Crawford v. Ross", 39 Ga 44 (228),

"The high prerogative act of taking property out of the hands of one and putting it in pound under the order of the Judge ought not to be taken except to prevent manifest wrong imminently impending."

In "Dozier v. Logan", 101 ga 173 (229) Atkinson J. said

"The appointment of a receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the creditors is exposed to manifest peril,"

Therefore, this exceedingly delicate and responsible duty will be discharged with the utmost caution and only when the "panch sadachar" or five requirements embodied in the words just and convenient (Order 40, Rule 1) are fulfilled by the facts of the case under consideration -- ("Ramachandrayya v. Nethi Iswarayya", AIR 1952 Hyd 139 (Z30))."

29. The same principles have been laid down by the Madras High Court in the case titled as Muniammal v. P.M. Ranganatha Nayagar and another, reported in AIR 1955 Madras 571. It is profitable to reproduce para 19 of the judgment herein:

"19. The principles which should guide Indian Courts in the appointment of a Receiver are three in number. First of all, a plaintiff applying for the appointment of a Receiver must show "prima facie" that he has a strong case and good tide to the property or a special equity in his favour and that the property in the hands of the defendant is in danger of being wasted; - "Muhammad Qasim Ravather v. Nagaraja Moopnar", AIR 1928 Mad 813 at p. 814 (Z13). It is not enough for the plaintiff to show that he has a fair question to raise as to the extent of the right alleged as in the case of a temporary injunction, but he must go further and make out that he has a good "prima facie" title requiring Court's protection and safeguarding pending litigation and which must be made out on the facts of that particular case. "Guruswami Pandiyan v. S. K. P. Chinnathambirar", AIR 1919 Mad 157 at p. 158 (Z14).

Secondly, where the property is in media 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 & compelling reasons are necessary for interfering with such possession :- "Sivaji Raja Sahib v. Aiswariyanaudaji Sahib", AIR 1915 Mad 926 at p. 929 (Z15); AIR 1924 Mad 482 at p. 483 (Z12). Thus the "bona fide" purchaser of the property - "bona fides have to be presumed unless and until the contrary can be inferred - in dispute should not be disturbed by the appointment of a Receiver unless there is some substantial and compelling ground for such interference.

Where there is no apprehension of waste or danger a Receiver will not be appointed merely on the ground that the applicant apprehends difficulty in obtaining possession "of properly in the event of success or in realising mesne profits or the opposite party is poor or a woman. Specific acts capable of being tested should be alleged 21 Mad 1J 821 (Z11); AIR 1915 Mad 926 (Z15). Voilently stated vague allegations constitute no substitute for vacuum of facts.

Thirdly, an application for the appointment of a Receiver should always be made promptly and delay in making it is a circumstance unfavourable to such an appointment. But of course the matter should be considered judicially in all its aspects before being disposed of as there may be legitimate reasons for preferring an application after delay: - Pattiharakettu v. Mauavedan", AIR 1936 Mad 966 (Z1G). If all these conditions are satisfied, and it is found just and

convenient to appoint a Receiver, the Court can exercise its discretion in favour of the applicant."

30. Applying the tests to the instant case, the defendants/respondents/non-applicants are not in illegal possession and their possession is admitted. There is also nothing on record to show that the defendants/respondents/non-applicants have acted in such a way in order to cause damage or loss to the suit property or have/are tried/trying to alienate the suit property or are acting in such a way that there is a great and eminent danger to the suit property.

31. Appointment of Receiver is one of the harshest remedies in the eyes of law. It is obligatory, rather, duty of the appellant/plaintiff/applicant to carve out all the three ingredients which are sine quo non for grant of relief, i.e. (i) strong prima facie case, (ii) irreparable loss and (iii) balance of convenience.

32. The appellant/plaintiff/applicant has not been able to show a prima facie case, not to speak of carving out a strong prima facie case.

33. The appellant/plaintiff/applicant has to show that irreparable loss will be caused to it if the Receiver is not appointed. Applying the test, it can be, prima facie, said/held that in case Receiver is appointed, it will cause irreparable loss to the defendants/respondents/non-applicants because they are in possession coupled with the fact that they have established the Society, are running the school and for sixteen years, the appellant/plaintiff/applicant has not raised any finger.

34. In view of the pleadings of the parties read with the other attending factors, balance of convenience also leans in favour of the defendants/respondents/non-applicants and not in favour of the appellant/plaintiff/applicant.

35. The Gwalior Bench of the Madhya Bharat Court in the case titled as Madhu Lal v. Ramji Das Chironji Lal and others, reported in AIR 1953 Madhya Bharat 85, has also laid down the same principle.

36. Various High Courts have almost laid down the same tests and in addition to the said tests, have also held that a person in possession should not be dispossessed unless it is shown that the property is in medio or it is necessary to preserve the property. Further, it has been held that even if Receiver is to be appointed, a person, who is in possession, should be appointed as Receiver, not a third party.

37. It would be profitable to reproduce para 5 of the judgment rendered by the Orissa High Court in the case titled as Rasi Dei v. Bikal Maharana and others, reported in AIR 1965 Orissa 20, herein:

"5. The appointment of receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the person seeking the appointment of a receiver is exposed to manifest peril. Therefore, this

exceedingly delicate and responsible duty has to be discharged by the Court with the utmost caution. The principles to be followed for appointment of receiver as laid down are these; Not only must the plaintiff show a case of adverse and conflicting claim to property, but he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration. An order appointing a receiver will not be made where it has the effect of depriving a defendant of a de facto possession since that might cause irreparable wrong. The high prerogative act of taking property out of the hands of one and putting it in pound under the order of the Judge ought not to be taken except to prevent manifest wrong imminently impending.

Hence the Court should not appoint a receiver of property in the possession of the defendant who claim 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 consider whether special interference with the possession of defendant is required, there being well founded fear that the property in question will be disputed or other irreparable mischief may be done unless the court gives protection. The mere circumstance that the appointment of a receiver will do no harm to anyone is no ground for appointing a receiver."

38. The Mysore High Court in the case titled as Srinivasa Rao v. Baburao and another, reported in AIR 1970 Mysore 141, while placing reliance upon the "panch sadachar" enunciated in T. Krishnaswamy's case (supra), held that an order appointing a Receiver shall not be made if it has the effect of depriving a defendant of de facto possession. It is apt to reproduce para 23 of the judgment herein:

"23. The next contention urged on behalf of the petitioner was that the appellate Court exceeded its jurisdiction in interfering with the order of the trial Court for the appointment of a receiver. Reliance in this behalf is placed on a decision in Bipan Lal v. I.T. Commr.. The argument is that the appointment of a receiver is a matter, which falls within the discretionary powers of a Court and as such is not ordinarily reviewable on appeal except to correct a clear and manifest abuse of justice. Sri K. Jagannatha Shetty, the learned counsel appearing on behalf of the respondents, did not dispute this proposition. But, what he submitted was that a trial Court in the exercise of its discretionary power relating to the appointment of a receiver, had clearly overlooked the several relevant circumstances or at any rate, assumed certain facts in favour of such an appointment of receiver. His contention was that the two elements to be considered in all cases where an appointment of a receiver was sought were that the existence of reasonable probability that the plaintiff asking for the appointment of a receiver would ultimately succeed in obtaining the general relief sought for in his suit and that the property in controversy would be wasted or destroyed unless a receiver was appointed.

He also submitted that it would not be enough to make mere general averments

relating to the acts of waste or damage to the property. It must be established by affidavits setting out the grounds upon which such petition was based. In addition to the above circumstances, the conduct of the parties would also become relevant. In support of this proposition, which, was not disputed by Sri Muralidhar Rao, reliance has been placed on the decisions in *Iswara Shastri v. Ramakrishna Shastri*, 1965 (1) Mys LJ 342, *Bore Gowda v. K. Channegowda*, 1965-2 Mys LJ 548, *Saraswathi Bai v. Kamala Bai*, 1964 (1) Mys LJ 551 and *Krishnaswamy v. Thangavelu*, AIR 1935 Mad 430. In the last of the above decisions, after a detailed examination of the several cases bearing on the subject, Ramaswamy, J. has enunciated five principles, which have been described by him as the "panch sadaachar", which should be borne in mind by the Courts while exercising equity jurisdiction in appointing receivers. The principles are; that the question of appointing a receiver is a matter resting in the discretion of the Court; that a receiver should not be appointed unless the party has an excellent chance of succeeding in the suit; that plaintiff himself shall show that there was some emergency or danger or loss that may be caused to the right involved in the suit; that an order appointing a receiver shall not be made if it has the effect of depriving a defendant of de facto possession; that, however, the position would be different if the property is shown to be "in medio" that is to say, in the enjoyment of no one, and that the Court should always look into the conduct of the parties who seek for the appointment of a receiver."

39. The Goa, Daman and Diu Judicial Commissioner's Court in the case titled as *Rogunatrao M. Dessai and another v. M/s. Mineira Nacional Ltd. And others*, reported in AIR 1974 Goa, Daman and Diu 41, held that the Receiver cannot be appointed when the effect of the appointment is to deprive a person from his possession.

40. The Jammu and Kashmir High Court in the case titled as *Vijay Kumar and another v. B.K. Thapper and another*, reported in AIR 1976 Jammu and Kashmir 30, held that the court has a wide discretion in the matter of appointment of Receiver but the discretion must be sound and reasonable and the Court should not appoint a receiver save in exceptional circumstances, such as, when the property is in danger of being wasted, destroyed or lost. It is apt to reproduce paras 5 and 6 of the judgment herein:

"5. Order 40, Rule 1 of the Civil Procedure Code empowers a court to appoint receiver of any property where it appears to the court to be just and convenient that such appointment should be made. The exercise of this power is however limited by the proviso that the appointment of receiver will not authorise the court -

"To remove from the possession or the custody of property any person whom any party to the suit has not a present right so to remove."

The proviso clearly refers to a case where a person in possession is a third person and the parties to the suit have no present right to disturb his possession.

This was the view taken by Ramesam and Cornish, JJ. In *Vythulinga Pandarasannadhi v. Board of Control, Thiagarajaswami Devasthanam*, (AIR 1932 Mad 193). I fully agree with this view. I make these observations because it was argued by Mr. Inder Dass that the provision was an impediment in the way of the appointment of a receiver in the present case having regard to the fact, as he said, that the plaintiffs had yet to establish their right to eject the defendants and that way they had no present right to disturb their possession.

6. In the ordinary sense, the words "Just and convenient", would denote what is practicable and what the interests of justice require. Now what is practicable and in the interests of justice in one case may not be so in the other case. Different considerations arise in different cases depending on the facts and circumstances of each case. The Court has, therefore, a wide discretion in the matter of appointment of Receiver but the discretion must be sought and reasonable. The court may be influenced mainly by the particular facts of each case, it must also be guided by road and well established principles which have covered the previous practise and which, though unexpressed, may be said to be lying dormant in the provisions of the Code."

41. The same principle has been laid down in the cases titled as *Prem Prakash Kapoor v. Gobind Ram Kapoor and others*, reported in AIR 1976 Jammu and Kashmir 37; *Chandrashekhar Sidramappa Chinchansure v. Bhaurao Sidramappa Chinchansure and others*, reported in AIR 1983 Bombay 475.

42. The Delhi High Court in the case titled as *Rajeshwar Nath Gupta v. Administrator General and others*, reported in AIR 1989 Delhi 179, following the "panch sadachar" described in *T. Krishnaswamy's* case (supra), held that Court should not appoint a Receiver to take possession of immovable property from the defendants unless and until the Court is of the opinion that there is a well founded reason to believe that the property in question will be dissipated or that other irreparable mischief may be committed and calls for the interference and protection of the Court.

43. In the cases titled as *Ravi Kumar v. Misha Vadhera and others*, reported in AIR 1995 Delhi 175, and *Sanatan Barik and another v. Purna Chandra Barik*, reported in AIR 2003 Orissa 127, it has been held that the application for appointment of Receiver should not be disposed of summarily, but is to be considered cautiously and judicially.

44. The Apex Court in the case titled as *Industrial Credit & Investment Corporation of India Ltd. And others v. Karnataka Ball Bearings Corpn. Ltd. and others*, reported in (1999) 7 Supreme Court Cases 488, held that the law Courts are entrusted with the power under Order 40, Rule 1 CPC to protect the rights of the parties, preserve the subject matter of a lis and to do complete justice between the parties. Further held that the Court may appoint a Receiver not as a matter of course but as a matter of prudence and just according to judicial notion. It is profitable to reproduce para 6 of the judgment herein:

"6. Order 40, Rule 1 of the Code of Civil Procedure expressly provides for the appointment of a Receiver over a property whether before or after the decree and the Court may by an order confer on the Receiver all powers of realisation, management, protection, preservation and improvement of the property. Order 40, Rule 1 (d) specifically provides for realisation and the words "or such of those powers as the Court thinks fit" appearing in Order 40, Rule 1 (d) ought to be interpreted in a manner so as to give full effect to the legislative intent in the matter of conferment of powers by the Court to preserve and maintain the property through the appointment of a Receiver. Needless to record here that there is existing a power which is totally unfettered in terms of the provisions of the statute. Law courts, however, in the matter of appointment of a Receiver through a long catena of cases, imposed a self-imposed restriction on the use of discretion in a manner which is in consonance with the concept of justice and to meet the need of the situation "unfettered" does not and cannot mean unbridled or unrestricted powers and though exercise of discretion is of widest possible amplitude, but the same has to be exercised in a manner with care, caution and restraint so as to subserve the ends of justice. The law courts are entrusted with this power under Order 40, Rule 1 so as to bring about a feeling of securedness and to do complete justice between the parties."

45. The Apex Court in the cases titled as Kalpana Kothari (Smt) v. Sudha Yadav (Smt) and others with Parasnath Builders Pvt. Ltd. v. Sudha Yadav (Smt) and others, reported in (2002) 1 Supreme Court Cases 203; and Firm Ashok Traders and another v. Gurumukh Das Saluja and others, reported in (2004) 3 Supreme Court Cases 155, held that the basic principle governing the discretion of the Court in appointing a Receiver is whether it is "just and convenient" to do so and the interests of both the parties are to be balanced while deciding whether it is desirable to appoint a Receiver.

46. Keeping in view the ratio of English law, law made by the Apex Court and the other High Courts, as discussed herein above, one comes to an inescapable conclusion that the appellant/plaintiff/applicant has failed to carve out a prima facie case, not to speak of strong prima facie case. It has also failed to, prima facie, carve out that the suit property is in danger of being wasted. The appellant/plaintiff/applicant has failed to satisfy the tests laid down by the Madras High Court in T. Krishnaswamy's case (supra).

47. Having said so, the learned Single Judge has rightly made the discussions, need no interference.

48. Viewed thus, the impugned order merits to be upheld and the appeal is to be dismissed.

49. Having glance of the above discussions, the impugned order is upheld and the appeal is dismissed along with the pending applications, if any.