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(2012) 10 CAL CK 0070

Calcutta High Court

Case No: C.O. No. 2000 of 2011

S.k. Joynal Abedin and

Others

APPELLANT

Vs

Mohammad Abdul Salam and Others

RESPONDENT

Date of Decision: Oct. 4, 2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Section 151

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Sulekha Mitra, for the Appellant; Samapti Chatterjee and Mr. Musarraf 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 filling 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 <u>Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh</u>, 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 <u>Exhibitors Syndicate Pvt. Ltd. Vs. Repose Properties Pvt. Ltd. and Others</u>, 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 <u>Kishore Kumar Khaitan and Another</u> 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.