

(1991) 03 DEL CK 0064
In the Delhi High Court
Case No : First Appeal No. 55 of 1990

Maharaj Jagat Singh

APPELLANT

Vs

Sawai Bhawani Singh and Others

RESPONDENT

Date of Decision : 20-03-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 50 Rule 1

Citation : (1991) ILR Delhi 475

Hon'ble Judges : Leila Seth, J;A.D. Singh, J

Bench : Division Bench

Advocate : Ram Jethmalani, M.J.L. Bhasin, Neena Gupta, J.K. Dass, Shanti Bhushan, K.N. Kataria, S.C. Paul, P.K. Bakshi and Subhash Oberoi, for the Appellant;

Judgement

Leila Seth, J.

(1) This appeal is against the judgment and order dated 21st March, 1990 passed by Mr. Justice Charanjit Talwar dismissing an application under Order XI rule 1 read with section 151 of the CPC filed on behalf of the appellant-plaintiff for appointment of a receiver.

(2) The brief facts are that Swai Man Singh, Maharaja of Jaipur, died on 24th June, 1970 and respondent No. 1 succeeded him. But on 6th February, 1949, the late Maharaja had entered into an agreement with the Union of India. The said agreement provided that the Maharaja would be entitled to "the full ownership, use and enjoyment of all the private properties" belonging to him and that "succession according to law and custom, to the gaddi" and to "the personal rights, privileges, dignities and titles of the Ruler" were guaranteed. These commitments and guarantees are "contained in Articles 12, 13 and 14 of the Covenant.

(3) The main controversy pertaining to these articles is with regard to the interpretation of the words "personal rights" in Article 14. It is contended on

behalf of respondent No. I that the right to succeed to the private property of the Ruler is covered by this phrase whereas the appellant disputes this contention.

(4) There is, however, no dispute that the rule of primogeniture was the custom in the princely State of Jaipur and that the late Maharaja had become the ruler on 7th September, 1922 on this basis. There is also no dispute that respondent No. 1. the eldest son of the late Maharaja ascended to the Gaddi of the Jaipur State and was recognised as a Ruler by the Government of India. It is also admitted that the late Maharaja never filed any tax returns as a Karta of a Hindu undivided family, but filed returns as a sole owner. However, it appears that respondent No. I, at some stage, filed returns as Karta of a Hindu undivided family and also sought to have assessments of the late Maharaja reopened seeking to show him as Karta. It is now contended that he was misled into filing these returns.

(5) The Government of India had entered into agreements with the princely states to merge their territories with the union of India by an instrument of accession. The State of Jaipur along with some other princely states acceded by virtue of an instrument dated 30th March, 1949. On merger of the State, the properties of the State were divided into two categories i.e. State properties and private properties. In the category of private properties, both movable and immovable, there is a list of properties with full rights of disposal and another list of family property which the Maharaja is to preserve for future successors.

(6) It appears that sometime in 1986, the appellant sought partition. Respondent No. I refused partition claiming primogeniture. Consequently the suit was filed in 1986 along with an application under Order XXXIX rules 1 and 2 and certain interim orders were made. Subsequently, the application for appointment of a receiver was moved making averments of mismanagement, non payment of tax dues, entering into agreements to sell property and misappropriating funds of income bearing properties.

(7) Respondent No. I challenged the locus of the appellant to file the suit and asserted that the appellant, who is his brother, was born in 1949 and was given away in adoption in 1957 to late Col. Bahadur Singh Ji of Isarda, his uncle and thus all his links with his natural family were severed. It is also averred that the appellant has filed a suit, in which he has himself asserted in the plaint that with effect from the date of adoption i.e. 21st February, 1957, he became the son of Col. Bahadur Singh Ji. Consequently, it was contended on behalf of respondent No. I that a suit filed by the plaintiff was not maintainable.

(8) The learned Single Judge while dealing with this preliminary objection held that "at present I am advised to hold that as Maharaj Bahadur Singh Ji had no son of his own, perhaps a ceremony was performed to enable him to leave his property to his nephew". However, he has clarified that this was a prima facie view and the onus was on respondent No. 1 to prove the facts in the suit.

(9) The other preliminary objection pertained to jurisdiction of the Delhi High

Court, because it was urged that there was no property in Delhi, which was the object matter of the suit. The suit was filed on 25th April, 19⁶⁶. Admittedly, the plaintiff averred therein that Jaipur House in New Delhi was one of the immovable properties owned by the family and this was not denied by respondent No. 1. However, it appears that respondent No. 1 thereafter learnt from a letter, written by the Secretary, Ministry of Works and Housing, New Delhi to him that a decision had been taken, as far back as 10th July, 1951 to treat the said House as State property and not private property of the late Maharaja. But without prejudice to this decision, the Government of India had agreed that a suitable portion of the sale proceeds or rental value would be paid to the Maharaja, if a suitable portion of the House could not be reserved for his residence in Delhi. It appears that sometime in April, 1956, an agreement was reached between the late Maharaja and the Chief Minister of Rajasthan that the rent and/or sale proceeds which were to be received, would be divided half and half. Thereafter, on the sale of the said property, one half of the sale proceeds, amounting to Rs. 1.5 crores were received by the Inspecting Assistant Commissioner of Income Tax, as an amount to be adjusted against the outstanding demands of Income Tax and wealth-tax.

(10) When respondent No. 1 became aware of these facts, he sought permission to amend the written statement and the amendment was allowed on 3rd March, 1987. Consequently, the preliminary objection regarding territorial jurisdiction was taken for the first time in the amended written statement.

(11) The learned Single Judge held that it is clear that the plaintiff in this case was not aware, at the time when the plaint was filed, that Jaipur House had been sold by the State of Rajasthan and the addition of that House in the list of properties was bona fide. He further observed that respondent No. 1, assuming he is the sole heir or alternatively the Karta, could have filed a suit in Delhi to claim the share of the late Maharaja in the said House. Consequently, his prima facie view was that this court having entertained the suit could not now hold that it had no jurisdiction to try it. As such, he did not direct the plaint be returned to the plaintiff for filing in Jaipur.

(12) Though both these issues were decided in favor of the appellant, Mr. Jethmalani, learned counsel for the appellant indicated eleven points for consideration, apart from the question of territorial jurisdiction and court-fees. The first three pertained to different aspects of the question of adoption of the appellant. The next two pertained to the conduct of respondent No. 1 in publicly treating the private properties as joint family property and consequently being estopped from taking a contrary stand. The next two points pertained to whether the property was joint family property in the hands of the late Maharaja Man Singh after the Covenant and whether respondent No. 1 was estopped from pleading to the contrary in view of the fact that he had represented to the tax authorities that the property was joint even in the life time of the late Maharaja. The next three questions pertained to the application of the Hindu Succession

Act, 1956 and the interpretation of its provisions as also Articles 12 to 14 of the Covenant dated 6th February 1949. The last point pertained to the principles applicable to the exercise of discretion under Order XI rule I of the CPC and whether a receiver should be appointed of the said property in dispute.

(13) It is, Therefore, apparent that on merits, the main bone of contention between the parties is whether the rule of primogeniture, which was applicable to the -State of Jaipur, applied to Respondent No. I and the estate descended to a single heir.

(14) The contention of learned counsel for the appellant is that succession to the Gaddi was guaranteed by the Covenant.. but not succession to private properties. Consequently, it was urged that the rule of primogeniture having been abolished by section 4 of the Hindu Succession Act, 1956, (to be referred to as "the Act"), was not saved by virtue of section 5(ii) of the Act.

(15) Mr. Shanti Bhushan, learned counsel for respondent No. I however, submitted that in view of section 5(ii) of the Act, these impartible properties which descended to a single heir by the terms of a Covenant entered into by a Ruler of a State and the Government before the commencement of the Act were excluded from the purview of the Act and not to accept this contention would render section 5(ii) otiose.

(16) After referring to the provisions of the various sections of the Act. the Parliamentary debates, the Covenant and the decisions in *Pratapsinhji N. Desai Vs. Commissioner of Income Tax, Gujarat-III*, , *Ahmadunnisa Begum Vs. Union of India*, and the commentary to sub-section (ii) of section 5, of Mr. S. V. Gupte's book on Hindu Law of Succession, the learned Single Judge was of the view that though impartible estates had been abolished and the old rule of succession by a single heir abrogated, section 5(ii) of the Act, saved the rule of primogeniture to an estate, which descended to a single heir by terms of the agreement entered into by any Ruler with the Government of India. Consequently, he held that Article 14 of the Covenant guaranteed succession according to rule and custom, not only to the Gaddi but also to personal properties apart from guaranteeing privileges, dignities and titles. He disagreed with the decision of the Gujarat High Court and held that the interpretation of "personal rights" as given by them, would amount to rendering section 5(ii) otiose. He further was of the view that the other decisions relied on, i.e. *Kunwar Shri Vir Rajendra Singh Vs. The Union of India (UOI) and Others*, *Sri Sudhansu Shekhar Singh Deo Vs. The State of Orissa and Another*,) *Kunwar Vir Rajendra Singh Vs. Union of India (UOI) and Others*, and *Anant Kibe and Others Vs. Purushottam Rao and Others*, were not relevant.

(17) Referring to the decision of *Bhaiya Ramanuj Pratap Deo Vs. Lalu Maheshanuj Pratap Deo and Others*, , the learned Single Judge observed that it had been held therein that section 5(ii) of the Act protects an estate which descends to a single heir by the terms of any covenant or agreement entered

into or by the terms of any enactment and consequently, supported the case of respondent No. I rather than that of the plaintiff. He also noticed the decision of this Court in *H. H. Maharani Sarojni Devi v. H. H. Maharaja Pratap Singh and others*, RFA(OS) No. 6 of 1977 decided on 23rd May, 1980(8) and observed that there was no discussion regarding the construction of Section 5(ii) of the Act and also highlighted the fact that in that case there was no evidence brought to the notice of the court to show that the property belonging to the Nabha Ruling family was impartibly or that succession to it was to be governed by the rule of primogeniture; whereas in the present case, the question in issue was whether the private property of Maharaja Man Singh, to which respondent No. I had succeeded, is an impartible estate and whether he succeeded to it under the rule of primogeniture and whether article 14 of the Covenant guaranteed his right to succeed to that property as a single heir and consequently excluded the estate from the operation of the Act.

(18) The learned Single Judge did not notice all the authorities cited but was of the view that observations regarding covenants in the said decisions cannot be construed as Acts of Parliament. He referred to the words of Lord Morris in *Herrington v. British Railways Board*, (1972) 2 W L R 537, approved by the Supreme Court in *Amar Nath Om Prakash and Others Vs. State of Punjab and Others*, , that "there is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of, the facts of a particular case". "

(19) He next dealt with the question of estopped by conduct. He noticed that according to the plaintiff, the property was Hindu undivided family and liable to be partitioned and it was suggested in the plaint that after the merger of the Jaipur State, the private property was held by the late Maharaja, on behalf of the members of the family and the said Huf was governed by the Mitakshara School of Hindu Law. Consequently, on the death of Maharaja Man Singh, respondent No. I became the Karta of the family and it was in that capacity, he was looking after the affairs of the family and filing tax returns on that basis.

(20) The learned Judge noticed that it is not. disputed that the late Maharaja Man Singh did not file any returns as Karta of a Hindu undivided family and he treated the properties as an absolute owner and he even gifted some of the properties to some of the defendants. However, respondent No. I, it appears, on legal advice, sought to have the returns filed by the late Maharaja revised and filed returns as a Hindu undivided family. The learned Judge was of the view that though estoppel by conduct can be pleaded, it is open to respondent No. I to plead the circumstances and how and why he was misled into taking such a stand. This being a question of fact, it could not necessarily be held in law that the property must automatically be partitioned, if a person has taken such a stand earlier.

(21) The learned Judge was of the view that the ple.a of respondent No. I

regarding the estate of late Maharaja Man Singh being excluded from the operation of the Act had considerable force and at any rate, . it could not be brushed aside. Consequently, it could not be held that the plaintiff had an excellent chance of succeeding in the case. He was also of the view that an order appoint^ a receiver ought not to be made where it has the effect of depriving a defendant of de facto possession since that might cause irreparable harm. It was not a case of a suit for" partition of a running business, but was a case of suit for partition of properties most of which were not income earning. Consequently, the learned Judge came to the conclusion that it was not just and convenient to remove the Karta and to appoint a receiver in his place, as it could not be said that the plaintiff had an excellent chance of succeeding and in any case interim orders for preserving the property had been made.

(22) Though the matter was argued at length, it Would appear to us that the question whether the appellant has been validly adopted and is, Therefore, no longer a member of the family of respondent No. I is an issue which will have to be decided on evidence in the suit. Further, the question whether the property was a joint family property on the date of filing of the suit by reason of the conduct of respondent No. 1 and/or whether he is estopped from pleading to the contrary are also matters which will have to be decided on evidence in the suit; similar is the position with regard to, whether the property Was a joint family property in the hands of the last owner Maharaja Man Singh. The question of applicability of the Act to the estate of the late Maharaja Man Singh and the correct interpretation of Articles 12 to 14 of the Covenant of 6th February, 1949 are ticklish questions of law. Whether the principles of noscitur societies will apply or the words in the Covenant are tautologous or whether section 5(ii) of the Act is rendered to other matters which require in depth consideration, as there is much to be said on either side. We feel that it is not desire- able that we should express our views at this stage, as these may be referred to the trial to prejudice either party. It is almost impossible to discuss in detail the various contentions and approve or criticize the observations of the learned Single Judge without the danger of it being utilized at the trial. However. after considering all aspects of the matter, we are of the view that though it cannot be said that there is no force in the plaint, on the other hand, it cannot be said that the appellant has an excellent chance of succeeding. Consequently, we agree with the prima facie conclusions of the trial Judge.

(23) We shall now examine the principles for appointment of a receiver and see if it is just and convenient to do so in the facts of this case.

(24) The suit was filed in 1986. Along with the suit an application, being I.A. 2809 of 1986 under Order Xxxix rules I and 2 of the CPC was filed. An interim order was made restraining defendant No. I, its attorney, agents and representatives from alienating, transferring, parting with possession, creating any charge or mortgage or entering into any agreement either to sell or transfer and /or to create any encumbrance whatsoever on any of the suit properties

enumerated in Schedules I and II of the plaint. This ex parte order was confirmed on 28th January, 1987.

(25) Three other applications, being Indian Administrative Service . 4952/86. 5065186 and 5739)86, seeking sealing of various strong rooms where movable property was stored, were filed. On 6th September, 1986 sealing of some strong rooms was directed. The statement of the general attorney of respondent No. I was recorded, wherein he undertook not to shift the goods from the strong rooms or store rooms. These other strong rooms were also sealed by an order dated 1st October, 1986.

(26) The last application was disposed of on 23rd October, 1986. Respondent No. I had also moved an application for sealing of certain strong rooms in the occupation of the appellant and others. That application was also disposed of on 23rd October, 1986. It was agreed that if any strong rooms were found in Takht-e-Shahi Moti Doongri Palace and in "Lilly Pool" or in Durgapur Palace, these rooms were to be sealed; but if they were being used as living rooms then an inventory of the articles lying there should be made.

(27) Therefore, the position that emerges is, that respondent No. 1 has been absolutely restrained from alienating, parting with possession etc. of the immovable properties ;with regard to the moveables, including jewellery and other valuables, these have been preserved, since the store rooms /strong rooms have been sealed. It would, Therefore, appear that steps for preservation of the properties have been taken and that any attempts to sell any properties have been thwarted by virtue of the injunction/interim orders. Tax returns are being filed in the name of the Hindu undivided family as were being submitted earlier and as per the directions of the trial Court, statement of accounts of income derived from suit properties are to be filed annually till the decision of the suit.

(28) What then is the need for a receiver? The main argument for appointment of a receiver is, that since respondent No. I is now denying the existence of the Hindu undivided family, he ought not to be allowed to manage the said properties as there is a conflict of interest between him and his duties as a Karta and the interests of the other co-parceners. It is further contended that in a partition suit a receiver ought to be appointed if there is a dispute.

(29) The five principles for appointment of a receiver as enunciated by the Madras High Court in T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others, and as reiterated by various other Courts, including the Punjab and Haryana High Court in Nihalchand L. Jai Narain and Others Vs. Ram Niwas Munna Lal and Others, the Patna High Court in Ram Kishore Das Vs. Balram Sah, and this Court in Rajeshwar Nath Gupta Vs. Administrator General and Others, 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; 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; 3. Notwithstanding the existence 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 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; 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 any one 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. Otherwise a receiver should not be appointed in supersession of a bona 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 disentitled himself to the equitable relief by laches, delay, acquiescence etc."

(30) Teamed counsel or the appellant, however, contended that in a suit for partition a receiver ought to be appointed if there is a good prima facie case and there does not have to be an "excellent chance of succeeding". He relied on the decision in *Ramiji Ram & another v. Salig Ram V. Indian Cases 96(15)*. He urged that in a suit for partition where one of the co-owners is in occupation of the property, the court should appoint a receiver as the others are being kept out of possession to which they are admittedly entitled: in the present case, as respondent No. I is keeping the plaintiff/appellant out of possession of the property, this is sufficient ground for placing the property in the hands of a receiver.

(31) He also relied on the decision in *Kamal Chaudhary and another v. Rajendra*

Chaudhary Atr 1957 Patna 366(16). In that case, the Court on the facts held that since defendants 2 and 3 had taken control and ousted the plaintiff who was the eldest son and ought to have been the Karta, the discretion exercised by the trial court in appointing a receiver was not improper. The court noticed that the plaintiff was on the verge starvation and the co-owners had occupied the whole property and excluded the other co-owner from a share and the profits, and so the appointment of a receiver was not wrong even though no case of waste or mismanagement had been proved.

(32) The third case relied on by learned counsel is Jambagavalli Ammal Vs. Govindaraja Kandlar, . In the said case, it was observed that the primary thing which has to be looked into by a court before the wishes of the parties are acceded to, is to see how best the suit properties can be preserved without being wasted. The responsibility of court is greater if there is a race between the two competing parties to possess the suit properties. In that case, a widow was claiming possession in her own right under the Hindu Succession Act and the defendants were claiming possession under the Succession Act as legatees under the Will. In the particular facts of the case, the Court held that the trial court had rightly appointed a receiver.

(33) Whether to appoint a receiver is dependent on all the facts and circumstances of the case, and in the two cases. immediately mentioned above, poverty and widowhood were certainly factors taken into consideration. In Ramji Ram's case supra, a receiver was appointed because all supplies were cut off from his branch of the family and the share of the plaintiff was admitted and had been declared by arbitration. But the basic principles for appointment of a receiver have not been given a go by in partition suits as is apparent from the decisions that. we will refer to hereafter.

(34) In Govind Narain Rao Desai v. Vallabharao Narayanrao Desai Air 1920 Bom 321, a Division Bench of that Court observed that as a general rule, the Court will not, in a partition suit between members of a joint family appoint a receiver, except by consent and upon proof by the plaintiff that prima facie he has "a very excellent chance of succeeding in establishing the case made out in the plaint, and in the next place, he must satisfy the Court that the property in possession of the opposite party is in danger of being wasted". The mere fact that there is a dispute is no reason whatever for appointing a receiver. The Court noticed that the parties were brothers and no doubt their relations were strained and partition was sought. All sorts of claims had been made by the plaintiff including mismanagement "of property. The Court noticed that a considerable part of the properties in dispute was immovable and that the defendant's share would be ample security for any claim which the plaintiff would be able to substantiate in the case for damages or under any other "cause of action against the defendant. It was observed that it is always open to the Court to ask the party in possession to file an inventory of the goods and maintain an account. As an interlocutory measure, the Court did not find sufficient grounds for taking the

property into its own possession and depriving the defendant of possession of the property. Consequently, the order, appointing a receiver was set aside and the property was restored to the possession of the parties from whom it came.

(35) In the Firm Raghbir Singh Jaswant of Quetta v. Narijan Singh and others, Air 1923 Lahore 48, the learned Judge after hearing a great deal of argument addressed on the question of whether the part's formed a joint Hindu family refrained from expressing his views as it was the main question in the suit and he felt it was necessary at this stage "to be very careful not to say anything which may prejudice its ultimate decision by the lower Court". However, he observed that if a joint family is to be presumed then a manager must also be presumed and he cannot be ousted from control of the family property in a summary manner; and held the senior member of the family to have a legal right to physical possession of the property until the family is dissolved. The Court could not appoint a receiver merely on strained relatives "except by consult and upon proof by the plaintiff that prima facie he had a very excellent chance of succeeding in establishing the case made out in the plaint and that the property in possession of the opposite party was in danger of being wasted", especially where the opposite party is presumably the manager.

(36) In Kalappatti Eravamannattil Ithamma Maruvalamma's son Krishnan and Another Vs. Thankurisai Puliyankalath Koma Maruvalamma's daughter Wani Maruvalamma and Others, , it was held that, a receiver could not be appointed to manage the estate, merely because a suit for partition of certain properties has been filed, unless there is a finding that the manager has been guilty of waste and mismanagement. The argument was that once a suit for partition is filed, there is a disruption of status and the Court should appoint a receiver. This argument was not accepted by the Court and consequently, the appeal was allowed and the order appointing a receiver was set aside.

(37) In Chaitanya Naiko Vs. Kandhino Naiko and Others, it was held that 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 and to appoint a receiver in such a case, special circumstances must be proved. However, a receiver may be appointed in a partition suit where there is a prima facie case of misappropriation by the manager of the family. But the Court in exercising its discretion must proceed with caution and examine all the circumstances keeping in view the legal principle that it 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 mere circumstances 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. It is further, necessary to consider whether such interference with the possession of a

defendant is required. It is only if there is Well founded fear that the property in question will be dissipated or other irreparable mischief may be done that the Court gives its protection.

(38) In *Rasi Dei Vs. Bikal Maharana and Others*, , the Court observed that the appointment to 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 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. An order appointing a receiver will not be made when it has the effect of depriving a defendant of 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. Consequently, in a partition suit, the Court should not appoint a receiver of property in the possession of a defendant unless the plaintiff can show prima facie that he has a strong case and good title to the property. The mere circumstance that the appointment of a receiver will do no harm to any one is no ground for appointing a receiver.

(39) In *Rajeswar Nath Gupta v. Administrator General and others* (supra), this Court did not appoint a receiver, but passed certain other directions regarding alienating, transferring or parting with possession of the property. The learned Judge observed that where a bona fide defense has been set up and where the proposition of law is arguable, it is not advisable to appoint a receiver to take possession of immovable property from the defendants unless and until the Court is of the opinion, as observed in *Benoy Krishna Mukerjee and others v. Satish Chandra girl and others*, AIR 1928 PC 49 that there is a well founded fear that the property in question will be dissipated or other irreparable mischief will be done for which the Court has to give protection. The observations of the Division Bench of the Allahabad High Court in *S.B. Industries, Freegunj and Another Vs. United Bank of India and Others*, to the same effect were also noted.,

(40) Thus it is clear that a receiver is to be appointed if there is no other adequate remedy in the facts and circumstances of the case. However, in order to get a receiver appointed, emergency or danger or loss calling for immediate action is to be established. It must also be apparent that the plaintiff has prima facie an excellent chance of succeeding in the suit. A receiver will not be appointed merely because it does no harm to appoint a receiver. A receiver ought not to be appointed where it has the effect of depriving a person of de facto possession as that might cause irreparable wrong. The conduct of parties making an application has to be free from blame and there must be a "well founded fear that in the absence of protection the property will be dissipated or irreparably lost".

(41) In the present case, respondent No. I is the eldest son of the late Maharaja

of Jaipur, who died in 1970. He has been in possession of the properties, either by the rule of primogeniture or as a Karta of the H.U.F. and has been looking after the affairs since then. The properties are vast and his share, even as a member of the H.U.F., substantial and valuable. The appellant is his brother and it is contended that he is no longer a member of the H.U.F. as he has been given away in adoption and consequently has no right to ask for partition. The property has been protected as above indicated by interim orders of the Court by restraining alienation of immovable properties and by sealing of strong rooms[store rooms with regard to movable properties. The tax returns are also being filed in the status of H.U.F. and an annual certified statement of income is being filed as suggested by the trial Judge. As such, there does not appear to be such peril to the property that it might perish, nor does the plaintiff-appellant appear to have "an excellent chance of succeeding". Consequently, looking at all the facts and circumstances of the case the appeal is dismissed. However, we make no order as to costs.