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Calcutta High Court

Case No: F.M.A. No. 1307 of 2011

Soumitra Dey — APPELLANT

Vs

Anima Dey and Others — RESPONDENT

Date of Decision: Nov. 22, 2013

Citation: (2014) 1 CHN 432

Hon'ble Judges: Jyotirmay Bhattacharya, J; Arindam Sinha, J

Bench: Division Bench

Advocate: Amrita Lal Dhar, for the Appellant;Shyamal Chakraborty, for the Respondent

Final Decision: Disposed Off

Judgement

Jyotirmay Bhattacharya, J.
This First Miscellaneous Appeal is directed against an order being Order No. 3 dated 6th August, 2011 passed by the learned Judge, 12th Bench, City Civil Court at Calcutta in Title Suit No. 1504 of 2011 at the instance of the defendant No. 1/appellant. The plaintiff and the defendant No. 1 are closely related to each other. In fact, the defendant No. 1 is the younger son of the plaintiff. The proforma defendant No. 5 is the eldest son of the plaintiff. The plaintiff filed this suit praying for declaration that the plaintiff is the proprietor of the business carried on under the name and style of M/s. Ramendranath Jagabandhu Dey situated at premises No. 106, Pandit Purusattam Roy Street, Calcutta-700007 and she is also a lawful tenant in respect of the suit shop room described in the schedule of the plaint under the defendant Nos. 2, 3 and 4.

2. The plaintiff has also prayed for a decree for permanent injunction for restraining the defendant No. 1, his men, agents and associates from obstructing and/or interfering with the peaceful possession of the plaintiff in respect of the said suit shop room and/or from disturbing the plaintiff in smooth running of her business in the said shop room under the name and style of M/s. Ramendranath Jagabandhu Dey in any way whatsoever.

3. Relief by way of mandatory injunction was also sought for against the defendant Nos. 2, 3 and 4 for directing them to grant rent receipt in respect of the suit shop room in

favour of the plaintiff.

4. Other incidental reliefs were also claimed in the said suit.

5. After filing the said suit, the plaintiff filed an application for temporary injunction under Order 39 Rules 1 and 2 of the Civil Procedure Code, inter alia, praying for temporary injunction for restraining the defendant No. 1 from interfering with the plaintiff''s possession in the suit property and/or from causing any interference with the smooth running of the business by the plaintiff therein.

6. Temporary injunction has also been sought for restraining the defendant Nos. 2, 3 and 4 from granting rent receipt in respect of the suit shop room in favour of the defendant No. 1 and/or from accepting rent in respect of the suit shop room from the defendant No. 1.

7. Ad interim order of injunction was also sought for in similar term.

8. The defendant No. 1 appeared in the said suit and contested the injunction proceeding by filing objection denying the allegations made by the plaintiff in the said injunction petition.

9. In view of urgency involved in the said proceeding, the learned Trial Judge even before service of notice relating to temporary injunction proceeding was effected upon the defendant Nos. 2, 3 and 4, considered the plaintiff''s application for temporary injunction on the basis of the pleadings submitted by the plaintiff and the defendant No. 1 in connection with the said injunction proceeding.

10. Though the learned Trial Judge held prima facie that the plaintiff is the tenant of the suit shop room and she is the owner of the said business and mere allowing her son viz., defendant No. 1 to run the said business does not amount to delivery of possession and/or parting with possession of tenancy, still then the learned Trial Judge, instead of passing a temporary injunction against the defendant No. 1 from disturbing the plaintiff''s possession in the said shop room and/or from creating obstruction in smooth running the business therefrom by the plaintiff, directed the plaintiff and the defendant No. 1 to maintain status quo as regards possession in the suit shop room as well as running of the business therein for a period of three weeks from the date of passing of the said order.

11. Direction for issuance of notice upon the defendant Nos. 2, 3 and 4 calling upon them to file show cause within 15 days from the date of receipt of such notice as to why the plaintiff''s prayer for temporary injunction shall not be granted, was given by the learned Trial Judge in the said order.

12. Simultaneously with issuance of such direction for showing cause by the said defendant Nos. 2, 3 and 4 in the said injunction proceeding, the injunction application was also held to be disposed of.

13. However by a subsequent order passed by the learned Trial Judge on 23rd August, 2011, the earlier order was corrected by holding that the application for injunction which was made returnable on 2nd September, 2011 still remains pending.

14. The legality and/or propriety of the said interim order of status quo passed by the learned Trial Judge is under challenge in this First Miscellaneous Appeal at the instance of the defendant No. 1.

15. We have heard the learned advocates of the parties. We have considered the materials on record.

16. Having regard to the fact that admittedly the father of the defendant No. 1 who was the tenant of the said suit shop room under defendant Nos. 2, 3 and 4 and the owner of the business carried on in the said shop room under the name and style of M/s. Ramendranath Jagabandhu Dey died testate bequeathing his tenancy and his said business in favour of his wife, the plaintiff herein and the Will left by him having been probated by the City Civil Court at Calcutta in Probate Case No. 52 of 2005 with the consent of the defendant No. 1 and the proforma defendant No. 5 and the rent receipt also having been subsequently issued in favour of the plaintiff recognizing her as the tenant of the suit shop room, this Court has no hesitation to hold prima facie that the plaintiff is the recognized tenant in respect of the suit shop room and she has also become the owner of the said business by virtue of the probated Will left by the admitted owner thereof since the time of the death of her husband.

17. A trade licence was also issued in favour of the plaintiff by the municipal authority authorizing her to carry on business in the said shop room. Though subsequently the defendant No. 1 somehow or other managed to obtain rent receipt issued in his own name by the defendant Nos. 2, 3 and 4, but such issuance of rent receipt in favour of the defendant No. 1 alone, in our prima-facie view, cannot be accepted as evidence for creation of his tenancy in the suit shop room, in the absence of any evidence that the tenancy which was earlier created in favour of the plaintiff, was surrendered by her or the same was otherwise extinguished.

18. As such, even though we believe the defence case that the defendant was permitted to run the said business and in fact he has been running the said business since the lifetime of his father, but such running of the said business by the defendant No. 1 with the permission of the owner thereof does not amount to parting with title and/or possession by the plaintiff in favour of the defendant No. 1, as rightly held by the learned Trial Judge. As such the ownership of the said business and the tenancy in respect of the suit shop room still remain with the plaintiff.

19. Subsequent issuance of rent receipts by the defendant Nos. 2, 3 and 4 in favour of the defendant No. 1 and/or the trade licence issued by the Municipal authority in favour of the defendant No. 1 cannot affect the plaintiff''s right in her said tenancy and/or her

ownership in the said business which devolved upon her by virtue of the Will left by her husband.

20. As such, this Court has no hesitation to hold that the plaintiff at least has succeeded in proving a strong prima-facie case regarding her ownership in the said business and her tenancy in respect of the said shop room. Balance of convenience and inconvenience is also in her favour as, in case she is not allowed to run her business, she will suffer irreparable loss and injury.

21. Under such circumstances, we modify the impugned order by restraining the defendant No. 1/appellant from disturbing the plaintiff''s possession in the said shop room and/or from creating any obstruction in smooth running of the business by the plaintiff in the said shop room till the disposal of the suit.

22. We further hold that the learned Trial Judge was not justified in limiting the interim order to one of status quo for a period of three weeks only as nothing more was left out to be considered by the learned Trial Judge at the interlocutory stage so far the rights of the parties between the plaintiff and the defendant No. 1 is concerned after the learned Trial Judge came to the said conclusion on consideration of the pleadings of those parties at the interlocutory stage.

23. The plaintiff is thus permitted to remove all padlocks which were put on the main entrance of the said shop room by the defendant No. 1 and put her own padlock to protect her tenancy in the said shop room.

24. It is made clear that the findings which are arrived hereinabove, are all tentative findings of this Court and such findings are recorded only for the purpose of disposal of this appeal.

25. Since the plaintiff''s application for temporary injunction is pending for disposal before the learned Trial Judge for the limited purpose of considering the plaintiff''s interim relief against the defendant Nos. 2, 3 and 4, the learned Trial Judge is directed to expedite the disposal of the said temporary injunction application, as far as possible with reference to the interim relief''s claimed by the plaintiff against the defendant Nos. 2, 3 and 4. The learned Trial Judge is thus free to decide the said injunction application on its own merit according to his wisdom without being influenced by any of the observations made hereinabove.

26. The appeal is thus disposed of. Since we have already disposed of the appeal, no further order need be passed on the appellant''s application for enforcement of the interim order passed in this appeal as we have not maintained the said interim arrangement made by this appeal court in this appeal while disposing of the appeal itself. The said application is also disposed of.