

(2013) 11 CAL CK 0006

Calcutta High Court

Case No: C.O. No. 3148 of 2013

Mangalam Educational Society

APPELLANT

Vs

M/s. Shib Shakti Enterprise and
Another

RESPONDENT

Date of Decision: Nov. 26, 2013

Citation: (2014) 1 CALLT 187 : (2014) 1 CHN 594

Hon'ble Judges: P. Mandal, J

Bench: Single Bench

Advocate: Saktinath Mukherjee, Mr. Debabrata Saha Roy, Mr. Pingal Bhattacharya, for the Appellant; S.P. Roychowdhury, Saptangshu Basu, Abhijit Sarkar, Ms. Ananya Das and Ms. Angira De, for the Respondent

Final Decision: Allowed

Judgement

P. Mandal, J.

This application is at the instance of the defendant/respondent and is directed against the order dated July 30, 2013 passed by the learned Additional District Judge, 3rd Court, Howrah in Misc. Appeal No. 78 of 2013 thereby setting aside the order dated March 25, 2013 passed by the learned Civil Judge (Junior Division), 5th Court, Howrah in Title Suit No. 295 of 2012. The plaintiff/appellant/opposite party herein has instituted the aforesaid title suit against the defendants before the learned Trial Judge praying for a decree of declaration that the plaintiff is a tenant in respect of the suit property as described in the schedule to the plaint under the proforma defendant No. 2 or any other person who acquired a title, permanent injunction restraining the defendant No. 1 from making any attempt for taking possession by dispossessing the plaintiff from the suit property and other consequential reliefs.

2. In that suit he filed an application for temporary injunction against the defendant No. 1, which was rejected by the learned Trial Judge upon hearing both the sides. Being aggrieved, the plaintiff preferred an appeal being Misc. Appeal No. 78 of 2013,

which was allowed by the impugned order directing the parties to maintain status quo in respect of the suit property and not to change the nature and character of the suit property till the disposal of the suit. Being aggrieved by such judgment and order, this application has been preferred by the defendant No. 1.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned Advocates for the parties and on going through the materials on record, I find that the defendant/respondent/petitioner herein has contended that it had purchased the suit property by way of two sale deeds dated January 6, 2011 and November 28, 2011 from the owners and the concerned sale deeds clearly lay down that there is no tenant in the suit property and, in fact, the plaintiff is an attesting witness to the said deeds. Subsequently, the plaintiff has filed the said suit claiming the tenancy right over the suit property and other consequential reliefs.

5. The petitioner has contended that it runs a school namely St. Hellen School (a reputed English Medium School at Howrah district affiliated to ICSE) and immediately after the purchase, it got the vacant possession of the same and the said suit property has been surrounded by brick built boundary wall with a considerable height fixing an iron gate on the G.T. Road. It appointed security guards in the suit property and, in fact, there is a hoarding of the school at that place indicating that the property is in possession of the defendant.

6. While arguing over the matter Mr. Shaktinath Mukherjee, learned Senior Advocate appearing for the petitioner, reiterating the contentions as raised in the -application, has drawn my attention to the concerned sale deeds wherefrom, it appears that the plaintiff/opposite party herein is an attesting witness to the deeds and the deeds clearly indicate that there is no tenant and khas possession of the suit property had been delivered accordingly. The defendant/petitioner her in has taken the necessary steps for the act of possession to start a school thereon.

7. Mr. Mukherjee has further contended that the petitioner had purchased the suit property from the owners for the benefit of the educational society for making construction and not for raising any mall or commercial purposes. The concerned deeds of sale had been duly executed by the vendors in presence of the witnesses and Mr. P.K. Singh, proprietor of M/s. Shib Shakti Enterprises, i.e., the defendant was a witness to the deeds. From the body of the deeds, it appears that the concerned suit property is situated at 195, 195/1, 195/2 and 195/3, G.T. Road, (North) within P.S. Malipanchghora and the said deeds clearly lay down that in the suit property conveyed by the vendors, no other person or persons except the vendors has any right, title and/or interest whatsoever into the said property, and the same had been sold at a consideration money of Rs. 1,06,00,000/-. It is also mentioned therein that the said property had been sold to the vendee free from all encumbrances and other defects in title. The deeds lay down the particulars of the suit property which

can be identified easily. Not only that it is also recorded that if it is found that the said property conveyed by the vendors is not free from all encumbrances as stated, the vendors, their respective legal heirs, executors shall remain liable to the purchaser, its successors and will be bound to make good any loss to be sustained. The vendors have also declared that the property conveyed is free from all encumbrances and that the vendors have the absolute right to transfer the property. The plaintiff of the said suit is a witness to the deeds and thus, he has affirmed as to the condition of the property as narrated by the vendors. Thus, he has submitted that the attesting witness is bound by that statement and he cannot claim a tenancy right as claimed in the said suit.

8. Mr. Mukherjee has also contended that the property in question is meant for educational institution and so, the construction has been made as indicated above. Not only the local people but the students of the locality will be benefited by such construction and this aspect of the matter cannot be ignored at all.

9. Mr. Mukherjee has also contended in reply that the submission of Mr. Roychowdhury as to the judgment delivered by Sir Asutosh Mookerjee in 19 CLJ 47 could not be applicable in the present time in view of the fact that at that time there was no enactment of the West Bengal Premises Tenancy Act, 1997 and as such, the tenant had no obligation as embodied now in the Act of 1997. So, the decision of Sir Asutosh Mookerjee would not be applicable here.

10. Mr. Mukherjee has also contended that the educational society had purchased the suit property at huge costs and when the said society was making construction, the plaintiff/opposite party filed the said suit for injunction. But, at that time there was no receipt of supply of iron scraps as indicated in Annexure-C at page No. 37 of the affidavit-in-opposition. Thus, this paper shall not be considered at all.

11. On the other hand, Mr. S.P. Roy Chowdhury, learned Senior Advocate appearing for the opposite party has submitted his arguments mainly on law points relating to the principle of grant of injunction and thus, he has contended that the Apex Court has changed the stand of granting injunction from time to time starting from long time back. The decision of Sir Asutosh Mookerjee relating to injunction reported in 19 CLJ 47 is the basis of all decisions for consideration of injunction and thereafter, certain changes have been made. Referring to the decisions passed by Sir Asutosh Mookerjee reported in (XIX) CLJ 47 [Gangubai Bablya Chaudhary and Others Vs. Sitaram Bhalchandra Sukhtankar and Others](#), , [Dalpat Kumar and Another Vs. Prahlad Singh and Others](#), and [Anand Prasad Agarwalla Vs. Tarkeshwar Prasad and Others](#), he has contended that the Apex Court has laid down guidelines for disposal of the injunction matter and [Gangubai Bablya Chaudhary and Others Vs. Sitaram Bhalchandra Sukhtankar and Others](#), is the basic principles and that the injunction can be granted upon due consideration of the balance of convenience and inconvenience and irreparable loss.

12. He has contended that in the case of [Gangubai Bablya Chaudhary and Others Vs. Sitaram Bhalchandra Sukhtankar and Others](#), the Apex Court has held that when the plaintiff and the defendant are found to be in possession of about half portion of the disputed land, injunction restraining the defendant from putting up construction on the entire land would be justified. The situation might become irreversible by the time, the dispute is decided if injunction is not granted.

13. Referring to the decision of [Dalpat Kumar and Another Vs. Prahlad Singh and Others](#), particularly the paragraph No. 5, Mr. Roychowdhury has contended that almost all the earlier decisions held by the Apex Court relating to injunction matter have been crystallized in paragraph No. 5 of the said decision by describing that in order to succeed on an application for temporary injunction a prima facie case in favour of the plaintiff which needs adjudication at the trial must be proved. Such prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only a prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. The Court has to satisfy further that if non-interference by the Court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. If on weighing, competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued.

14. Then by referring the decision of [Maharwal Khewaji Trust \(Regd.\), Faridkot Vs. Baldev Dass](#), particularly the paragraph Nos. 9 & 10, he has submitted 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 being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings.

15. Mr. Roychowdhury has also referred to the decision of [Anand Prasad Agarwalla Vs. Tarkeshwar Prasad and Others](#), and thus, he has submitted that while disposing of an application for temporary injunction, the Court cannot hold mini trial at the stage of grant of temporary injunction and examine various aspects of case under which the sale certificate had been issued.

16. Referring to the deposit of charges for electricity, Mr. Roychowdhury has contended that unless title to the property or legal possession is verified, the electricity company will not grant installation of electricity on the land in suit and so, upon being satisfied about the legal possession of the plaintiff with regard to the suit property Electricity Company had sanctioned for supply of electricity. Thus, he has submitted that the First Appellate Court is quite justified in passing the impugned judgment and order.

17. So far as the basic principles in granting injunction are concerned, the decision of [Dalpat Kumar and Another Vs. Prahlad Singh and Others](#), is a settled position of law. The Court is required to see whether there is any prima facie case to go for trial. In the instant case, the plaintiff/opposite party herein has contended that he is a tenant in respect of the suit property but, he could not file any letter of agreement or any agreement deed showing the induction of the plaintiff as a tenant in respect of the suit property. Even no rent receipt has been granted by the so called owners as contended by the plaintiff/opposite party herein. He has produced only a diary to show that one P. Das has issued rent receipts not on any printed form, but, showing a statement as receipt of rent on behalf of the landlord.

18. It may be noted herein that the proforma defendant is not supporting the case of plaintiff at all and as noted above since the plaintiff is an attesting witness of the sale deeds by which the defendant/petitioner herein has claimed right, title, interest and possession over the suit property, in my view, the papers as annexed by the petitioner indicates that the petitioner became the owner of the suit property and got possession of the suit property with full knowledge of the plaintiff being an attesting witness to the sale deeds.

19. After taking possession of the suit property, the petitioner has raised boundary wall of considerable height and fixed a big iron gate on the G.T. Road and such construction cannot be done in one day. The materials filed by the plaintiff do not suggest any protest by the plaintiff at that time. So, after purchase, prima facie, the petitioner did the act of possession as owner of the suit property.

20. Mr. Roychowdhury has contended that in order to decide who is in possession of the suit property, a Commissioner may be appointed by this Court and the Commissioner may be directed to decide the issue of possession. With due respect to him, I am of the opinion that the materials on record are sufficient for the disposal of the application. No Commissioner should be appointed to decide possession now.

21. The contention of Mr. Roychowdhury regarding the provisions of Sections 42 & 43 of the Electricity Act, 2003, vis-à-vis Rule 47 of the Indian Electricity Rules, 1956 as to the legal possession of the plaintiff, in my view, has been negated by the above observations.

22. Under the circumstances, the learned Trial Judge, in my view, has rightly held that the plaintiff has failed to show prima facie possession of the suit property and that the plaintiff has failed to show prima facie case to go for trial. The plaintiff has filed the documents relating to permission to obtain electricity for the suit premises for his business and some other papers-showing transactions from the suit property and, in my view, these materials and the other papers relating to transaction from the suit property shall be considered at the time of trial of the suit and so far as taking electric line to the suit premises, I find that these papers are subsequent to

the purchase of the suit property on January 6, 2011. This being the position, in my view, the learned Trial Judge has rightly held that the plaintiff has failed to show the prima facie case in support of his tenancy right. But, the Appellate Court has failed to appreciate this fact. If the injunction as prayed for is granted and rightful owner is debarred from taking steps for making construction over the said suit property and if it succeeds in the suit ultimately, in the meantime there may be increase of the price of building materials to a considerable figure as is happening now everyday. Question is who is (sic to) compensate such loss owing to price hike. So, in overall consideration, the balance of inconvenience will be in favour of the defendant/petitioner herein, if injunction is granted. Therefore, the balance of convenience in granting injunction is not, at all, in favour of the plaintiff but non-granting of injunction will be convenience for the defendant. Since the land had been purchased in a good locality on the G.T. Road for the purpose of construction of a school, certainly, if the order of status quo as granted by the learned 1st Appellate Court is maintained, it is the defendant/petitioner herein who is to suffer irreparable loss and not the plaintiff who has produced some documents which are yet to be proved at the appropriate stage of trial. Therefore, if the injunction as prayed for is withheld, the plaintiff will not suffer any irreparable loss, but, if injunction is granted it is the petitioner who is to suffer irreparable loss.

23. Therefore, even relying on the decisions referred to by Mr. Roychowdhury, in consideration of the above facts and circumstances, I am of the opinion that the findings of the learned 1st Appellate Court cannot be sustained and that the order of the learned Trial Judge on injunction matter should be sustained.

24. Accordingly, the application is allowed. The impugned order is hereby set aside.

The application for temporary injunction filed by the plaintiff/appellant/opposite party herein stands dismissed.

Considering the circumstances, there will be no order as to costs.

It is clarified that the above findings are for the purpose of the disposal of the application only and the learned Trial Judge, while dealing with the suit, shall not be swayed away by my findings.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.