

(2011) 08 CAL CK 0031**Calcutta High Court****Case No:** C.O. No. 380 of 2002

Dinesh Kumar Soni

APPELLANT

Vs

Santosh Singh and Others

RESPONDENT

Date of Decision: Aug. 4, 2011**Acts Referred:**

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

Hon'ble Judges: Raghunath Bhattacharya, J**Bench:** Single Bench**Advocate:** Bidyut Kr. Banerjee and Sila Sarkar, for the Appellant; Sanjoy Ghosh and Utpal Kumar Bandyopadhyay, Kapil Chandra Sahoo, for the Respondent**Final Decision:** Allowed**Judgement**

Raghunath Bhattacharya, J.

The hearing stems from an application filed by the Petitioner praying for revision of order No. 42 dated 11.01.2002 passed by Learned Civil Judge (Junior Division), 4th Court, Sealdah in T.S. No. 19 of 1997 by way of setting aside the same, inter alia on the ground that learned Court below erred in law in not appreciating the true spirits of the order and passed an order which is conflicting in the interest of the parties to the litigation.

2. The Petitioner as Plaintiff filed a title suit being No. 19 of 1997 in the aforesaid Court praying for declaration and permanent injunction. After filing the suit Plaintiff/Petitioner moved an application for injunction and learned Trial Court by order No. 37 dated 12.01.2001 allowed the injunction application on contest and directed both sides to maintain statusquo with regard to the nature, character and possession of the suit property. The Defendant/opposite party filed a title suit being No. 71 of 1997 and also made an application for injunction and subsequently filed an application u/s 151 of the CPC praying for a direction upon the O.C. Belgharia P.S. or implementation of the order dated 12.03.2001. Learned Civil Judge passed an

order being Order No. 53 dated 11.01.2001 direct the O.C. Belgharia P.S. to implement the order dated 12.03.2001. Against such order the Petitioner moved in revision before the District Judge and learned District Judge stayed all further proceedings in Title Suit No. 71 of 1997. Thereafter by order No. 42 dated 11.01.2002 both the title Suit Being No. 71 of 2007 and 90 of 1997 was taken up for analogous hearing and after passing the order the analogous hearing it is alleged that Learned Court below took up an application u/s 151 of the CPC for hearing and allowed the application directing the O.C. Belgharia P.S. to implement the order dated 12.03.2001. According to Petitioner in Title Suit No. 19 of 1997 no application u/s 151 of CPC was either filed by the Petitioner or by the opposite parties.

3. On a careful scrutiny of the application an order passed by the learned Court below it appears to me that over the self same property learned Trial court passed two injunction orders. One i.e. the order of status quo and another order of injunction restraining the Defendant to interfere the peaceful possession of the Plaintiff in respect of the suit property. In my opinion these two orders were conflicting one. If we look into the order of status quo then neither party will be able to disturb the suit premises as it is stand on the date of the order. On the other hand if we look into the order of injunction passed in the other suit then one side get an opportunity to enter in the suit premises which is contrary to the principle of natural justice. Moreover, after passing such a conflicting order the learned Trial Court passed an order of police help in order to implement the order of injunction. It appears to me that learned Trial Court made an unintentional mistake by passing the order of police help. Without appreciating the facts and circumstances of both the suit and without look into the order of injunction passed in Suit No. 19 of 1971 it is neither wise nor proper for the Court below to pass an order of injunction.

4. Learned Counsel Mr. Banerjee appearing for the Petitioner contended that during his long practice is seldom comes across such an order. Moreover he has pointed out that the order required to be moved otherwise it will cause miscarriage of justice. On the other hand learned Lawyer for the O.P. Mr. Jana contended that there is nothing wrong in the order and interest of the opposite party in respect of the suit property must be practiced.

5. Considering the submission of the both side I think that both side should be given an opportunity to agitate the prayer for police help before the Court below afresh. Meanwhile both sides will not disturb the right and interest of the other side. In view of the aforesaid submission the Civil Revision is hereby allowed. The order of police help passed by the Court below is hereby set aside. Learned Trial Court hereby directed to hear the application of police help within 15 days from the date of communication of the order and after giving an opportunity to the both side for hearing and passed a reasoned order in accordance with the law.

6. Urgent photostat certified copy, if applied for, be handed over to the parties as early as possible.