

(2016) 04 CAL CK 0083

In the Calcutta High Court

Case No : FMA 4349 of 2015 With CAN 11184 of 2015

Smt. Sabitri Debi Sharma & Anr.

APPELLANT

Vs

Rajkumari Debi Sharma

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

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

Citation : (2016) 163 AIC 860

Hon'ble Judges : Jyotirmay Bhattacharya and Ishan Chandra Das, JJ.

Bench : Division Bench

Advocate : Mr. Bidyut Banerjee and Ms. Shila Sarkar, Advocates, for the Appellant; Mr. Aniruddha Chatterjee and Mr. Kushal Chatterjee, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Jyotirmay Bhattacharya, J.—This First Miscellaneous Appeal is directed against an order dated 7th September, 2015 passed by the learned Civil Judge (Senior Division) at Asansol in Title Suit No.10 of 2001.

2. By the impugned order, a learned advocate of the local Bar was appointed as a receiver over the suit property. The receiver was directed to make a detailed account of rent receipt or income receipt from the suit property and file a statement of accounts in the Court each month within a week of the succeeding month.

3. The entire income of the suit property was directed to be kept in a separate bank account to be open by the receiver. Receiver's remuneration was fixed at Rs.3,000/- (Rupees three thousand) per month which may be collected by the receiver from the income realised from the suit property.

4. The legality and/or propriety of the said order is under challenge in this First Miscellaneous Appeal before this Court at the instance of the defendants. Such application for appointment of receiver was filed by the plaintiff in the partition

suit filed by him.

5. The plaintiff is closely related to the defendant No.1. The plaintiff is the daughter of the defendant No.1. Thus, admittedly, both the plaintiff and the defendant No.1 are the co-sharers. Dispute is with regard to the defendant No.2 as to whether he has any share in the suit property or not. The defendant No.1 claims that the defendant No. 2 is her adopted son. Now the dispute relates to the claim of the defendant No.1 regarding adoption of the defendant No. 2 as her son. Such a dispute is an issue in that suit. Such dispute is required to be tried on evidence at the time of hearing of the suit. If it is found ultimately that the defendant No.2 is the adopted son of the defendant No. 1 then the defendant No.2 will also be a co-sharer of the suit property. In that event the plaintiff and the defendant Nos. 1 & 2 will have 1/3rd share each in the suit property.

6. On the contrary if it is ultimately found that the defendant No. 2 is not the adopted son of the defendant No.1 or in other words if it is found the adoption was not legal and/or valid, then the defendant No.2 will not be regarded as a co-sharer in the suit property. In that event the plaintiff and/or defendant No.1 will be the co-sharers of the suit property and they will have half share each therein.

7. It is alleged by the plaintiff that the defendant No.1 being her mother is an old lady aged about more than 80 years and she has been suffering from various old age ailments. As such she is unable to manage the suit property personally. It is further alleged that the defendant No. 2 is presently managing the suit property. He is collecting the rents from the tenants of the suit property. It is further alleged that there are various tenants inducted in different portion of the suit property and the actual rental income of the suit property is not less than 50,000/- (Rupees fifty thousand) per month. It is further alleged that the plaintiff has not been paid any single naya paisa out of such collection. The plaintiff also alleged that the property is not properly maintained and the original income is also misappropriated by the defendants.

8. For proper preservation and/or maintenance of the suit property during the pendency of the suit the plaintiff was filed an application for appointment of receiver.

9. The defendant contested the plaintiff's said application for appointment of receiver by filing objection denying the allegations made out therein. In the said objection the defendant claims that the defendant No.2 realizes a sum of Rs.20,000/- (Rupees twenty thousand) only per month from the tenants on account of rents. It is further stated therein that out of such collection, the defendants pay the Municipal rates and taxes of the said premises and the property is also maintained by the defendant No. 1 out of such collection.

10. Since the parties were making contradictory allegations with regard to the actual realisation of rents from different tenants from the suit premises, we after admitting the appeal, appointed a learned advocate practising in this Court as Special Officer with a direction upon him to make an inventory of the tenants of

the suit premises and the rent paid by each individual tenant in respect of his tenancy. An inventory was made by the learned Special Officer appointed by this Court in the presence of the representatives of the parties. The learned Special Officer has prepared a list of tenant and the rent payable by each of them individually in respect of his/her tenancy. The learned Special Officer has also submitted his report before this Court. No exception has been taken against the Special Officer's report by any of the parties. As such we accepted the said report.

11. It appears from the said report that there are 21 tenants in the suit premises. The list of tenants has been prepared by the learned Special Officer. The rent payable by each of them in respect of his/her tenancy, has also been mentioned in the Special Officer's report. On perusal of the said report it appears that about a sum of Rs.26,350/- (Rupees twenty six thousand three hundred fifty) only is the rental income of the suit premises. In the Special Officer's report it has also mentioned that a tenancy was also created in favour of the natural brother of the defendant No. 2 for a meagre amount of Rs.300/- (Rupees three hundred) only per month.

12. Considering the report of the learned Special Officer, we have no hesitation to hold that the actual rental income from the suit property has not been disclosed by the defendant No.2 who are collecting the rent from the tenants of the suit premises. These lead us to believe that at least some portion of the collection is being misappropriated by him.

13. Under such circumstances, we hold that for proper preservation and maintenance of the suit property and for proper collection of the rent from the tenants of the suit premises a third party receiver should be appointed.

14. Be it mentioned here that an option was given to the parties earlier for appointment of the joint receiver over the suit property, i.e., one to be selected by each of the groups i.e., one from the plaintiff and another from the defendants groups. But the parties could not come to any conscious for appointment of the joint receiver. In these circumstances we do not find any justifiable reason to interfere with the impugned order by which an advocate receiver has been appointed by the learned Trial Judge.

15. It is, however, made it clear that the remuneration of the learned receiver will be paid by the plaintiff who will not claim any adjustment of such payment against the realisation of rent from the suit property. The receiver's remuneration will not be a charge over the suit property.

16. Since the defendant No. 1 being the mother is an old lady and she has been suffering from old age ailments, we direct the receiver to pay 1/3rd of the total collection of each month to the defendant No.1 against receipt to be granted by defendant No.1. The rest of such collection per month after payment of Municipal rates and taxes and other statutory payments will be deposited by the learned receiver in a separate bank account to be open by the learned receiver in any

Nationalized Bank. It is further directed that the receiver will not be permitted either to accept any surrender of tenancy or to induct a new tenant and/or licensee in the suit property without the leave of the learned Trial Court.

17. The impugned order is modified to the above extent remaining the portion of the said order will remain unaltered.

18. We are informed that another suit for declaration filed by the defendant No.2 herein seeking a declaration that he is the adopted son of the defendant No.1 herein is pending for disposal before the Court of the learned Civil Judge Junior Division, 1st Court at Asansol. The said suit being Title Suit No. 190 of 2000 has already matured for hearing and we are informed that the evidence of the plaintiff's witness is now being recorded in the said suit.

19. Considering the fact that parties in both the suits are almost common excepting one i.e., Hiralal Sharma who is not a party in the partition suit.

20. Since one common issue i.e., as to whether the defendant No. 2 herein is the adopted son of the defendant No. 2 herein or not, is involved in both the aforesaid suits. We feel that for avoiding conflict of decisions both the suits should be heard by a common Court. We thus request the learned District Judge Burdwan to transfer the declaratory suit being Title Suit No.190 of 2000 from the Court of the learned Civil Judge (Junior Division) 1st Court at Asansol to the Court of learned Civil Judge (Senior Division) at Asansol where the partition suit is pending so that both the suits can be tried by a common Court simultaneously one after another.

21. The learned Trial Judge is, thus, requested to expedite the disposal of both the civil suits without granting any unnecessary adjournment to any of the parties.

22. Let this order be communicated to the learned District Judge, Burdwan.

23. Both the appeal and the application are disposed of .

24. Urgent photosat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.