

(1991) 04 OHC CK 0014

In the Orissa High Court

Case No : Civil Revision No. 338 of 1988

Suresh Chandra Rout and Others

APPELLANT

Vs

Ekadasi Swain and Others

RESPONDENT

Date of Decision : 05-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 40 Rule 1, 151

Citation : (1992) 2 OLR 494

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : S. Mohanty, R.C. Sahu, S.C. Satpathy and S.L. Pattnaik, for the Appellant; P.K. Khuntia, K.C. Swain, R.C. Ram, D. Sahu and M. Sahu, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—The correctness of the conclusion regarding maintainability of an appeal, is the Subject-matter of the adjudication in this revision application.

2. Since the pivotal issue is one of law, detailed reference to the factual aspects is unnecessary and shorn of irrelevant, the fact situation is as follows :

While considering a petition under Order 39, Rule 1 of the Code of Civil Procedure, 1908 (in short the "Code"), the learned Munsif, Kendrapara passed an order appointing a receiver in respect of the suit property instead of granting injunction. The petitioners assailed the correctness of the said order in appeal. Considering the order appointing receiver to have been passed in exercise of the jurisdiction u/s 151 of the Code, the learned Subordinate Judge, Kendrapara held the appeal to be not maintainable. The conclusion has been characterised as contrary to law and forms the subject-matter of challenge.

3. For resolution of the question whether the appeal was maintainable, it is necessary to refer to the provisions of Order 39, Rule 1, of the Code, and the scope and ambit thereof. Rule 1 of Order 39 is primarily concerned with the

preservation of property in dispute till legal rights are ascertained. The words "make such other order" occurring in Rule 1 includes the power to appoint a receiver, which read with Order 40, Rule 1 of the Code, the Court could do even suo motu. Under Order 39, Rule 1 of the Code, it is open to the Court to grant a temporary injunction -or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property, until disposal of the suit or until further orders. The language used in Order 39, Rule 1 makes it clear that the power is very wide and is not restricted to grant of temporary injunction, but to make such other order for any of the purposes referred to above. In the case of *Chummar v. Kuniamaibu*: AIR 1952 Ker 331, it was held that there was no prohibition contained in the Code in the matter of suo motu appointment of a receiver by a Court, even in the absence of an application in their behalf by any of the parties. For the aforesaid view, reliance was placed on a decision in *Dar Prasad v. Gooikishan* : AIR 1914 All 4. Similar view was also expressed by the Madras High Court in the case of *D. K. Raja v. P. S. Kumaraswami, Raja* : AIR 1955 Mad 360. The provisions of Order 40, Rule 1 of the Code relating to appointment of receiver nowhere mandate an application, and as indicated above, suo motu action by the Court is also permissible. Similar view was expressed by the Andhra Pradesh High Court in the case of *Ravi Lakshmaiah Vs. Nagamothu Lakshmi and Another*, : . The object of appointment of a receiver is the safeguarding of property for the benefit of those who would ultimately be entitled to it."In *Wide Kerr on Receivers*" 13th Edition, page 7, it is stated that in the common interest of all parties, the Court should prevent a scramble where the property is as it were in medio. Similarly in *Halsbury's Laws of England* (Vol. 32 page 396). it is stated if no one is in possession of the property, the Court will appoint a receiver almost as of course, to prevent a scramble, and to preserve the property until the rights of the parties are ascertained." It would not be out of place to quote the oft-quoted passage in *Owen and Gutch v. Homari* (1853) 4 HIC 997 in the words of Lord Granworth L. C. as follows :

"Where, indeed, the property is as it were, in medio in the enjoyment of no one the Court can hardly do wrong in taking possession, it is common interest of all parties that the Court should prevent a scramble ..."

In view of what has been stated above, the view of the learned Sub- ordinate Judge that the appointment of receiver was u/s 151 of the Code is indefensible. The appointment was obviously in exercise of powers under Order 39, Rule 1 of the Code, and the order is appealable. The/appeal was therefore maintainable and dismissal thereof is not sustainable. The impugned order is hereby set aside. The learned Sub- ordinate Judge shall hear the appeal on merits.

The Civil Revision is allowed. No costs.