

(1997) 10 PAT CK 0051

In the Patna High Court

Case No : Appeal from Oroginal Order No. 343 of 1993

Smt. Jairani Devi and Others

APPELLANT

Vs

Ram Sanehi Singh and Others

RESPONDENT

Date of Decision : 17-10-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 43 Rule 1(s)

Citation : (1998) 2 BLJR 782 : (1998) 3 CivCC 237 : (1997) 2 PLJR 1009

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Judgement

Gurusharan Sharma, J.—This appeal under Order XLIII Rule 1(s) of the CPC has been filed by the plaintiff against the order of the trial Court refusing to appoint Receiver for the suit properties.

2. One Kuldeep Singh of village Pawa, District-Nalanda left behind four sons, namely, Nand Keshwar Singh, Ram Balak Singh, Ramadhin Singh and Tribeni Singh. Nand Keshwar Singh died leaving behind his son. Ram Saheni Singh, the defendant No. 1. Ram Balak Singh died leaving behind his three sons, namely, Sachchidanand Singh, Dayanand Singh and Bibeka Singh, the defendants No. 2 to 4. Ramadhin Singh died leaving behind his son Parmanand Singh, the plaintiff and Tribeni Singh, the defendant No. 5 has two sons, namely, Ramashray Singh and Ramdayal Singh, the defendant Nos. 6 and 7.

3. The plaintiff filed Title Suit No. 257 of 1991 for partition of his 1/4th share in the joint family properties, detailed in Schedules I and II to the plaint

4. According to the plaintiff, the four sons of Kuldeep Singh were still joint and there was no partition by metes and bounds. Being aggrieved by the attitude and behaviour of the Karta, the defendant No. 1, the plaintiff felt difficulty to continue in jointness and filed the present suit. The defendants on the other hand claimed partition by metes and bounds already completed in the year 1962 and so the plaintiff had no cause of action to file the present suit.

5. A petition under Order XL Rule 1 of the Code was filed by the plaintiff to appoint a receiver for the management, protection, preservation and improvement as also distribution of the profits of the suit properties among the co-sharers.

6. Three sets of rejoinders thereto filed separately on behalf of (i) the defendant No. 1 (ii) the defendants 3 and 4 and (iii) the defendant Nos. 5 to 7. The plaintiff's prayer for appointment or receiver was objected to by all of them.

7. By the impugned order dated 4.8.1993, the Second Subordinate Judge, Patna City was pleased to reject the said petition with a direction to the defendants not to dispose of any of the properties in dispute without permission of the Court.

8. During the pendency of this Appeal the appellant died leaving behind his widow, Jairani Devi, two married daughters, namely, Sunita Kumari and Kanchan Kumari and one minor daughter, Kamini Kumari, who were substituted in his place.

9. The plaintiff asserted that the joint family properties, both an ancestral or acquired, businesses and industries were situated at different places in the names of the members of the joint family and the defendant No. 1 was the Karta. The plaintiff was being neglected by him and was not being given anything for his livelihood. The plaintiff was also not being informed of all the transactions and other family affairs. The said Karta in collusion with the defendant Nos. 3 and 6 started creating showy and false documents in favour of certain members of the family. Two sons of the defendant No. 1 have also filed a suit for partition challenging those deeds. The Karta, in collusion with other defendants wanted to usurp the whole share of the plaintiff as he had got no son, but only three daughters. For the acts of the defendant No. 1, the plaintiff was living in a very pitiable condition.

10. The defendants in their rejoinders jointly asserted partition by metes and bounds on 30.12.1962. Pursuant to the said partition the four branches were possessing the properties allotted to them and started separate businesses and there was no unity of title and possession among the parties.

11. The plaintiff in his petition dated 24.6.1992 furnished further details of the joint family properties. In the said petition it was specifically asserted that several properties were standing in the name of one of the members of the family, but management and possession was with other member even after the alleged partition of December, 1962. In order to meet the plaintiff's assertion, the defendants got their written statements amended and the following averments were added:

After partition in the Year 1962 the parties were separate for a long time. Though they acquired properties jointly and separately on which their possession was as tenants in common and continued to be so. In the Year 1986 there was again some difference between the parties regarding the properties and hence on the

advice of the friends and relations they solved the problem among themselves in which there was prepared one memorandum concerning family arrangement, copy of which were given to each of the branches.

However, thereafter, nowhere it was stated that there was partition by metes and bounds.

12. After hearing the parties at length and perusing the records, I find that in the instant suit for partition the plaintiff applied for appointment of a receiver for the joint properties alleging, inter-alia, that he was excluded from the enjoyment thereof and the defendants opposed appointment of receiver.

13. According to plaintiff, the defendant No. 1, who was the karta, was in clutches of the defendant Nos. 3 and 6 and they were in collaboration with other defendants and were making capital and illegal gains out of the income from the suit properties ignoring the plaintiff; who was getting nothing out of the income therefrom. The relationship between the plaintiff and the defendant No. 1 became more strained and the defendant No. 1 began to put all sorts of obstructions and hindrances in the peaceful enjoyment of the suit properties and deprived the plaintiff of his legitimate share, which was a loss to him to a great extent.

14. According to the case of the contesting defendants the partition had already taken place in the year 1962, thereafter, again a family arrangement was arrived at in the year 1986. The ancestral properties consisted only agricultural lands and it was only after partition in 1962 that different co-sharers acquired considerable properties, out of their separate business and fund. Each of them, thereafter, got their separate karbar and lands were cultivated by them separately and each of them enjoyed the produce of their own field and acquired properties exclusively after separation. There was no joint business or partnership between the plaintiff and the defendants.

15. The plaintiff learnt that the defendant No. 1 claiming self acquisition after the alleged partition made showy transactions by registered deeds 11.9.1989 and 12.9.1989 in the name of respectively the defendant Nos. 3 and 2, which were challenged by the sons of the defendant No. 1 in Title suit No. 142 of 1989.

16. It is true that the ancestral properties consisted of only agricultural land but in view of the stand taken by the contesting defendants that there was oral partition in the year 1962 and, thereafter, again a family arrangement in the year 1986, whereof a memorandum was prepared on 20th January, 1986, I am, prima facie of the opinion that a case of partition by metes and bounds was not made out and it cannot be said that there was partition in the year 1962. Of course my this finding is limited for the purpose of receivership matter and it is left upon to be finally decided at the time of hearing of the suit on the evidence adduced by the parties.

17. It is well settled that in the matter of appointment or receiver of the property

in dispute before it, the Court had a wide discretion, but it must be satisfied on the materials brought to it's notice that it was just and convenient to appoint a receiver. In the present case I find the plaintiff had a good *prima facie* case.

18. The averment made by the parties indicate that the plaintiff has been completely excluded and ousted from enjoyment of the usufruits of the joint family properties. In the present case it may be noticed that among the four sons of Kuldeep Singh, the youngest, namely, Tribeni Singh was alive and he ought to have been the Karta of the alleged joint family, but the allegation was that the defendant No. 1, who was his nephew, had taken control of the properties.

19. It is also settled that by appointment of a receiver the Court takes upon itself management of the property during continuation of the litigation. Receiver's possession was on behalf of all the parties to the action. The title of the real owner was in no way affected either in theory or on principle by the appointment of a receiver. In such circumstance, if after final hearing of the suit, on consideration of evidence adduced by the parties, the trial Court would come to the conclusion that version of the defendants as given in the written statements was correct, no substantial prejudice would be caused to them, when the owners of the properties were themselves appointed as receiver.

20. The defendants were not to lose their right as proprietors while dealing with the properties during their receivership, except that they could not impair the value of the properties in their hand or cause interference with their possession of properties as receivers.

21. In this regard reference may be made of a Division Bench decision of this Court in Kamal Chaudhary and Another Vs. Rajendra Chaudhary and Others, , wherein it was held that in a partition suit when one co-owner occupied the whole properties and excluded other co-owners from the shares of the rent and profits of the properties, a case of appointment of receiver was made out, although no waste or mismanagement by the co-owner in possession was proved.

22. After considering whole of the circumstances of the case, in order to preserve status-quo ante during the litigation, subject to final decision on merits in the suit, I appoint the defendant Nos. 1, 3 and 6 as receivers to the suit properties and direct them to render accounts six monthly i.e. by 30th June and 31st December every year. They are also directed to give the plaintiff's share in the income approximately, after deduction of the costs of management, payment of revenue and taxes etc. The receiver would furnish the details of the properties before the trial Court while taking charge thereof. The trial Court is directed to fix the quantum of profits payable to the plaintiff either in cash or kind or both during the pendency of the suit.

23. The trial Court while rejecting the petition for appointment of receiver in the impugned order directed the defendants not to dispose of the suit properties during the pendency of the suit. This part of the order was not under challenge and, therefore, the same is not being disturbed by this Court.

24. However, the impugned order rejecting the petition for appointment of receiver is set aside and this appeal is allowed with the direction aforesaid.

25. I wish to make it clear again that whatever the trial Court had observed and whatever I have observed in this judgment was exclusively meant for disposal of the matter of appointment of receiver and it would not affect the case of either party in the suit.

26. In the facts and circumstances of the case and in view of the joint prayer of the parties, the trial Court is directed to dispose of the suit expeditiously. The parties herein undertake to appear before the trial Court on the next date fixed in the suit after Annual Vacation, on which date the trial Court shall fix a firm date, from which the hearing of the suit shall proceed on day to day basis.