

(2000) 02 CAL CK 0001

Calcutta High Court

Case No: Civil Order No. 1221 of 1999

Rekha Ghosh

APPELLANT

Vs

Chanchal Sinha Roy

RESPONDENT

Date of Decision: Feb. 16, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 151

Citation: (2000) 1 ILR (Cal) 363

Hon'ble Judges: Bhaskar Bhattacharya, J

Bench: Single Bench

Advocate: Saswata Gopal Mukherjee and Dipankar Dandapat, for the Appellant; S.N. Mukherjee, Sudip Mazumdar, R.N. Dutta and H.K. Halder, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.

The revisional application u/s 115 of the CPC is at the instance of Defendants in a suit for declaration and injunction and is directed against Order No. 32 dated May 11, 1999, passed by the learned Civil Judge, Junior Division 2nd court, Sealdha in Title suit No. 583 of 1998 thereby allowing an application u/s 151 of the CPC filed by the Plaintiffs/opposite parties permitting them to restore connection of the water pipe line without damaging or changing the present position of supply line.

2. The Plaintiffs/opposite parties filed a suit being Title suit No. 583 of 1,998 for declaration of their right, title and interest over the subject matter of the property by adverse possession and for further declaration that the present Petitioners have no right to interfere with their exclusive possession over the suit property. In the said suit, the Plaintiffs/opposite parties further prayed for permanent injunction restraining the present Petitioners, their men and agent from dispossessing the Plaintiffs from the disputed property without due process of law and also from making any obstruction by blocking the staircase for the purpose of ingress and

egress to and from the property. In the said suit, the Plaintiffs, further prayed for mandatory injunction directing the Defendants to remove the door on the first floor fixed by the Defendants.

3. The subject matter of the suit property was as follows:

All that entire second floor and staircase room on the third floor roof at 31B, Lalit Mitra Lane, P.S. Ultadanga (old Manicktala), Culcutta-4.

4. In the said suit the present Petitioners (opposite parties-Sic) filed an application u/s 151 of the CPC for restoring the water supply line from overhead tank by removing the blockage from the roof door on the third floor and the case made out by the Plaintiffs in the said application was, inter alia, follows:

a) The Plaintiffs were occupying the second floor and third floor (roof with chile ketha) and they were using water for drinking and domestic purposes by lifting water from ground floor reservoir to over head tank by a tulu pump.

b) The Defendants had intentionally on October 29, 1998, broken the water supply pipe line from the overhead tank to the Plaintiffs Portion and since then the Plaintiffs were not getting a drop of water on the second floor for any purpose.

c) The Plaintiffs tried to restore water supply line by repairing the same on November 1, 1998 but due to resistance and obstruction by the dependants on the roof door, the Plaintiffs were unable to get access on the roof with mistry. Hence the prayer for restoration.

5. The said application for restoration was opposed by the Defendants by filing written objection and supplementary objection thereby opposing the prayer of the Plaintiffs and their objections were, inter alia, as follows:

a) The Plaintiffs never got any filtered water from the overhead water reservoir affixed on the roof of the suit property. The water reservoir on the roof of the suit premises exclusively meant for the user of the Defendants and their family members.

b) The Plaintiffs were getting supply of filtered water in their occupied portion on the second floor from accumulation of water in the cistern which is situated on the ground floor (Eastern side) by lifting such water by operation of hand pump set and there was no interference with the supply of water.

c) The Plaintiffs were in possession of the second floor as a licensee and as such the claim of title by adverse possession was baseless. The Defendants are the present owners of the building.

6. An Advocate Commissioner was appointed for the purpose of ascertaining the position of the water pipe lines in the said building. It appears from the report that from a cistern placed at the ground floor, there is an existing pipe line and water

goes to the bath, privy and Kitchen on the second floor by dint of a hand pump which is the case of the Defendants. At the time of inspection, the learned Commissioner found water in the suit premises through such hand pump. In the application u/s 151 of the Code filed by the Plaintiffs, they totally suppressed this arrangement but their case was that they were getting water through reservoir placed on the third floor roof of the building by a "tulu pump". There is of course another water line from second floor to the roof but it appears from the Commissioner's report that on the roof the same is not connected with the reservoir. But there is no mention of existence of any "tulu pump" in the report of the commissioner. Moreover, the reservoir on the roof is placed on a portion which is admittedly in occupation of the Defendants and the Commissioner reached the place after opening the lock of a door on the roof and such lock was opened by the Defendants. It will not be out of place to mention here that although in the plaint, the Plaintiffs claimed adverse possession in respect of second floor and the staircase room on the roof but in the application u/s 151 of the Code they claimed possession of second floor and also "third floor (roof with chile ketha)" which is inconsistent with and in excess of the plaint case. In the plaint they never claimed right over roof except the staircase room. As indicated above, the roof is in possession of the Defendants/owners as it appears from the commissioner's report.

7. Therefore, the aforesaid facts indicate that at one point of time there was a pipe line connected with the water reservoir on the roof but at present there is no such connection and that the Plaintiffs have no possession over the said reservoir on the roof nor have they claimed any declaration of title on the basis of adverse possession over that portion of roof. Now the question is whether the Plaintiffs on these facts are entitled to the order passed by the learned trial Judge.

8. There is no dispute that the Defendants are the present owners of the building by purchase and the Plaintiffs assert title over second floor, and staircase room by adverse possession from 1950 whereas the Defendants describe them as permissive occupier. The Defendants are therefore under no legal obligation to supply water from a tank under their possession and the moment a licensee claims title adverse to the interest of the owner, such owner is entitled to revoke such licence. The learned trial Judge, it appears from the order impugned, did not demand *prima facie* proof of the alleged title of the Plaintiffs. The building is in Calcutta and as such it was the duty of the Plaintiffs to produce papers showing that they were asserting their title openly by mutating the names in the register corporation of Calcutta on payment of corporation taxes. If they had already mutated their names after acquiring title by adverse possession, they could claim water connection direct from corporation of Calcutta; otherwise, a person although claiming title by adverse possession cannot pray before court for a direction upon the recorded owner to supply water from the reservoir in possession of the owner nor can court allow such a Plaintiff to reconnect line from a reservoir in possession of Defendants which is beyond the subject matter of the suit.

9. It is now a settled law that although even a trespasser cannot be evicted except by due process of law but when such a trespasser comes before court and prays for protecting his possession against lawful owner, the court does not favour such a trespasser with an order of injunction. See [Premji Ratansey Shah and Others Vs. Union of India \(UOI\) and Others,](#)

10. The learned trial Judge therefore acted illegally and with material irregularity in allowing the prayer of the Plaintiffs although the Plaintiffs failed to prove *prima facie* title by adverse possession particularly when there is no obligation of the Defendants to supply water from their reservoir on the roof which is beyond the subject matter of the suit. Moreover, the existence of water supply in the suit property through hand pump was also suppressed by the Plaintiffs.

11. The revisional application is thus allowed, order impugned is set aside. The application filed by the Plaintiffs before the trial court u/s 151 of the Code is dismissed. The observations made herein are meant for disposal of the application filed by the Plaintiffs and will not be binding upon the court at the trial when evidence will be adduced.

12. No costs.