

IN THE COURT OF DISTRICT JUDGE, HOOGHLY.

Present: Sri Amit Chakravorty

District Judge, Hooghly.

(J.O Code WB-00615)

Dated, Hooghly, the 23rd day of April, 2026.

Misc. Appeal No. 135 of 2025

(CNR No.WBHG010045362025)

Susanta Mondal.....Appellant.

-Versus-

1. Jagabandhu Mondal

2. Sufal Chandra Mondal

3. Gour Chandra Mondal

4. Sanjib Mondal

5. Kanai Mondal

6. Mahadeb Mondal

7. Joydeb Mondal.....Respondents.

For the Appellant: Sri Sanjoy Bandopadhyay, Ld. Advocate.

For the Respondents: Sri Partha Sarathi Dutta, Ld.
Advocate.

J U D G E M E N T

1. Interference of the Appellate Court has been prayed for challenging the Order No.24 dated 14/11/2025, passed by the Learned Civil Judge (Junior Division), 2nd Court, Hooghly at Chinsurah, in connection with Title Suit No. 196 of 2023.
2. For the sake of convenience, the parties to the appeal will be addressed as per their rank and status in the suit as “the plaintiff” and “the defendants”.
3. Backdrop of the instant appeal is that the plaintiff (“the appellant” herein) filed the Title Suit No. 196 of 2025 against the defendants

for declaration that the plaintiff and pro-forma defendant are owners as well as possessors of 'Ka' schedule property of the plaintiff and also for permanent injunction over 'ka' schedule property with other equitable reliefs. In that suit, the defendants have filed an application under Order XL Rule 1 CPC, read with section 151 CPC. On 14.11.2025 the learned Trial Court allowed the application on contest and appointed one learned Advocate as the Receiver.

4. Being dissatisfied with and aggrieved by the order passed by the learned Trial Court, the instant appeal has been preferred by the plaintiff of the suit on the grounds mentioned in the Memorandum of appeal.

POINT FOR DETERMINATION

5. The points for determination, in this appeal, are as follows:
- (i) Whether the concerned learned Civil Judge (Junior Division), was justified in allowing the application under Order XL Rule 1 read with section 151 CPC, in the facts and circumstances of the case and in view of the materials on record,
 - (ii) Whether the learned Trial Court has passed the impugned order illegally, improperly and incorrectly?
 - (iii) Whether the impugned order is liable to be set aside?

DECISION WITH REASONS

6. The moot question in the appeal is whether on a consideration of the facts set out in the application under Order XL rule 1, read with section 151 of CPC, filed by the defendants, a case has been made out for the appointment of a receiver.
7. At the outset, learned counsel for the plaintiff argues that the plaintiff is in physical possession in respect of the scheduled property and appointment of a receiver is nothing but dispossession

of the plaintiff from the said property. The plaintiff invested a huge sum of money to cause the pisciculture in the said property by taking bank loan. The learned trial court has prejudged the suit by holding that both the parties are the co-sharers and have joint interest in the suit property. The predecessor of the plaintiff obtained the suit property by way of amicable partition in the year 1963. The plaintiff as well as pro forma defendants inherited the scheduled property and is in possession of the same. The record of rights was published in the name of Dhirendranath Mondal, where from the suit pond was inherited by the plaintiff and the pro forma defendant. So learned trial court has erroneously passed the order of appointment of receiver though the same was rejected in order No. 12 of the suit. As such, prayer has been made to allow the appeal by setting aside the impugned order.

8. In support of his submission, learned counsel for the appellant refers a judicial decision of **T. Krishnaswamy Chetty versus C. Thangavelu Chetty and others** reported in **AIR 1955 Madras 430**, wherein the Hon'ble High Court has been pleased to evolve five principles by describing as the "panch sadachar" of the Courts exercising equity jurisdiction in appointing receivers.
9. Per contra, learned counsel for the defendants argues that whether the suit pond was joint or not to be decided at the time of trial. Record of rights disclosed only 1/3rd (one third) share in favour of the plaintiff and the pro forma defendant. There is nothing to show where from the plaintiff ("the appellant" herein) became absolute owners of the said property. Temporary injunction order was passed directing the parties to maintain status quo regarding the title, possession and enjoyment of the suit property till disposal of the suit and the status quo order to not create any embargo upon the pisciculture done irrespective of whoever is doing the same. Order

No. 12 was passed to reject rectification of certain portions of order No. 5 of the learned trial court. It was admitted by the plaintiff that on 12th December, 2025 he caught fish from the suit tank. Sricharan Mondal was never owned the scheduled property of the plaint. The receiver was appointed to preserve and protect the interest of the parties as 'Ka' schedule property is a joint property of the parties to the suit. So, the instant appeal is liable to be dismissed with costs.

10. Specific assertion of the plaintiff in his plaint of the suit is that the properties mentioned belonged to the predecessor of the parties to the suit, namely, Sricharan Mondal. Subsequently, he died, in the year 1960, leaving behind his three sons, namely, Dashurathi Mondal, Dhirendranath Mondal and Lakhhikanta Mondal. They inherited 1/3rd share in the properties left by him. Accordingly, they possessed the same. Thereafter, they amicably partitioned their properties in the year 1963 and started to possess and enjoy their respective properties according to such amicable partition. Their names were published in the record of rights according to their respective shares. The plaintiff is the successor of Dhirendranath Mondal. The defendants are sons and daughters of Dashurathi Mondal and Lakhhikanta Mondal. According to such amicable partition, Dhirendranath Mondal was allotted 'ka' schedule property of the plaint. His name was also recorded in the record of rights in respect of the entire 'ka' schedule property. Subsequently, other successors of him sold and gifted their respective shares to the plaintiff. The suit tank is of area of 121 decimal. The name of the pro forma defendant has been recorded in respect of 5 decimal of the land. Presently, the plaintiff and the pro forma defendant have been possessing the suit tank as absolute owners of the same. But the defendants have claimed they have right, title and interest in respect of the 'ka' schedule property illegally and has been created disturbance in the title and possession of the plaintiff. The

defendants have also tried to catch fish forcibly from the suit tank. There was every possibility of dispossession of the plaintiff and the pro forma defendant from the suit property. Hence, the suit has been filed.

11. The defendants filed the written statement with counter claim and the averments made therein are that the suit property originally belonged to Bibhutibhusan Mondal. Thereafter, Dasurathi, Dhirendranath and Lakhhikanta Mondal became the owners of 16 annas and their names were recorded in the record of rights. The 'ka' schedule property is actually a large tank which is jointly looked after and cultivated by the legal heirs of them. They all enjoyed the usufructs of the tank. But taking advantage of erroneous record of rights (LRROR), the plaintiff has tried to oust the defendants as well as other legal owners from the suit tank. The plaintiff has not impleaded some necessary parties to the suit. As the plaintiff has failed to oust the legal owners and possessors from the suit tank, he filed the suit by suppressing and concealing the actual facts and documents. The plaintiff has two separate khatians in respect of the suit plot, which is illegal, and he has used two different names of his father to create such documents. The defendants have applied for correction of record to the BL & LRO but the application was rejected and as such, the appeal was preferred in which the appellatte forum set-aside and quashed the impugned order of the BL & LRO and directed him to consider the matter afresh. On the date of adjudication of the matter afresh, the defendants got information from the concerned BL & LRO that the plaintiff obtained an order of injunction and the defendants have no right, title, interest and possession over the suit property. So, the prayer for counter claim has been made.

12. In the case of **T. Krishnaswamy Chetty versus C. Thangavelu Chetty and others** reported in **AIR 1955 Madras 430**, the Hon'ble Madras High Court has enunciated five principles which can be described as the "panch sadachar" in the course exercising equity jurisdiction in appointing receivers as follows:

- (i) The appointment of receiver pending issue 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;
- (ii) 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;
- (iii) 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.
- (iv) 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.

- (v)** 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 not come to Court with clean hands and should not have disentitled himself to the equitable relief by laches, delay, acquiescence et cetera.

13. The application under Order XL Rule 1, read with section 151 of CPC has been filed by the defendants to the effect that the suit tank is the joint property of the predecessors of the parties and after their death, the plaintiff has got 1/3rd share and the defendants' side have got their 2/3rd share. They are in possession of the suit property and doing pisciculture thereon. On the basis of the injunction order passed by the learned trial court, the plaintiff without informing the defendants caught fishes from the said tank and sold-out the same in the open market though the defendants raised their objections. Challenging the injunction order, a revisional application was preferred before the Hon'ble High Court and on 10th October, 2023 the injunction order was set aside. In that C.O 2201 of 2023 the Hon'ble Court was pleased to pass an order of stay against the order of the learned Trial Court dated 5th June, 2023 but the plaintiff has violated the order of stay on 20th September, 2023 and forcefully and illegally entered into the suit tank and took out and caught fishes despite of objection raised by the defendants. The matter was informed to the local police station. The defendants have incurred expense for the purpose of pisciculture but the plaintiff misappropriated the same violating the order of the Court. So, prayer has been made for appointment of receiver.

14. The plaintiffs contested the application for appointment of receiver by filing a written objection contending that the defendants illegally tried to stop the pisciculture on various pretext. For a long time, the plaintiff has been using the suit tank for pisciculture and to stop the rightful cultivation over the suit tank, the defendants disturbed the plaintiff. The plaintiff invested huge sum of money for that purpose and in case of appointment of receiver, the plaintiff would face irreparable financial loss.

15. In the impugned order, Ld. Trial Court has opined as follows:

“.....On perusal of record, it appears that both parties were directed to maintain status quo but there is allegation upon the plaintiff to sell out of fishes without informing the defendants and to that respect the appellate forum has also passed set aside order. Now as both parties are co-sharers and have joint interest in the suit property, there is a need to appoint one mediator to protect and preserve the suit property and worth of fishes equally for both the parties.....”

16. A perusal of the case record of the learned Trial Court, it is apparent that in Order No. 5 dated 24th April, 2023, the learned Trial Court granted injunction on contest and in Order No. 12 dated 5th June, 2023 the learned Court was pleased to reject an application dated 6th May, 2023 for rectification of certain portion of Order No. 5 dated 24th April, 2023 and allow an application under section 151 of CPC, filed by the plaintiff, on 30th May, 2023 for implementation of the injunction order on contest. Thus, those above-mentioned orders have no bearing with the application under Order XL Rule 1 of CPC, read with section 151 of CPC for appointment of receiver.

17. Undisputedly, the suit property mentioned in the ‘ka’ schedule of the plaint previously belonged to predecessors of the parties to the suit. According to the plaintiff, the predecessors, who originally

- belonged the suit property, were three brothers. On the other hand, the defendants claimed that they were four brothers. Needless to say, that the suit property including the suit tank was originally a joint property of ancestors of the parties to the suit. The plaintiff has averred in the plaint that due to amicable partition between the predecessors in the year 1963, the suit property was allotted only in favour of predecessors of the plaintiff and the pro forma defendant. Prima facie, there is no mention of documentary evidence in respect of such amicable partition in the year 1963. It is the case of the defendants that there was no amicable partition among the predecessors of the parties to the suit in the year 1963 or any time thereafter and so the suit property has been inherited by all the parties to the suit and some other persons as successors of such four predecessor-brothers.
18. The plaintiff has taken plea that as the suit property was inherited only by the successors of Dhirendranath Mondal, as the suit property was allotted to him and as such, the name of the plaintiff and the pro forma defendant have been recorded in the record of rights in respect of the disputed suit tank. As pointed out earlier, the defendants challenged the entry of record of rights as erroneous and filed an application before the BL&LRO, having jurisdiction, which was initially rejected. Against such order of rejection, an appeal was preferred before the DL & LRO, who set aside the order of rejection and directed the concerned BL & LRO to adjudicate the same afresh. As available from the case record, the adjudication was pending at the relevant point of time of hearing of the instant application as well as passing of the impugned order.
19. Contention was made by the defendants that the plaintiff by violating the order of temporary injunction as well as without informing the defendants, caught fishes and sold-out the same in the open market without considering the objection raised by the defendants in this regard. Both the parties to the suit have claimed

that they did pisciculture in the suit tank. The plaintiff has pointed out that he spent huge sum of money by taking bank loan to organize such pisciculture; whereas the defendants also claimed that they invested huge sum of money for such pisciculture.

20. All the questions divulged in the foregoing paragraphs are required to be disposed of by giving the parties to the suit opportunity to adduce evidence to prove their respective cases. As there is counter claim in the suit, the status of both the parties is almost same. If any of the parties is permitted to collect fishes from the suit tank and sell the same in the market and enjoy the usufruct of the suit tank alone at this stage of the suit, and subsequently, after trial it will be found that such person is not the sole owner of the suit tank or not even an owner of the suit tank, then it will cause and invite further complication as well as multiplicity of the suit and proceeding. In case of appointment of receiver, he may deposit the sale proceeds of fishes in the bank account and after conclusion of trial, the amount may be handed over to the real person who is or are entitled to get the same.

21. Appointment of a receiver in the suit will protect the rights of all parties interested in the controversy and the subject matter. There is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding.

22. Prima facie the defendants, who prayed for appointment of receiver, have chance of succeeding in the suit because their case has disclosed that admittedly, the predecessors of the parties to the suit were the previous owners of the suit property and their case is simple that due to death of their predecessors, the parties to the suit inherited the same. Undisputedly, none of the predecessors is in the world at present and as such, obvious result is that the parties to the suit have inherited the suit property by way of devolution of property as per law of inheritance. On the contrary, in order to establish the case of the plaintiff, he has to establish

certain vital facts like amicable settlement between the predecessors in the year 1963 and allotment of the suit property entirely the name of Dhirendranath Mondal. As the plaintiff is admittedly not only legal heir of Dhirendranath Mondal, the plaintiff has also required to establish or prove that other heirs of the above-named predecessor transferred their respective share(s) to the plaintiff by way of either sell or gift, as claimed by the plaintiff, in his plaint.

23. As such, the defendants have shown a case of adverse and conflicting claims to the suit property along with emergency or danger or loss demanding immediate action and of their own right, the defendants are reasonably clear and free from doubt. There is every possibility of deprivation or loss of either of the parties to the suit, if a party alone is permitted to catch fishes and sell out the same in the open market and enjoy the sale proceeds before conclusion of the trial and determination of the rights of the parties.

24. As both the parties claimed their respective possession in the suit property, more particularly, the suit tank, it cannot be possible to determine at this stage that appointment of receiver has the effect of depriving the plaintiff or not. It cannot be established prima facie that the plaintiff is in 'de facto' of possession of the suit property.

25. From the case record of the learned trial court, the appeal court has found nothing to hold that the conduct of the defendants has not been free from blame. There is no laches, delay, acquiescence etc. on the part of the defendants in making the instant application for appointment of receiver. Immediately after the alleged catching of fishes from the suit tank and sale of the same in the market by the plaintiff, the application for appointment of receiver has been made by the defendants. They also have made counter claim along with the written statement.

26. From the discussion made in the foregoing paragraphs, the Appeal Court is of the considerate view that appointment of receiver

has been made by the learned Trial Court in order to prevent manifest wrong imminently impending.

27. Bearing the principles of the solemn judgement referred above in mind, and also after examining the facts of the case as set out in the contentions of the respective parties, no confusion remains that the requirements for granting the appointment of a receiver have been made out. For that, ultimate decision arrived at by the learned Trial Court in the impugned order is justified and thus, the order is required to be affirmed. So, the impugned order passed by the learned Civil Judge (Junior Division), 2nd Court, Chinsurah in the District of Hooghly, requires no interference of the Appellate Court.

28. Accordingly, the point no. (i) for determination is answered in affirmative; whereas the points for determination nos. (ii) and (iii) are decided in negative.

29. In short, the appeal fails.

30. Memorandum of appeal is correctly stamped.

31. Hence, it is -

ORDERED

that the instant Appeal be and the same is dismissed on contest against the respondents.

Consequently, the Order No.24 dated 14/11/2025, passed by the Learned Civil Judge (Junior Division), 2nd Court, Hooghly at Chinsurah, in connection with Title Suit No. 196 of 2023, is, hereby, affirmed.

Parties must bear their respective costs of the appeal.

Due to conclusion of the appeal, the application dated 27th November, 2025 for stay of the operation of the impugned order, is rejected being infructuous.

Accordingly, the instant appeal is disposed of.

Let copy of this judgement along with TCR be sent down to the learned
Trial Court at once.

Typed by me

District

Judge

District Judge