

S.k. Joynal Abedin and Others Vs Mohammad Abdul Salam and Others

Court: Calcutta High Court

Date of Decision: Oct. 4, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 151

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Sulekha Mitra, for the Appellant; Samapti Chatterjee and Mr. Musarraff Alam Sk., for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

Challenge is to the Order No. 19 dated May 25, 2011 passed by the learned Civil Judge (Junior Division), 1st Court,

Malda in O.C. Case No. 39 of 2010 thereby allowing an application u/s 151 of the CPC for police assistance. The plaintiffs/opposite parties

herein instituted a suit being O.C. Suit No. 39 of 2010 against the petitioners and others for decree of declaration that the property described in

the Schedule to the plaint is the joint property, permanent injunction restraining the petitioners from disturbing peaceful possession of the suit

property and for other reliefs.

2. The petitioners are contesting the said suit.

3. At the time of the filing of the suit, the plaintiffs filed an application for temporary injunction and that application for temporary injunction was

disposed of on contests directing both the parties to maintain status quo with regard to the nature, character and possession of the suit property as

on date until disposal of the suit. Thereafter, the plaintiffs filed an application u/s 151 of the CPC praying for police assistance contending, inter alia,

that the defendants are trying to forcibly evict the plaintiffs from the suit property. That application was allowed by the impugned order.

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

5. Upon hearing the learned Counsel for the parties and on going through the materials-on-record, I find that the plaintiffs have contended that the

suit property as described in the schedule to the plaint belonged to Hazi Sk. Mofijuddin who had transferred the same in favour of his wife,

proforma defendant No. 4, on April 26, 2007. Thereafter, on September 5, 2007 and September 6, 2007, the proforma defendant No. 4 had

transferred the suit property in favour of the plaintiff No. 1 by two Deeds of Sale. Thereafter, some transfers took place in between the inter-

plaintiffs in respect of the suit property and thus, the plaintiffs became the owner of the suit property and they are in possession of the suit property

according to their share by way of amicable partition. The L.R. Record had been prepared in the name of the plaintiffs in respect of the suit

property.

6. On the other hand, the defendants by filing the written objection to the application has contended that although Hazi Sk. Mofijuddin, while

owning the suit property, transferred the suit property in favour of his wife, the proforma defendant No. 4, but, she did not transfer the suit

property at all. The Deeds prepared are totally fake. The proforma defendant No. 4 executed a Power of Attorney in favour of five persons who

had sold the same to nineteen transferees and these transferees are in possession of the suit property. According to the contention of the

defendants, there is no bamboo pole in the suit property and there are houses/huts on the suit property. Upon due consideration of the contentions

of the respective parties, the learned Trial Judge granted the order of status quo.

7. Thus, from the facts as noted above, it appears that there is a controversy as to which party is in possession of the suit property. Unless trial is

held it cannot be possible to decide actually who is in possession of the suit property.

8. Ms. Sulekha Mitra, learned Advocate appearing for the petitioners, has contended that since there is no specific finding in the impugned order

as to which party is in possession, it will not proper to grant police assistance and in support of her contention, she has relied upon the decision of

Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh, and thus, she has submitted that order of status quo is not proper when specific

finding as to possession has not been decided.

9. She has also referred to the decision of Exhibitors Syndicate Pvt. Ltd. Vs. Repose Properties Pvt. Ltd. and Others, and thus, she has submitted

that the order of granting police help is not proper unless possession is determined.

10. This decision, I find, is based on the decision of Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh,

11. Ms. Mitra has also referred two other decisions reported in 2012(1)CHN (CAL) 300 and 2012(3)CHN (CAL) 197 in support of her

contention.

12. Upon due consideration of the above decisions and the facts as stated above that since there is a rival claim of possession in respect of the suit

property, I am of the view that it will be highly risk to grant police assistance. Generally, when an order of status quo is granted in respect of

nature, character and possession of the suit property on a particular date in respect of the suit property, the Court must take into consideration that

the order of status quo of the suit property be maintained till the disposal of the suit and in appropriate cases police assistance may be rendered for

implementation of the order of status quo. But, in the instant case as noticed above, since the suit is for declaration and permanent injunction as

noted above and there is a cloud as to the possession of the suit property by the parties, I am of the view that it will not be proper to grant any

police assistance. It is the specific contention of the defendants that the proforma defendant No. 4 did not transfer the suit property, at all, to the

plaintiff No. 1 as alleged, but, to other nineteen persons and those transferees have their homestead on the suit property.

13. So, this being the position, I am of the view that there should not be any order of rendering police assistance in such circumstances.

14. The application is, thus, allowed.

15. The impugned order is hereby set aside.

16. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the

learned Advocates for the parties on their usual undertaking.