

(2008) 04 CAL CK 0059

Calcutta High Court

Case No: F.M.A.T. No. 323 of 2008 and CAN No. 2484 of 2008

Tarak Nath Das and Others

APPELLANT

Vs

Manorama Chowdhury and
Others

RESPONDENT

Date of Decision: April 7, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 40 Rule 1, Order 43 Rule 1

Citation: (2008) 2 CHN 976

Hon'ble Judges: Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Harish Tandon and Gautom Das, for the Appellant; Ahim Kumar Routh, for the Respondent

Final Decision: Dismissed

Judgement

1. This first miscellaneous appeal is at the instance of a defendant in a suit for partition and is directed against Order No. 122 dated 26th February, 2008 passed by the learned Judge, 12th Bench, City Civil Court at Calcutta by which the said Court arrived at a finding that it is a fit case for appointment of a Receiver but did not name the Receiver; the Court directed both the plaintiff and the defendant to give one name from their side for appointment of Receiver within one month from that date and it was further indicated that after getting the name of one person each from the side of the parties, the order of joint Receiver would be issued.

2. Being dissatisfied, the defendant has come up with the present appeal.

3. After hearing the learned Counsel for the parties, we are of the view that this first miscellaneous appeal under Order 43 Rule 1(s) of the CPC is a premature one.

4. About a century ago, a Division Bench of this Court in the case of Upendra Nath Nag Chowdhury v. Bhupendra Nath Nag Chowdhury reported in 13 CLJ 157 held that

so long a Receiver was not actually appointed by name, the order under Order 40 Rule 1 of the CPC was not complete and no appeal was maintainable in terms of Order 43 Rule 1(s) of the Code against the mere finding of the Court below that it was a fit case for appointment of a Receiver.

5. The said view is all along followed by this Court in course of last hundred years and we do not propose to deviate from that view. It further appears that another Division Bench in the case of Raju Shyam Lal Singh v. Raj Kumar Thakur Madhusudan Singh reported in 31 CWN 235 took note of the aforesaid decision and it was reiterated that so long the order under Order 40 Rule 1 of the Code was not complete in its term, no appeal should be maintainable. In that case, the appointed Receiver was asked to give security but till the presentation of the said appeal, no security was given and in such circumstances, it was held that the appeal was incompetent.

6. Be that as it may, in view of our aforesaid finding, we hold that this appeal is a premature one and is dismissed, accordingly.

7. We make it clear that we have not gone into the merit and the dismissal of this appeal will not stand in the way of the appellant in challenging the recorded finding in the order impugned along with the subsequent order naming the Receiver.

8. Let the certified copy of the order impugned be returned to the learned Advocate for the appellant.

9. In view of disposal of the appeal itself, the connected application has become infructuous and the same is disposed of accordingly.

10. Urgent xerox certified copy of this order, if applied for, be given to the appellant by Friday next.