

(1998) 01 CAL CK 0020**Calcutta High Court****Case No:** Civil Order No. 2982 of 1997

Bimal Kumar Rakshit

APPELLANT

Vs

Prakash Kumar Mitra

RESPONDENT

Date of Decision: Jan. 16, 1998**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115, 144, 145, 145(6)
- Specific Relief Act, 1963 - Section 41

Citation: (1998) 2 ILR (Cal) 551**Hon'ble Judges:** Bhaskar Bhattacharya, J**Bench:** Single Bench**Advocate:** S. Das Gupta and Sambuddha Chakraborti, for the Appellant; S.P. Roychowdhury, A. Goswami and Tapati Chatterjee, for the Respondent**Final Decision:** Dismissed**Judgement**

Bhaskar Bhattacharya, J.

This revisional application u/s 115 of the CPC is at the instance of a Defendant in a suit for declaration of title and permanent injunction and is directed against Order No. 8 dated August 29, 1997 passed by the learned District Judge, Hooghly in Misc. Appeal No. 69 of 1997 thereby setting aside the Order No. 20 dated July 22, 1997 passed by the learned Civil Judge, Junior Division, 1st Court, Hooghly in title Suit No. 120 of 1997.

2. It appears from the record that the present Petitioner filed an application u/s 144 of the Code of Criminal Procedure before the Court of Executive Magistrate which was ultimately converted into a proceeding u/s 145 of the Code of Criminal Procedure as according to the Petitioner, he was dispossessed during the pendency of the proceeding. The aforesaid proceeding gave rise to M.P. Case No. 1010 of 1994.

3. After contested hearing the Executive Magistrate, Hooghly held that the Petitioner was previously in actual possession of the suit property and the opposite party No. 1 forcibly dispossessed the Petitioner during the pendency of the proceedings. By the said order dated June 5, 1995 the opposite party No. 1 was directed to deliver possession of the disputed property to the Petitioner within one month from the date of receipt of the said order.

4. Thereafter on an application of the opposite party No. 1, the District Magistrate withdrew the file of the case to himself and dismissed the application u/s 145 of the Code of Criminal Procedure.

5.. Being aggrieved by the order passed by the District Magistrate, the present Petitioner filed a criminal revisional application before this Court and this, court set aside the order passed by the District Magistrate and the Executive Magistrate was directed to give effect to the earlier order dated June 5, 1995.

6. Immediately thereafter the present opposite parties filed the aforesaid Title Suit No. 120 of 1997 against the Petitioner for declaration of title to the suit property and also for permanent injunction restraining the "Petitioner from proceeding with the aforesaid M.P. Case No. 1010 of 1994 for giving effect to the order dated June 5, 1995 passed in the said case by the Executive Magistrate.

7. In the aforesaid suit the opposite parties filed an application for temporary injunction restraining the Petitioner from further proceeding with the M.P. Case No. 101.0 of 1994 for the purpose of giving effect to the order dated June 5, 1995. In the said application the opposite parties claimed that they had become owner of the suit property by virtue of purchase from the heirs of original owner of the suit property viz. Sadhu Charan Mukherjee.

8. The Petitioner contested the said application by filing written objection thereby opposing the prayer of the opposite parties and the defence of the Petitioner was. that he was running medicine shop in the suit property from 1976 after taking permission from the original owner of the suit property.

9. The learned trial Judge by Order No. 20 dated July 22, 1997 rejected the prayer of the opposite parties for temporary injunction. In rejecting the said application the learned Trial Judge held that in view of Section 41(b) and (d) of Specific Relief Act, 1963, no order of injunction can be passed to restrain a person from instituting or prosecuting any proceeding in a court not subordinate to that in which the injunction is sought and to restrain any person from instituting or prosecuting any proceeding in criminal matter. According to the learned Trial Judge in view of the aforesaid provisions he could not pass any order of injunction in favour of the opposite parties thereby restraining the Petitioner from proceeding with the M.P. Case No. 1010 of 1994 for the purpose of giving effect to order dated June 5, 1995.

10. Being dissatisfied, the opposite parties preferred an appeal being Misc. Appeal No. 69 of 1997 which has ultimately been disposed of by the order-impugned and the learned District Judge by the said order has allowed the appeal thereby granting an order of injunction restraining the Petitioner from proceeding with M.P. Case No. 1010 of 1994 for implementation of order dated June 5, 1995 passed therein.

11. Mr. Dasgupta, the learned senior advocate in support of the instant application has firstly contended that the learned District Judge acted illegally and with material irregularity in granting-an order of temporary injunction in clear violation of Section 41(b) and (d) of the Specific Relief Act. Mr. Dasgupta further contends that in a proceeding u/s 145(6) of the Code of Criminal Procedure an order of restoration having been passed, it was not competent for a Civil Court to pass an order of injunction thereby preventing implementation of the said order. Mr. Dasgupta further contends that even assuming for the sake of argument that a Civil Court can pass such an order, in that event, a very strong *prima facie* case was required to be established and the opposite parties having failed to prove such a strong *prima facie* case, the learned Court of Appeal below acted illegally and with material irregularity in passing an order of temporary injunction.

12. Mr. S.P. Roychowdhury, the learned senior advocate appearing on behalf of the opposite parties on the other hand has supported the order passed by the learned District Judge and has contended that the Petitioner in his written objection to the application for temporary injunction having failed to prove any *prima facie* title over the suit property, the learned District Judge rightly granted an order of temporary injunction.

13. So far the first two contentions of Mr. Dasgupta are concerned, it is now settled by a Division Bench decision of this Court in *Zamila Khatoon v. Umar @ Munna* 85 C.W.N. 940. that existence of an order u/s 145(6) of the Code of Criminal-Procedure is no bar for granting an order of temporary injunction by a Civil Court, provided of course, that a very strong *prima facie* case has to be made out. In the instant case it appears from the written objection of the present Petitioner to the application for temporary injunction filed by the opposite parties that the present Petitioner did not dispute the title of Sadhu Charan Mukherjee over the suit property. The Petitioner simply stated that he was carrying on a business in a part of the suit property from 1976 with the knowledge of Sadhu Charan Mukherjee. There is no dispute that the opposite parties have purchased the suit property from the heirs of Sadhu Charan and had mutated their name in the local Municipality. It may be mentioned here that the Petitioner could not prove any title over the suit property excepting his allegation that at one point of time he was in possession of the suit property. It is now well settled that a party in possession of a suit property can preserve his possession against whole world except the true owner thereof. There is no dispute that at present the opposite parties are in possession of the suit property. The fact that the Petitioner was dispossessed from the suit property has been established in

a proceeding u/s 145 of the Code of Criminal Procedure cannot by itself stand in the way of granting an Order of temporary injunction and the said finding is not binding on a Civil Court adjudicating the title of the parties. There is no dispute that a Civil court is entitled to grant an order of injunction for the purpose of maintaining status quo over the suit property provided prima facie case of the Plaintiff is established and the other two factors viz. balance of convenience and inconvenience and question of irreparable loss and injury are also found in favour of the Plaintiff. As indicated above the Plaintiffs prima facie title to the suit property has been established. It is also undisputed that Plaintiffs are at present in possession of the suit property. In view of the aforesaid fact, the first appellate court being the final court of fact having granted temporary injunction for the purpose of preserving status quo, in my opinion, sitting in revision I should not interfere with such finding of fact arrived at by the first appellate court which has been passed after applying proper tests which are required to be followed by a court disposing of an application for temporary injunction. The view taken by the first appellate court cannot be said to be a perverse one. It may be mentioned here that the learned Trial Judge patently refused to exercise jurisdiction vested in him by holding that in view of Section 41(b) and (d) of the Specific Relief Act, no order of injunction can be passed by a Civil Court against a person who obtained an order u/s 145(6) of the Code of Criminal Procedure. As indicated earlier in view of the Division Bench decision in Zamila Khatoon(Supra) existence of such order is not an absolute bar. In this case the Petitioner could not prima facie show better title than the opposite parties. On the other hand, the opposite parties have shown prima facie title to the suit property and they are admittedly in possession of the same. Under such circumstances in my opinion, the learned first appellate court rightly passed an order of temporary injunction thereby maintaining status quo till the disposal of the suit.

14. Thus, on consideration of the entire materials on record I find no merit in the instant revisional application and as such the same is dismissed.

15. I direct the learned Trial Judge to dispose of the suit as expeditiously as possible.

16. There will be, however, no order as to costs.