

Badal Chandra Dutta & Ors Vs Mathur Ganguly And Ors

Court: Calcutta High Court

Date of Decision: Sept. 30, 2019

Acts Referred: Specific Relief Act, 1963 & Section 34

Hon'ble Judges: Bibek Chaudhuri, J

Bench: Single Bench

Advocate: Sibasish Ghosh, Ashis Kumar Dutta, Tarapada Das, Binayak Kumar Ghosal

Final Decision: Disposed Of

Judgement

Bibek Chaudhuri, J

This is an application filed by the appellant praying for temporary injunction restraining the respondent No.1 and his men and agents from making any

construction on and/or changing the nature and character of the suit property till the disposal of the instant appeal.

It is alleged by the plaintiffs/petitioners that they instituted Title Suit No.71 of 1997 before the learned Civil Judge (Senior Division) at Bankura for

declaration of title over the suit property and that the defendant/respondent No.1 has no right, title, interest and possession in respect of the said suit

property, partition, permanent injunction and other consequential reliefs.

The case of the plaintiffs was that the suit property originally belonged to one Sripati Halder whose name was duly recorded in CS Record of Rights.

Sripati died intestate and issueless and the suit property devolved upon his two sisters namely Bijanbala and Fulkumari. By a registered deed of sale

dated 18th February, 1970, the said Bijanbala sold out the suit property along with other non suit lands to one Madan Mohan Datta who is the

predecessor in interest of the present plaintiffs/appellants.

The defendant No.1/respondent contested the suit by filing written statement. Specific case of the defendant No.1 was that he purchased the suit

property at a consideration of Rs.4000/- by way of oral sale sometimes in 1974. Moreover his name was recorded in the Record of Rights as an

adverse possessor in respect of the suit property.

The learned Civil Judge (Senior Division) at Bankura by his judgment and decree dated 21st January, 2004 dismissed the suit on contest. The

plaintiffs/appellants challenged the said judgment and decree of dismissal by filing Title Suit No.71 of 1997. Finally the said appeal was also dismissed

on contest by the learned Additional District Judge, 1st Court at Bankura. Against the concurrent finding of fact by both the courts below the

plaintiffs/appellants have preferred the instant appeal.

Now, the appellants have alleged that the respondent No.1 has already taken step for raising construction of a building over the suit property. He has

accumulated building materials for such purpose. Such wrongful act on the part of the respondent No.1 prompted the appellants to file the instant

application for temporary injunction.

Mr. Sibasish Ghosh, learned Advocate for the appellants draws my attention to the order dated 11th February, 2009 passed by the Division Bench of

this Court admitting the appeal on the following substantial questions of law:-

(i) Whether the learned Judges in the courts below substantially erred in law in dismissing the suit of the plaintiffs as barred by section 34 of the

Specific Relief Act, 1963, ignoring the deed of sale being exhibit-I inasmuch as document raises presumption of possession of the plaintiffs in respect

of the disputed property?

Ã, (ii) As the vendor of the plaintiffs never challenged the title of the plaintiffs whether it was open to the defendants to challenge the title of the

plaintiffs in the suit and whether the learned Judges in the courts below substantially erred in law in dismissing the suit of the plaintiffs with the finding

that the execution of the document of the title in favour of the plaintiffs was not proved?Ã¢â€â€

It is contended by Mr. Ghosh that the appellants are claiming title over the suit property on the basis of a registered deed of sale executed more than

30 years ago. The deed of title prima facie raises a presumption of possession over the suit property. The Division Bench of this Court vide order

dated 11th February, 2009 directed that the appeal would be heard on the question of law as to whether a suit could be dismissed under the proviso to

Section 34 of the Specific Relief Act ignoring the title deed of the appellants.

It is also submitted by Mr. Ghosh that the respondent No.1 is not related to vendor of the appellants. The vendor of the appellants never disputed or

raised any question as to the title of the appellants over the suit property. The respondent No.1 cannot challenge the title of the appellants. Both the

courts below failed to consider such intricate substantial questions of law. Therefore the appeal was admitted by the Division Bench.

According to Mr. Ghosh disputed question of title is involved in the instant appeal. If at this stage the respondent makes construction over the suit

property or the nature and character of the suit property is changed by specific act of the respondent No.1, the appellants will suffer irreparable loss

and injury. Therefore, the appellants are entitled to get order of temporary injunction pending disposal of the instant appeal.

Learned Advocate for the respondent No.1, on the other hand, submits that his possession over the suit property is established in both the courts

below. The appellants have no possession over the suit property. Both the trial court as well as the First Appellate Court disbelieved execution of the

registered deed of sale by Bijanbala in favour of the predecessor of the appellants on the ground that Bijanbala was a pardanashim lady and execution

of the impugned deed of sale in favour of the appellants was not proved. Under such circumstances, the appellants are not entitled to an order of

temporary injunction.

The principle of granting temporary injunction is well settled and has been reiterated in Seema Arshad vs. Municipal Corporation reported in (2006) 5

SCC 282, in the following words:-

“The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (i)

existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for

protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's

rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary

injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the

plaintiff's conduct is free from blame and he approaches the court with clean hands.”

A prima facie case does not mean a case to succeed but a case which fairly needs an enquiry. In course of his submission, Mr. Ghosh has urged that

the appellants claimed their title over the suit property on the basis of a registered deed of sale executed by the lawful owner of the suit property. On

the other hand, the respondent No.1 was claiming his title on the basis of adverse possession and oral sale. Sale of immovable property at a

consideration price of Rs.4000/- as alleged by respondent No.1 is not permissible under the Transfer of Property Act and such sale ought to be made

by a registered deed of conveyance. The claim of the respondent No.1 to the effect that he became the owner of the suit property by an oral sale has

no leg to stand. On the contrary, the instant appeal was admitted on substantial questions of law relating to acquisition of title over the suit property.

Needless to say that during the pendency of the appeal, suit property should be directed to be maintained in the manner as it exists as on this date. In

other words, the parties to the appeal should not be permitted to change the nature and character of the suit property during the pendency of the

appeal.

It is submitted by the learned Advocate for the respondent No.1 that the instant appeal was filed in the year 2006. It was admitted for hearing on 11th

February, 2009. The appellants did not file any application for injunction at the time of filing of the appeal. At this belated stage equitable relief cannot

be granted on the ground delay defeats equity.

I am not in a position to accept the above argument made by the learned Advocate for the respondent because injunction, being an efficacious relief in

the aid of the suit or appeal, the parties are at liberty to pray for injunction even at a subsequent stage when his right is going to be infringed or there is

a threat or danger in respect of the property in dispute of being wasted, damaged or alienated by other party to the suit.

If the respondent No.1 is successful in raising construction over the suit property, it will of course cause irreparable loss and injury to the appellants if

they succeed ultimately in appeal.

For the reasons stated above I hold that balance of convenience is in favour of the appellants and they are entitled to get an order of temporary

injunction till the disposal of the appeal.

In view of the above discussion, the respondent No.1 is restrained from raising any construction or changing nature and character of the suit property

till the disposal of the instant appeal.

CAN is thus disposed of on contest without cost. Department is directed to take immediate step so that the hearing of the instant appeal may be

expedited.