
(2010) 04 JH CK 0147
In the Jharkhand High Court

Kishori Niak and Others

APPELLANT

Vs

Haradhan Niak @ Hari Narayan Niak and Others

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2010) 04 JH CK 0147

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradeep Kumar, J.—Heard the parties.

2. It is submitted by the learned Counsel for the appellants that he has filed this miscellaneous appeal against the order dated 8.7.2008 passed by Sub Judge -I, Bermo at Tenughat. In an application U/O 40 Rule 1 C.P.C. read with Section 151 C.P.C. filed by the plaintiffs-respondents praying for appointment of a receiver arising out of partition suit no. 19 of 2006. The plaintiffs have filed the suit on 22.5. 2007 with a prayer to adjudicate and declare that the plaintiffs have got 5/12 share in the suit lands and further for passing final decree and by appointment of Survey Knowing Pleader Commissioner for carving out the share of the plaintiffs and after preparation of final decree the plaintiff be put in khas possession over their share out of the suit lands.

3. The plaintiffs have filed this application for appointment of a receiver allegation that the defendants-appellants have forcibly taken possession over the suit property more than their share and they are collecting huge royalty from the and collected from the Khanjo river and its carriage by truck through plot no. 1077 of khata no. 19. Similarly, the defendants-appellants have set up brick kilns over the said plot. The plaintiff-respondents further stated that the defendants-appellants are taking royalty also doing business. The plaintiffs-respondents also alleged that the defendants-appellants have cut down several mango trees from

the Aam Bagicha and sold the same along with other trees of paras, rnahua etc.

4. The defendants-appellants filed rejoinder stating therein that they cannot be dispossessed by appointment of receiver and the allegation of any damage to the suit property is only false and fabricated. They further stated that the partition has already taken place between the parties in the year 1953 and both the parties have sold some portion of their lands.

5. It is submitted by the learned Counsel for the appellants-defendants that there was a land dispute between the parties due to which the plaintiffs-respondents' brother was murdered for which Sessions Trial No. 383 of 2000 was started in which the defendants-appellants were convicted and considering the report filed by the Pleader Commissioner the impugned order has been passed, which is bad in law and fit to be set aside. Learned Counsel further submitted that as per Order 40 Rule 2 C.P.C. that " a party in possession cannot be dispossessed by appointment of a receiver".

5. Learned Counsel relying in several judgments reported in 2000(2) PUR 100 in the case of Sheoji Singh v.-Brijbansh Singh and Ors. AIR 2000 S.C. 3513 in the case of Tetri Kuer and Others Vs. Raj Mano Kuer and Others, in the case of Tetri Kuer and Ors. v. Raj Mano Kuer and Ors.

6. On the other hand, learned Counsel for the plaintiffs-respondents has submitted that in pursuance of the impugned order dated 8.7.2008 the receiver has already taken possession over the property on 8.9.2008. He has also submitted three monthly reports of Pleader Commissioner. Last such report has been filed in February,2008 and since the trial court considering the report of Pleader Commissioner as also the fact that the defendants-appellants are misappropriating the property and destroying the same and rightly appointed the receiver.

7. After hearing both the parties and going through the record, it appears that the plaintiffs-respondents filed the instant partition suit no. 19 of 2006 before Sub-Judge-I, Bermo at Tenughat stating therein that the lands originally belongs to Magna Teli and the lands were amicably divided. Magna Teli had four sons and they were separate in mess, cultivation from his other co-sharers amongst their heirs. They further stated that the plaintiffs-respondents and the defendants-appellants are sons of Magna Teli and they are in separate possession over the suit property. It has been alleged by the plaintiffs that the defendants had taken possession of lands more than their share and the plaintiffs demanded partition of the suit lands by metes and bounds and asked the defendants 1st Set to get the share of the plaintiffs to bifurcated then they refused.

8. However, the defendants-appellants appeared and filed their written statement claiming that they are in possession over the suit property and there is no question of partition.

9. Thus, it is admitted case that at present the defendants-appellants are in

possession over the suit property after filing the petition under Order 40 Rule 1 C. P. C. A report of Pleader Commissioner, which is marked as Annexure-4 shows that the Pleader Commissioner found that trees which were shown in the khata long ago are not existing, otherwise there is no report of any misuse by the defendants. In that view of the matter, since it has been settled law as per Order 40 Rule 1 C. P. C. that " a party in possession cannot be dispossessed by appointment of a receiver.

10. The Patna High Court in the judgment reported in Sheoji Singh Vs. Brijbansh Singh and Others, while disposing of similar matter, came to a conclusive finding that" in a suit for partition a co-sharer may be in possession of more than his share, but he cannot be ousted from the same on this ground alone by appointment of receiver- moreover appointment of receiver at the fag end of trial of a suit would rather frustrate the intention of legislature and complicate the matter-appointment of receiver should not be motivated for obtaining possession over the suit land-order set aside and court below directed to dispose of the suit within 3 months as directed".

11. In the present case, also I find that the Pleader Commissioner Report does not show any mismanagement at the hands of the defendants and only giving statement that the trees shown in the original Khata are not present, cannot prove damage or mismanagement.

12. The Hon'ble Supreme Court also in the case of Saleema Bi. v. Pyari Begum and Anr. reported in AIR 2000 S.C. 3513, came to a finding that the receiver can only be appointed when it is just and convenient and also when there is a prima facie case in favour of the plaintiff-respondent and the case calls for taking of urgent measure like appointment of a receiver. In the instant case there was no such urgent measure for appointment of a receiver.

13. In that view of the matter, in my opinion, the impugned order is bad in law considering the fact of the case. Accordingly, the appointment of receiver made by the trial court is set aside.

14. However, it is directed that the trial court will conclude the trial of the suit within three months from the date of receipt of this order by the trial court and if either the plaintiffs or defendants delayed the matter and prayed for any unnecessary adjournment, the same will be refused and if the trial is not concluded within three months then the plaintiffs will be at liberty again to pray for appointment of receiver.

15. With the aforesaid observation/direction, the impugned order dated 8.7.2008 passed by Sri B.N. Singh, Sub-Judge-I, Bermo at Tenughat is set aside and the appeal is dismissed.