

ITEM NO.54

COURT NO.12

SECTION XV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 8783-8784/2016

(Arising out of impugned final judgment and order dated 10/02/2016 in SBCMA No. 913/2015 and in SBCMA No. 958/2015 passed by the High Court Of Rajasthan At Jodhpur)

DEV PRAKASH AND ANR

Petitioner(s)

VERSUS

INDRA AND ORS.

Respondent(s)

(with appln. (s) for permission to place addl. documents on record and interim relief and office report)

Date : 01/05/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Mr. H.D.. Thanvi, Adv.  
Ms. Ishita J., Adv.  
Mr. Rishi Matoliya, Adv.For Respondent(s) Mr. Avneesh garg, Adv.  
Mr. P. V. Saravana Raja, Adv.  
Mr. Bhupendra Sharma, Adv.UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

Appeals are allowed in terms of the signed order.

(NEELAM GULATI)  
COURT MASTER(TAPAN KR. CHAKRABORTY)  
COURT MASTER

(Signed order is placed on the file)

**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 5791-5792 OF 2017**  
**[ARISING OUT OF S.L.P. (C) NOS. 8783-84 OF 2016]**

**DEV PRAKASH & ANOTHER****...APPELLANTS****VERSUS****INDRA & OTHERS**  
**RESPONDENTS**

...

**ORDER**

Leave granted.

2. The appellants, who filed appeals in the High Court against the orders passed by the Trial Court granting temporary injunction and appointing a receiver qua the property involved, on interim applications filed by the respondents in their pending suit, have sought refuge of this Court under Article 136 of the Constitution of India, being aggrieved by the order directing sale of the subject-matter of suit by public auction. The appeals, before the High Court, are however pending.

3. We have heard Mr. H.D. Thanvi, learned counsel for the appellants and Mr. Avneesh Garg, learned counsel for the respondents.

4. Having regard to the issue demanding scrutiny, it would be

inessential to dilate too much on facts. Suffice it to mention that the parties, who are locked in a series of litigation, are the heirs of a common ancestor i.e. Kodu Ram. The respondents, who are the heirs of late Prabhu Dayal, had filed a suit being Civil Case No. 15 of 2015 in the court of District Judge, Bikaner praying for a decree, inter alia, for a declaration that the suit property being the assets of a partnership firm M/s. Chand Ratan Hira Lal is of their predecessor late Prabhu Dayal and for restraining the appellants/defendants from either mortgaging or utilising the said property, which would in any way adversely affect their rights. A prayer for rendition of accounts has also been made.

5. In short, according to them, the partnership comprised of Prabhu Dayal (since deceased), and the appellant/defendant No. 3 Dev Prakash. However, on the death of Prabhu Dayal, the latter started utilising the entire property forcibly by bringing them in his possession and thereby excluded the respondents/plaintiffs therefrom. As the plaint would reveal, the subject matter of suit included immovable and movable properties as described therein.

6. The appellants/defendants have filed their written statement denying the allegations levelled. They denied that any property of late Prabhu Dayal has remained in the partnership business. Though they admitted that Prabhu Dayal had been a

partner of the aforementioned firm, according to them, on his death, it was dissolved and his dues had been duly remitted to his widow and therefore, the respondents/plaintiffs did not have any further claim with regard thereto.

7. In the suit, the respondents/plaintiffs filed two separate applications registered as Misc. Civil Case No. 12/2015 (24/2015) and Misc. Civil Case No. 13/2015 (25/2015), praying for temporary injunction and appointment of receiver qua the suit property respectively. The Trial Court, by separate orders dated 25.4.2015, granted both the prayers in the following terms:

“Resultantly, the application in question filed on behalf of the applicants/plaintiffs under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure against the non-applicants are restrained through temporary injunction to the effect that they shall not use & utilise the movable & immovable property of the firm M/s. Chandratan Heeralal, which have been mentioned in the application/plaint of the applicants/plaintiffs and whose inventory report has been got prepared through the commission in the presence of the rival parties and has been filed in the file; and nor shall diminish to the aforesaid property. The counter-claim-application of the non-applicant is not accepted.”

....                      ....                      ....                      .....

“Resultantly, the application in question filed on behalf of the applicants/plaintiffs against the non-applicants under Order 40 Rule 1 read with Section 151 of the Code of Civil Procedure regarding appointment of a receiver, is accepted and on the basis of the consent of the rival parties, Advocate Shri Brijratan Vyas, is appointed receiver upon the

entire movable and immovable properties of the firm M/s. Chandratan Heeralal, and it is ordered that the receiver should take over in his possession to the entire movable & immovable properties of the aforesaid firm with immediate effect as per rules; and keep them secured/protected in his possession up to passing of any other order in the original suit; and any of the party may not be allowed to use and utilize the aforesaid properties in any manner.”

8. It would thus be evident that the Trial Court on a prima facie consideration of the pleadings available and the contentions based thereon was of the opinion that for the purposes of the suit, pending adjudication, the property was necessary to be appropriately secured and preserved to abide by the final determination of the controversy. The order of appointment of the receiver also indicates in clear terms that the officer was appointed as consented to by the parties.

9. The appellants/defendants however preferred two separate appeals being S.B. Civil Misc. Appeal Nos. 913 of 2015 and 958 of 2015 before the High Court being aggrieved by these two orders, wherein the common order dated 10.2.2016 impeached before this Court has been passed. As the order of the High Court assailed would disclose, thereby the suit property has been, directed to be sold in public auction, pending disposal of the appeals.

10. Mr. H.D. Thanvi, learned counsel for the appellants has emphatically urged that the order directing disposal of the suit property by public auction is on the face of the records palpably illegal and is in derogation of the basic principle of preservation of property in a civil litigation, pending final adjudication. Further, in absence of any reason for adopting this course, the impugned order is patently unsustainable in law and on facts, and if not reversed, would result in irreparable loss and prejudice to the appellants.

11. The learned counsel for the respondents though did faintly endeavour to support the order, eventually did admit that none of the parties had sought for disposal of the suit property by public auction, as has been directed by the High Court.

12. We have duly considered the recorded facts to the extent necessary at this stage as well as the rival contentions. The order indeed presents certain discomfiting features. To reiterate, the property involved is the subject matter, amongst others of the aforementioned suit and the appeals before the High Court, all of which are presently pending. There is a dispute inter alia, as to whether this property is an asset of the partnership firm in question. Prayer for declaration of the title thereto and rendition of accounts, as made by the respondents/plaintiffs is pending

scrutiny of the Trial Court. Not only an order of injunction has been passed by the Trial Court, noticing the nature and extent of the lingering controversy revolving around the suit property, it has also construed it to be expedient to appoint a receiver to keep the same in its custody, pending final resolution of the lis in accordance with law.

13. The impugned order, to start with, has been passed at an interim stage pending the disposal of the appeals assailing the order of injunction and appointment of receiver. It does not record any convincing reason for electing the course of disposal of the suit property in this overwhelming background, by public auction. Not only, this initiative has the potential of possible annihilation of the suit property, the purported justification cited that such an auction would facilitate determination and realisation of the current fair market value and that appointment of receiver would unnecessarily put the suit property in disuse, is wholly indefensible. Noticeably, the High Court not only had estimated the value of the suit property at Rs. 2 crores, it had directed amongst others, that the said amount be quoted as the minimum reserve price in the auction notice to be issued. It has directed as well that a committee, as suggested by it, be constituted to conduct the court auction and also to submit a

report with regard thereto, to it. Direction thereby has also been issued to the appellants/defendants to hand over the peaceful and vacant possession of the suit premises to the highest bidder/auction purchaser on the completion of the exercise.

14. In the preponderant factual backdrop, as outlined hereinabove, we are of the view that not only the reasons endeavoured to be cited in the impugned order in justification of the direction for public auction of the suit property lack in persuasion, those are apparently speculative and illogical, to say the least. The direction for disposal of the suit property by public auction, in the facts and circumstances of the case, clearly militates against the fundamental precept of preservation of subject matter of any dispute pending adjudication in a court of law, more particularly relatable to a civil litigation, to appropriately decide on the rights of the parties for administering the reliefs to which they would be entitled eventually on the culmination of the adjudication. As it is, the very essence of the concept of temporary injunction and receivership during the pendency of a civil litigation involving any property is to prevent its threatened wastage, damage and alienation by any party thereto, to the immeasurable prejudice to the other side or to render the situation irreversible not only to impact upon the

ultimate decision but also to render the relief granted, illusory. We do not wish to burden this order by the decisions of this Court on the issue except referring to the one in ***Maharwal Khewaji Trust (Regd.) Faridkot vs. Baldev Dass*** AIR 2005 SC 104, wherein it has been underlined that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property to be changed, which may include alienation or transfer thereof leading to loss or damage been cause to the party who may ultimately succeed and which would as well lead to multiplicity of proceedings. Judicial discretion has to be disciplined by jurisprudential ethics and can by no means conduct itself as an unruly horse.

15. The course adopted by the High Court in this perspective is in a way unprecedented and rather unknown in law. The impugned order seems to be the yield of an unfathomable urge divorced from the bearing of the consequences thereof on the pending adjudication of the proceedings between the parties and is noticeably unusual and unexpected at the level of High Court. The follow up steps to execute the order also display a cavalier and committed approach so much so that it goes to the extent of fixing the estimated price of the property to be mentioned in the

notice for sale. As it is, none of the parties did suggest the disposal of the suit property by public auction. Neither any exceptional circumstance nor any compelling necessity in the interest of adjudication exists as on date to compel the disposal of the property as directed. This assumes great significance as well in view of the dispute as to whether the same belongs to the partnership firm or not. The impugned order thus not only is per se illegal, being violative of the basic tenets of law, but also seems to be informed with an overzealous disposition rendering the same unmistakably unsustainable. The same is thus set-aside. The High Court would decide the appeals on their own merits as expeditiously as possible. We make it clear that the observations made hereinabove are wholly in the context of the issue that arose in the present proceedings before this Court and the High Court would answer the appeals without being in any way influenced thereby.

16. We part with the belief and confidence that all concerned and more particularly those entrusted with the role of administering justice in accordance with law would not indulge in such misadventures lest the credibility of the legal process, which is the bedrock of public confidence in the institutional system, stands undermined.

17. The appeals are allowed in the above-mentioned terms. No costs.

.....**J.**  
**[ARUN MISHRA]**

.....**J.**  
**[AMITAVA ROY]**

**NEW DELHI;**  
**MAY 1, 2017.**