

In The Court of Sri Gauri Shankar, Sub-Judge-I, Dumraon
Case No.-T.S.No. 102/2022
Baban Singh & ors Vrs. Madan Singh & ors

Date of order of proceeding	Order with signature of the Court	Office action taken with date
29.07.2025	Today this file is put before this court for order on the petition of the plaintiff dated 06.01.2024 filed under order 40 Rule 1 of the C.P.C. The defendants have also appeared in this suit and has filed rejoinder to the said petition of the plaintiff. Heard the learned counsels for the plaintiff as well as the counsel for the defendants. Before adjudicating the claim of the parties, I will discuss both parties' arguments. The plaintiff's counsel while seeking relief of appointment of receiver has argued that the plaintiff filed the present suit for declaration of sale deed dated 23.10.2021 Lalan Singh v defendant 2nd of schedule III land as illegal, null, excess of share and void. The plaintiff seeks relief of preliminary decree of partition to carve out the 4/9 share from schedule II land of the plaintiffs after appointing a Survey Knowing Pleader Commissioner. It is further stated by the plaintiff Late Lalan Singh executed a sale deed of his share on dated 23.10.2021, which is absolutely null & void. and died after two days on 26.10.2021, which is questionable mentioned in content of the sale deed that the land is being sold for construction of house. The above facts are also worth considering. The defendant wrongly executed sale deed in his favour rather plaintiff 1st set and 2nd set always take care of late Lalan Singh and fulfill his needs. It is further stated that defendant no.2 are father and son, who are powerful persons in their locality and wants to grab the share of plaintiff and also prevent them from cultivation. Hence prayed for appointment of receiver to avoid the eminent danger. Per contra, defendant's learned counsel has opposed the petition of the plaintiff and has argued that petition is not maintainable. It is further contended that plaintiff have no concern with the property. The plaintiff wants to linger this suit and often has filed injunction petition or this type of petition. It is further contended that the injunction petition of plaintiff dated 14.08.2023 has been dismissed on 31.10.2023 by this court and also prima facie not found in the case of plaintiff. The defendant has further contended that for appointment of receiver there is excellent chance of succeeding, if the prima facie available in favour of the plaintiff, but this ingredient is absent in the present case. It is therefore prayed to reject the petition of appointment of a receiver. Heard and perused the record, the application for appointment of receiver, affidavits filed in support of the application for appointment of receiver. The plaintiff has brought this suit for declaration of sale deed dated 23.10.2021 Lalan Singh v defendant 2nd as null and void and for partition. Before deciding upon the relative merits of the claim, it would not be out of place to have a look at the relevant laws. The relevant provisions of the Code of Civil Procedure are as follows:-- "Order 40, Rule 1, Appointment of Receivers-- (1) Where it appears to the	

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Court to be just and convenient, the Court may by order

(a) appoint a receiver of any property whether before or after decree.

It is pertinent to mention here that the guiding principle for appointment of receiver laid down in the judgement of the Madras High Court in the case of **T. Krishnaswamy Chetty vs. C. Thangavelu Chetty and others** and the said judgment laid down the five principles, which was both well known and well accepted as the panch sadachar test, when exercising equity jurisdiction in the appointment of Court Receivers. " The five principles which can be described as the 'panch sadachar' of our Courts exercising equity jurisdiction in appointing receivers 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) Not only must the plaintiff show a case 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 not 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 anyone 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

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appointed in supersession of a bone 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 disintitiled himself to the equitable relief by laches, delay, acquiescence etc."

The plaintiff has contended that he heard from some person that the defendant wants to take possession of disputed land. Also the possession of the disputed land is in dispute. Defendant asserted that he had purchased the land vide sale deed dated 23.10.2021 and defendant was in peaceful possession of the land from the date of purchase and cultivating his land. The plaintiff admitted the fact that the sale deed executed by the Lalan Singh in favour of defendant 2nd and suit is also for declaration of said sale deed as null and void it means possession is not of plaintiff therefore no prima facie case of plaintiff. Then plaintiffs fails in proving prima facie & by virtue of second test laid down in *Panch Sadachar*, "*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*". Plaintiff must show some emergency or danger or loss demanding immediate action but no such condition present here. 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. 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.

So, it appears that the requisites for appointment of receiver, as laid down by the case-laws discussed above, does not appear and hence the petition of the plaintiff is devoid of merit and hereby rejected.

Put up for evidence on 09.09.2025.

(Gauri Shankar)
Sub-Judge-I
Dumraon

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