

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Muzammel Hossain
-Chief Justice
Mr. Justice Surendra Kumar Sinha.
Mr. Justice Md. Abdul Wahhab Miah.
Ms. Justice Nazmun Ara Sultana.
Mr. Justice Syed Mahmud Hossain.
Mr. Justice Muhammad Imman Ali.
Mr. Justice Md. Shamsul Huda.

CIVIL PETITION FOR LEAVE TO APPEAL NOS.94 WITH 397 OF 2010.

(From the judgment and order dated 06.12.2009 passed by the High Court Division in Civil Revision Nos.3492 & 3650 of 2006)

Most. Umme Shaheda Akhter Rina & others..... **Petitioners.**
(In C.P.No.94 of 2010)

Md. Habibur Rahman & others **Petitioners.**
(In C.P.No.397 of 2010)

-Versus-

Ayub Ali and others. **Respondents.**
(In both the Cases)

For the Petitioners. : Dr. M. Zahir, Senior Advocate,
(In C.P.No.94 of 2010) instructed by Mr. Syed Mahbubur
Rahman, Advocate-on-Record.

For the Petitioners. : Mr. Khorshed Alam Khan,
(In C.P.No.397 of 2010) Advocate, instructed by Mr.
Syed Mahbubur Rahman, Advocate-
on-Record.

For the Respondents : Mr. Md. Aftab Hossain,
(In both the cases) Advocate-on-Record.

Date of Hearing : **The 16th April, 2012.**

J U D G M E N T

SYED MAHMUD HOSSAIN, J: Both the Civil Petitions for leave to Appeal arising out of the same impugned judgment and order having been heard together are now

being disposed of by this common judgment as they do involve common question of law and fact.

The civil petitions for leave to appeal are directed against the judgment and order dated 06.12.2009 passed by a Single Bench of the High Court Division in Civil Revision Nos.3492 and 3650 of 2006 making the Rules absolute, setting aside the judgment and order dated 15.06.2006 passed by the learned Special District Judge, Dinajpur in Miscellaneous Appeal Nos.79 and 85 of 2002 reversing the order dated 02.11.2002 passed by the learned Joint District Judge, First Court, Dinajpur in Partition Suit No.250 of 1982 appointing receiver in respect of the suit land.

Briefly stated, the facts giving rise to the present petitions for leave to appeal are as follows:

The plaintiffs (respondents herein) and others instituted Partition Suit No.250 of 1982 in the Court of Joint District Judge, Dinajpur against the defendants (petitioners herein) and others.

The defendants-opposite parties filed written statement denying the material statements made in the plaint.

During the pendency of the suit, the plaintiffs-respondents filed an application under Order-XL Rule 1 of the Code of Civil Procedure for appointment of receiver in respect of the suit land alleging that the

plaintiffs-respondents are entitled to 91 bighas of land and, on the other hand, the defendants-petitioners and others are entitled to 182 bighas of land. But the defendants sold out more lands than their shares and have been continuing to sell further lands. They sold properties to different persons on different occasions by more than 50 deeds of sale. The plaintiffs being poor could collect certified copies of four such deeds of sale only. The defendants threatened the labourers of the plaintiffs, who had been ploughing the land of the plaintiffs. Under the circumstance it is necessary to appoint a receiver in respect of the suit land just to save the suit land from wastage and selling.

The learned Joint District Judge, First Court, Dinajpur allowed the application appointing a receiver in Partition Suit No.250 of 1982 by his order dated 02.11.2002.

After that, defendant Nos.1 to 6 and defendant Nos.12-23 preferred two appeals being Miscellaneous Appeal Nos.85 of 2002 and 79 of 2002 respectively before the Special District Judge, Dinajpur who heard and allowed both the appeals analogously by his single judgment and order dated 15.06.2006.

Being aggrieved by and dissatisfied with the judgment and order dated 15.06.2006 passed by the learned Special District Judge, Dinajpur the plaintiffs

preferred two revisional applications before the High Court Division under Section 115 of the Code of Civil Procedure and obtained Rules in Civil Revision Nos.3492 and 3650 of 2006.

The High Court Division made both the Rules absolute reversing the judgment and order passed by the learned Special District Judge and restoring the order passed by the learned Joint District Judge by the judgment and order dated 06.12.2009.

Feeling aggrieved by and dissatisfied with the judgment and order passed by the High Court Division, the defendants-petitioners have filed both the appeals.

Dr. M. Zahir, learned Senior Advocate appearing for the petitioners in Civil Petition for Leave to Appeal No.94 of 2010 submits that as a general rule, a receiver is not appointed in a suit for partition and that existence of dispute cannot be a ground for appointing a receiver and that the High Court Division without taking into consideration those broad principles set aside the judgment delivered by the appellate Court restoring the order passed by the learned Joint District Judge appointing receiver in respect of the suit land.

He further submits that there is no scope for putting a third party as a receiver of property of a joint family and admittedly when the members of the

joint family have been enjoying the undivided property. He lastly submits that without taking into consideration the provision of Order 40 Rule 1 of the Code of Civil Procedure, the High Court Division set aside the judgment and order of the Court of appeal restoring the order of the Joint District Judge who appointed receiver behind the back of the defendants petitioners.

Mr. Khorshed Alam Khan, learned Advocate appearing for the petitioners in Civil Petition for Leave to Appeal No.397 of 2010 has adopted the submissions made by Dr. M. Zahir.

Mr. Md. Aftab Hossain, learned Advocate-on-Record appearing for the respondents in both the leave petitions supports the impugned judgment and order passed by the High Court Division.

We have considered the submissions of the learned Advocates, perused the impugned judgment and order delivered by the High Court Division and the materials on record. Admittedly the plaintiffs filed a suit for partition in 1982. The plaintiffs claimed a saham for 91 bighas of land and the defendants 182 bighas of land. In the application for appointment of receiver the plaintiffs stated that the defendants sold out lands by many deeds of sale numbering more than fifty exceeding their shares. The plaintiffs also stated

that they could procure certified copies of four of such deeds only because of their poverty.

The learned Joint District Judge, First Court, Dinajpur, by his order dated 02.11.2002 appointed receiver in respect of the suit land. The learned Joint District Judge came to a finding that it could take long time for disposal of the suit because drawing up of final decree in a suit for partition usually would take long time and as such for management of the suit property, an Advocate Commissioner should be appointed as a receiver.

The appellate Court took into consideration the findings arrived at by the trial Court in detail and came to a finding that appointment of receiver by the trial Court without hearing the other side was illegal and as such the ex-parte order could not sustain. The appellate Court also noted that the properties left behind by Muldhoni Cheharu Mohammad were the subject matter of Partition Suit No.16 of 1965 in which there was an admission about passing of a compromise decree in that suit and that without examination of that decree appointment of receiver in respect of the suit land could not sustain.

Without adverting to the findings arrived at by the appellate Court the High Court Division came to a finding that 27 years had already elapsed and that the case was still in rudimentary stage and that it might

so happen that to dispose of the suit another twenty-seven years might be required. Therefore, the High Court Division set aside the judgment and order passed by the appellate Court restoring the order passed by the trial Court appointing the receiver in respect of the suit land.

As was discussed earlier, the trial Court appointed receiver without assigning proper reason as contemplated under Order XL Rule I of the Code of Civil Procedure. On the other hand the appellate Court taking into consideration all aspects of the case reversed the order of learned Joint District Judge appointing receiver. The High Court Division, however, concurred with the cryptic and slipshod order passed by the trial Court appointing receiver in respect of the suit land.

As a general Rule it is not proper to appoint a receiver in a suit for partition. Mere existence of a dispute can not be a ground whatsoever for appointment of a receiver. Receiver should be appointed in a suit for partition with the consent of the parties, especially where the family property consists of land. Delay in disposal of the suit cannot at all be a ground for appointment of a receiver in respect of the suit land. The plaintiffs alleged that the defendants had been exhausting their shares in the suit land. But the plaintiffs could only produce certified copies of

four such deeds of sale although the defendants were stated to have sold land to different persons by more than fifty deeds. Admittedly the plaintiffs claimed a saham for 91 bighas of land and according to the plaintiffs the defendants are entitled to 182 bighas of land. Therefore, it appears that the share of the defendants is double than that of the plaintiffs. Moreover, the plaintiffs could file an application for injunction praying for restraining the defendants by an order of temporary injunction from selling the suit land without prior permission of the Court. Instead of doing so the plaintiffs filed an application for appointment of receiver. The trial Court passed an order inducting a third party as receiver of the joint property of the family which goes against the cardinal principle of management of the property of a family.

In this connection reliance may be made on the case of ***Faiz Ahmed Chowdhury and another Vs. Baktear Ahmed Chowdhury and others (1984)36DLR(AD)97***. In the above case, this Division relying upon a good number of cases, held as under:

"As a general rule, the appointment of a receiver in a particular suit has not met the approval of the Court. The existences of dispute offers no ground whatsoever for appointing a receiver. In *Govind Narain Rao Desal Vs. Vallabhrao Narayantao Dasal*, AIR 1920 Bom. 321, it

has been observed that in a partition suit between members of a joint family the Court will not appoint a receiver except by consent, and especially where the family property consists of land. Special circumstances must be proved before the Court will make such appointment. The plaintiff must satisfy the Court that the property in possession of the defendant is in danger of being wasted."

The principle expounded in the case referred to above applies to the facts and circumstances of the case in hand.

In the case of ***Nurul Hossain Vs. Hasan Banu, (1983) 35 DLR 28***, the High Court Division maintained the order of appointment of receiver as the plaintiffs who were female co-sharers had been kept out of enjoyment of the property and the defendants were appropriating all the rents of the tenanted premises from the tenants. The High Court Division has held that order 40 of the Code of Civil Procedure confers very wide powers on the Court to appoint a receiver where it appears to the Court to be just and convenient.

The question of appointment of the receiver arose in the above case as the female co-sharers were deprived of the rent of tenanted premises. In the case

in hand the nature of the property is land and the share of the defendants is double than that of the plaintiffs. Therefore, the question of appointment of receiver in such a case does not arise.

In the case of ***Razia Begum Vs. Rafique Chowdhury (1981) 33 DLR 198***, the High Court Division set aside the order passed by the learned Subordinate Judge appointing receiver in a suit for partition on the ground that on an application filed by one of the defendants, the parties were directed to maintain a status-quo in respect of the suit property.

In the present case, the plaintiffs could have filed an application praying for restraining the defendants by an order of temporary injunction from selling the suit land without prior permission of the Court but they failed to do so.

What is important to note here is that in a suit for partition not merely the interest of the plaintiffs but also the interest of all the parties to the suit need be protected. The power to appoint a receiver as conferred by Order 40, rule 1 of the Code of Civil Procedure, therefore, should, therefore, be sparingly used. The provisions for the appointment of a receiver is to be considered as one of the harshest remedies for the enforcement of rights to property.

In the light of the findings made before, the impugned judgment and order passed by the High Court Division cannot sustain.

The present suit for partition has been pending before the trial Court. Therefore, we are of the view that instead of dragging the case in this Division, it would be proper to dispose of both the leave petitions to enable the trial Court to dispose of the suit as expeditiously as possible.

Accordingly, both the petitions are disposed of and the impugned judgment and order passed by High Court Division is set aside. The plaintiffs will, however, be at liberty to file an application praying for restraining the defendants by an order of temporary injunction from selling any portion of the suit land without prior permission of the trial Court, if so advised.

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The 16th April, 2012.