
(1997) 03 PAT CK 0023

In the Patna High Court

Case No : Civil Revision No. 461 of 1996 (R)

Mahadeo Mahto and Others

APPELLANT

Vs

Hiralal Verma and Others

RESPONDENT

Date of Decision : 01-03-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 406

Citation : (1997) 2 BLJR 1613

Hon'ble Judges : Prasun Kumar Deb, J

Bench : Single Bench

Judgement

Prasun Kumar Deb, J.—This civil revision application has been preferred against the order dated 28-6-1996 passed by the Subordinate Judge, 4th court, Hazaribagh. The back ground and the history of the case are necessary to be reiterated for considering the circumstances of the case,

2. The predecessor of opposite party Nos. 1 to 4 Giani Ram instituted Partition Suit No. 9 of 1956, before the Subordinate Judge, Hazaribagh in which the petitioners were arrayed as defendants No. 15 to 18. The said suit was contested by the defendants by raising a plea that Giani Ram had no interest in the suit property. During the proceeding of the suit, opposite party No. 5 (Baikunth Nath De) was appointed as receiver but as he went to jail in some criminal cases, the plaintiff Giani Ram was appointed as receiver by the court's order. There receiver remained in possession of the entire properties as required and practically the court had managed the properties through the receiver Giani Ram. It is alleged that while possessing the suit property as receiver Giani Ram was cultivating the land, and was selling the produce thereof and the sale proceeds were also kept by him. A preliminary decree was passed in the petition suit and final decree was under preparation. During the course of proceeding for final decree, Giani Ram had filed an application that he had purchased the entire interest of the defendants and accordingly there was no need to prepare the final decree and the lands under the management of the receiver be released and the khas

possession of the plaintiff be declared. On the basis of the petition, the Subordinate Judge passed final order on 7.7.1984 and declared the plaintiff Giani Ram to be the sole owner of the entire suit property. The petitioners filed civil revision being Civil Revision No. 289 of 1984 (R) in this Court and the order passed by the learned court below was stayed. During the pendency of that civil revision, Giani Ram filed an application that the partition suit filed by him may be permitted to be withdrawn and on the basis of that application this Court passed an order that the suit be allowed to be withdrawn by the lower court if he files a petition so. There was specific direction to the trial court that if such application is filed then the trial court may dismiss the suit on withdrawal. But Giani Ram instead of filing an application for withdrawal of the suit, filed an application that he being the owner of the suit property, he may be permitted to withdraw the suit but such petition was not entertained and the suit was dismissed in pursuance of the direction given by this Court in C.R.No. 289 of 1984 (R) by order dated 10.3.1987. The plaintiff Giani Ram then filed F.A.No. 62 of 1987 (R) and Miscellaneous Appeal No. 40 of 1987 (R) against the orders of the learned trial court dismissing the suit but again he withdrew the said appeals and those appeals were accordingly dismissed as withdrawn.

3. According to the petitioners, the receivers appointed by the learned trial Court had not furnished any accounts and of the money of the sale proceeds of the paddy produce in the field lay with them and the same was never being deposited in the Court. Accordingly, an application was filed under Order XL, Rule 3 of the CPC before the trial court for direction to the receivers to furnish accounts and also deposit in court the amount due from them, as according to the petitioners, they were entitled to a share of such sale proceeds. The said petition was registered as Misc. Case No. 1 of 1989 but after hearing both the parties, the same was rejected as not maintainable directing the petitioners that they may file a regular suit against the receivers if they feel so aggrieved. Against that order, the petitioners filed Civil Revision No. 618 of 1989 (R) and the said civil revision application was allowed vide order dated 18.3.1991 holding that the application was maintainable under Order XL, Rules 3 and 4 of the CPC and that the receiver was responsible as per the terms of the above Rules for any loss occurred to the properties by his wilful default. There was also direction that the receiver should be directed to submit accounts and also the income derived from the property in course of his appointment as receiver. In pursuance of that order, the learned Sub-Judge passed an order on 18.2.1995 to file detailed accounts on or by 12.5.1995, the receiver filed the accounts for the period 1976 to 1986 and sought for time to deposit the accounts for period 1959 to 1975 and on 18.8.1995 the court after hearing the parties passed a fresh direction to the respondents to furnish full detailed accounts for the year, 1982 and onwards and after that the matter remained pending to the court and no orders were passed. In the meanwhile, the opposite parties who happened to be the legal representatives of Giani Ram toyed the Hon'ble Supreme Court against the decision of C.R.No. 618 of 1989 (R). That move before the Hon'ble Supreme

Court was dismissed and the High Court's order was confirmed. While passing the order, the Supreme Court specifically mentioned in the following manner:

Special Leave Petition is dismissed. The concluding portion of the order of the High Court envisages that an appropriate order would be passed by the Court after examining the accounts furnished by the receiver and entertaining claims of the parties to which they are legally entitled to.

4. Now the petitioners, when no action had been taken by the Trial Judge, had moved for proceeding against the receiver by filing criminal prosecution u/s 406 of the Indian Penal Code as per the provisions of Order XL, Rules 3, 4 (a) (b) (c) of the CPC but without examining the accounts or giving any direction to the receiver or his legal representatives to deposit the sale proceeds as per his accounts given earlier, the learned court below by the impugned order asked the petitioners to adduce evidence regarding their claims in respect of the amount kept by the receiver. Such sort of order is definitely putting a cart before horse.

5. Mr. M.M. Banerjee, appearing for and on behalf of the opposite parties has submitted that let the evidence be adduced from the side of the petitioners regarding their entitled/claim and the opposite parties are giving an undertaking to the court that if the petitioners are found to be entitled to any amount then the same amount would be deposited by the opposite parties with interest up-to-date. The accounts or the deposit of the amounts by the receiver is not a matter depending on the claims to be made from the side of the parties. When the receiver is appointed, he becomes a representatives of the court and he is duty bound to furnish all accounts and deposit the amounts or the usufruct received time to time and it is the obligation of the receiver as per the terms of his appointment itself. Privity of contract is in between the receiver and the court and it is bound to take all accounts from the receiver or his legal representative when the receiver had not given the accounts in proper form on earlier occasions also. The orders passed by the Subordinate Judge asking the receiver to give fresh accounts from 1982, onwards still remain in vogue. First of all the matter should be finalised between the receiver and the court and the petitioners although they have come forward with their claims but they have also informed the court about its duty to proceed legally under Order XL, Rules 3 and 4 of the Code of Civil Procedure. Practically such initiations from the side of the petitioners regarding the duties of the court are not required because the court is bound to proceed under Order XL, Rules 3 and 4 of the CPC even after dismissal of the suit as the receiver is always answerable to the court itself. The matter could be delayed by the receiver and then by his legal representatives for long two decades, so at this juncture, I feel that the learned court below should prevail upon the receiver's representatives to deposit the amount as per their own accounts within a time framed and then pursue with his earlier orders and if necessary afresh again and examination of the accounts further and if there is still any default on the part of the opposite parties, then the court is at liberty to proceed with the criminal prosecution even if necessary. The petitioners' claim

regarding the usufruct is a matter to be considered by the court after getting all accounts and money being clearly from the side of the receiver of his representatives. Hence the court must proceed according to law in the light of the observations made above and the evidence on the side of the claimants may be deferred for the time being.

6. For the reasons aforesaid, this civil revision application is disposed of accordingly but without costs.