

MHJG200001862010



R. C. S. No. 28/2010

Kanhiyya Mahajan

//Vs.//

Govinda Mahajan

ORDER BELOW EXHIBIT NO. 80

(Passed On 19/04/2024)

01. Present application filed by plaintiff for appointment of Court receiver as per order XL rule 1 of Code of Civil Procedure.

The plaintiff submits as under :-

02. The plaintiff filed present suit for partition and separate possession of suit property. By way of this application the plaintiff seeking the appointment of Court Receiver over suit properties. He submitted that the suit properties are in possession of defendant No. 1 as Karta of their family. The plaintiff has undivided interest in the suit properties. The present suit has been filed on 05/04/2010. Till date the defendant No. 1 has not giving any share of income to the plaintiff. Therefore, the plaintiff have to suffer economical problems. The defendant No. 1 is deliberately causing delay in disposal of the suit. Lastly, he prayed for allowing of application.

03. The defendant No. 1 filed his say on this application at Exh. No. 83. The defendant No. 1 submitted that the plaintiff has not mentioned any strong reason for appointment of Court Receiver on suit properties. Suit properties are in his possession as a "Karta" of their family. The defendant No. 1 further submitted that plaintiff has not mentioned that he is damaging the suit properties. The defendant No. 1 further submitted that the

plaintiff has not prayed for mesne profit of the suit properties. Therefore, no purpose would be served by appointing Court Receiver on suit properties. Lastly, he prayed for rejection of application.

04. The defendant No. 2 filed his say on this application. he also prayed for rejection of application.

05. I have heard both the counsels. Perused application and say filed by defendants.

06. The following principles must be born in mind before a receiver is appointed by Court:-

- (a)** The appointment of a receiver is a discretionary power of the Court.
- (b)** It is a protective relief. The object is preservation of the property in dispute pending a judicial determination of the rights of the parties to it.
- (c)** A receiver should not be appointed unless the plaintiff prima-facie proves that he has very excellent chance of succeeding in the suit.
- (d)** It is one of the harshest remedies which the law provides for the enforcement of rights, and therefore, should not be lightly resorted to. Since it deprives the opposite party possession of property before a final judgment is pronounced, it should only be granted for the prevention of a manifest wrong or injury. A Court will never appoint a receiver merely on the ground that it will do no harm.

- (e) Generally, an order appointing a receiver will not be made where it has the effect of depriving the defendant of a de-facto possession, since that might cause irreparable loss to him. But if the property is shown to be in medio, that is to say, in enjoyment of no one, it will be in the common interest of all the parties to appoint a receiver.
- (f) The court should look at the conduct of the party who makes an application for appointment of a receiver. He must come with clean hands and should not have dis-entitled himself to this equitable relief by laches, delay or acquiescence.

07. Considering the above principles about the appointment of court receiver under Order XL Rule 1 of Code of Civil Procedure, 1908, it reveals that the such remedy is discretionary remedy and it is one of the harshest remedies which the law provides for the enforcement of rights, and therefore, should not be lightly resorted to.

08. In the application the plaintiff has not stated that the defendant No. 1 is trying to alienate the suit properties or damaging the suit properties. Therefore, there is no strong reason for appointment of Court Receiver on suit properties. Moreover, the plaintiff in the suit has not claim the mesne profit of the suit properties. Therefore, no purpose would be serve by appointment of the Court Receiver over the suit properties. Furthermore, it is admitted position that the defendant No.1 is in possession of suit properties. If, this application would allow then defendant No. 1

will be dispossessed from the suit property. Therefore, this would cause irreparable loss to defendant No. 1. Considering over all discussion the present application deserves to be rejected. Hence, I proceed to pass following order.

ORDER

- i. Application is rejected.

Raver.

Date: 19/04/2024.

(Pravin P. Yadav)

Civil Judge Junior Division, Raver.