

(1982) 08 CAL CK 0018

Calcutta High Court

Case No: None

Bagala Prasanna
Ghosh

APPELLANT

Vs

Islam Mallick and
Another

RESPONDENT

Date of Decision: Aug. 18, 1982

Acts Referred:

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

Citation: 88 CWN 361

Hon'ble Judges: N.C. Mukherji, J

Bench: Single Bench

Advocate: Puspendu Bikash Shau and Sudhakar Biswas, for the Appellant;

Final Decision: Allowed

Judgement

Nirmal Chandra Mukherji, J.

The notice of this Rule was duly served on the opposite parties but the opposite parties do not appear to oppose the Rule. This Rule arises on an application u/s 115 of the Code and is directed against order No. 15, dated 10th of November 1981 passed by Shri P.C. Choudhury, Munsif, 1st Court, Kandi, in Title Suit No. 134 of 1981.

2. The plaintiff filed a suit for declaration of title, injunction and for other reliefs. After institution of the suit the plaintiff filed an application for injunction and by order No. 4, dated 2nd of September 1981 the learned Munsif granted interim order of injunction restraining the defendants from interfering with the plaintiff's possession in respect of the disputed lands till the disposal of the application. On November 3, 1981 an application was filed by the plaintiff praying for police help so that the plaintiff may peacefully possess the property, as it was alleged, that in spite of the ad interim order of injunction the defendants were threatening to reap paddy which was grown by the plaintiff on the suit plots. The said application and the injunction matter were heard together and the learned

Munsif disposed of the injunction matter and the application referred to above by his order dated 10th of November 1981. The learned Munsif found that the defendants were not in possession of the property, that the plaintiff succeeded in proving that he had a prima facie case, that the balance of convenience was in favour of the plaintiff and that the plaintiff was entitled to get an order of injunction. Relying on a decision reported in 1980(1) CHN 18 (Haradhan Chongdar -Vs- Jitendra Nath Hambir) the learned Munsif without granting injunction directed the parties to maintain status quo in respect of the suit properties as on the day of passing the order till the disposal of the suit. The petition for police help was dismissed as injunction was not granted. Being aggrieved by the aforesaid order the plaintiff has come up to this court.

3. Mr. P.B. Sahu, learned Advocate appearing on behalf of the petitioner places before me the order dated 10.11.81. The learned Munsif finds that the certified copy of the order dated 29.6.81 passed in C.R. No. 4851 (w) of 1981 clearly reveals that the names of the defendants were not recorded as bargadars in respect of the suit property till on that date. The learned Munsif also found.

By no stretch of imagination the defendants can be considered to have been in possession of Kha Schedule properties as bargadars under the plaintiff for the last 20 years.

4. The affidavits filed on behalf of the defendants could not be relied on by the learned Munsif and the learned Munsif found that the plaintiff prima facie established that the defendants were not in possession of the suit properties. The learned Munsif finally finds "I hold, prima facie, that the plaintiff has been in khas possession of the suit properties and the defendants do not possess the same. The plaintiff has nicely made out a prima facie case in support of his prayers for temporary injunction. In the above circumstances if prayer for injunction is not allowed the plaintiff will be compelled to live in starvation, as he will not get the entire usufructs of the suit properties and this may cause him irreparable injury which cannot be mitigated by money value. On the contrary, the defendants who prima facie appear not to have been in possession of the suit properties will not be prejudiced if injunction is allowed. Considering the balance of convenience and inconvenience of the parties I find that inconvenience lies heavily on the side of the plaintiff. In the above circumstances, the plaintiff is entitled to temporary injunction and police help as prayed for. After finding, thus as has been stated earlier, the learned munsif refused to grant injunction and police help simply relying on the decision in the case of Haradhan Chongdar -Vs- Jitendra Nath Hambir, reported in 1980(1) CHN 18. In this case the defendants raised a dispute regarding barga right. The matter was referred to u/s 21 (3) of the Land Reforms Act. In this case it was held that even in such a case the jurisdiction of the Civil court is not ousted merely because a disputed question as to the status of the defendant who claims to be a bargadar is referred to the competent authority, for decision. Even when such a reference is made the Court is in seisin of the suit and has to dispose of the same after the decision by the authority is received. I do not see how this decision prevented the learned Munsif to grant and order of injunction when

he himself found all the points in favour of the plaintiff. I am, therefore, of opinion that the learned Munsif ought to have granted injunction in favour of the plaintiff.

5. With regard to the police help Mr. Sahu Submits on the authority of a decision made in the case of Jaishi and others vs. Salig Ram, reported in AIR 1981 NOC 88 (Himachal Pradesh) that the Civil Court has jurisdiction in appropriate cases to pass an order for police help. It has been held :

In order to do justice between the parties or to prevent the abuse of process of the Court, the Civil courts have ample jurisdiction u/s 151, CPC to give directions to the police authorities to render aid to the aggrieved parties with regard to the implementation of the orders of injunction passed by the Court or the exercise of the rights created under orders of injunction passed by the Court. The police authorities owe a legal duty to the public to enforce the law.

6. In the present case, after the order of ad interim injunction was passed the plaintiff came with the allegations that the defendants were threatening to dispossess him and the plaintiff apprehended that he will not be able to possess the suit property peacefully. In such circumstances, the Munsif, was prayed for granting police help. The learned Munsif was also of the view that the plaintiff was entitled to temporary injunction and police help, as prayed for. In the result, the application succeeds and the Rule is made absolute. The order passed by the learned Munsif is set aside. Plaintiff's application for temporary injunction is allowed. The ad interim order of injunction passed on 2.9.81 is made absolute. With regard to police help, the plaintiff will be at liberty to renew his application if it be necessary for the plaintiff, at this stage, to file such an application. If such an application is filed, the learned Munsif is to disposed of the same. As has been stated already, in my opinion, the learned Munsif is not prevented from granting police help in an appropriate case. There will be no order as to costs, in this Rule.