
(2010) 10 CAL CK 0059

Calcutta High Court

Case No: C.O. No. 3622 of 2008

Smt. Gita Devi Saha
and Others

APPELLANT

Vs

Amber Tour and
Travels Pvt. Limited
and Others

RESPONDENT

Date of Decision: Oct. 6, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 6 Rule 17, 151
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Prabhat Kumar Dey, J

Bench: Single Bench

Advocate: Malay Ghosh, Debnath Ghosh, Sutapa Sanyal and P.K. Tulsian, for the Appellant; Jayanta Mitra, Soumen Sen, Arindam Banerjee, Pooja Das Choudhury and Anjana Banerjee, for the Respondent

Final Decision: Allowed

Judgement

Prabhat Kumar Dey, J.

The instant revision is directed against the judgment and order dated 11th July, 2008, passed by the learned Additional District Judge, First Court, Alipore, in Misc. Appeal No. 182 of 2008 wherein the learned court was pleased to dismiss the said Misc. Appeal.

2. The facts of the case, as it appears from the instant revisional application, are, in short, as follows:

There was an agreement for sale entered into by and between the petitioners and the opposite parties herein during the pendency of Title Suit No. 94 of 2000 pending before the 8th Court of Civil Judge, Sr. Division, Alipore and another Title Suit No. 101 of 2000 pending before the said Court.

3. In both such suits injunction was prayed for and upon hearing the application under Order 39 Rules 1 and 2, order of status quo was passed with regard to the nature, character and possession of the scheduled property in suit.

4. The petitioners were made to understand that Title Suit No. 101 of 2000 would be dismissed being not maintainable under the law as the plaintiff in that suit did not have any right and/or interest in the said suit property.

5. The facts of the former suit i.e. Title Suit No. 94 of 2000 was also similar. Under such circumstances, the petitioners were made to understand that during the pendency of the status quo entering into the agreement for sale dated 17.06.2005 disclosing all the facts would not amount to any contemptuous conduct. Accordingly, the said agreement for sale was executed whereupon the petitioners agreed to sell their respective shares in the said property, which was the subject matter of both the above referred suits specifying to the effect that the said sale shall be effected only after the schedule property is free from all encumbrances after the said suits are disposed of in favour of the petitioners/vendors.

6. Furthermore, it was specifically made clear that the said agreement for sale is strictly dependent on the vacating the interim order and dismissal of both the above referred suits and as such, until and unless favourable orders are received, the agreement dated 17.06.2005 shall not be performed.

7. After discussion by and between the petitioners and the opposite parties, the opposite parties accepted the said proposal. However, the opposite parties opted to harass the petitioners and filed a title suit being Title Suit No. 39 of 2007 against the petitioners before the Third Court of Civil Judge, Junior Division, Alipore with a prayer for declaration and injunction.

8. After instituting the suit, the opposite parties filed an application under Order 39 Rules 1 and 2 read with Section 151 of the CPC praying for temporary injunction. The petitioners filed objection to the application for temporary injunction. The learned Civil Judge (Junior Division), Third Court, Alipore, after hearing the application for injunction, was pleased to reject the said application vide order dated 9.4.2008.

9. On 4th April, 2008, the opposite parties filed applications under Order 6 Rule 17 read with Section 151 of the CPC praying for amendment of the application for injunction and also for amendment of the plaint.

10. Being aggrieved by and dissatisfied with the order dated 9.4.2008, the opposite parties preferred appeal being Misc. Appeal No. 182 of 2008 before the learned District Judge. Subsequently the learned Additional District Judge, First Court, Alipore, in turn after hearing the appeal dismissed the same. However, the said court was pleased to direct the learned court below to dispose of the petitions for amendment of the plaint as well as the injunction petition, but directed the respondents/defendants to maintain status quo in respect of the suit property till disposal of the injunction application, by the court

below.

11. The learned Advocate, appearing on behalf of the petitioners, submitted that the learned First Appellate Court acted contradictory by allowing status quo and at the same time, directing the learned court below to dispose of the pending petitions under Order 6 Rule 17 of the Code of Civil Procedure. He further submitted that the learned court failed to appreciate that in one hand he dismissed the appeal preferred against the order of recall of the ad interim injunction granted in respect of the entire property although the defendants had 1/7th share in the property in suit. On the other hand, keeping the amendment of the plaint and injunction application pending before the said court, the learned court was pleased to add the words "status quo" to be maintained, which tantamounts to allowing the injunction petition. In support of such contentions, the learned Advocate relied upon decisions reported in [Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh](#), and [Ajay Mohan and Others Vs. H.N. Rai and Others](#),

12. It was further submitted that the learned First Appellate Court failed to appreciate and erred in not holding that the agreement dated 17.06.2005 is void for uncertainty and it is not possible to speculate about the result of the two suits being Title Suit Nos. 101 of 2000 and 94 of 2000, as referred to in the agreement.

13. Learned Advocate, appearing on behalf of the opposite parties, opposed the contentions of the learned Advocate, appearing on behalf of the petitioners. He contended that under Article 227 of the Constitution of India, although the High Court has been empowered to exercise superintendence over the subordinate courts, but such power is to be exercised most sparingly in appropriate cases. He referred to the decisions reported in AIR 1975 1297 (SC) , [Ouseph Mathai and Others Vs. M. Abdul Khadir](#), and [State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others](#), in support of his contention.

14. He further submitted that nothing wrong was committed by the learned First Appellate Court in passing the impugned order of dismissal of the appeal as well as passing an order of status quo. It is his further submission that considering the nature of the litigation in between the parties, the court rightly passed the order of status quo in the suit property.

15. On a plain reading of the plaint in connection with Title Suit No. 39 of 2007 filed by the opposite parties/plaintiffs in the Third Court of Civil Judge (Junior Division), Alipore, it appears that the defendants/petitioners and others became the joint owners in respect of the suit property after the demise of Brindaban Chandra Saha, who purchased the property in suit by a certificate sale proceeding. It also appears that the defendants have got 1/7th share in the suit property, comprising of 3 bigha 2 katah 4 chittak and 7 sq. ft. of land, and they have agreed to enter into an agreement to sell their such shares to the plaintiffs subject to vacating of the status quo order in the aforesaid suits being Title Suit No. 94 and 101 of 2000 and on such basis, a negotiation/agreement dated 17.06.2005

was executed by the defendants as vendors and plaintiffs as purchasers. It also appears that Title Suit Nos. 94 and 101 both of 2000 are still pending before the 8th Court of Civil Judge, Sr. Division, Alipore.

16. During the hearing of injunction petition in connection with Title Suit No. 39 of 2007 before the learned Civil Judge (Junior Division), Third Court, Alipore, it was brought to the notice that the said court granted interim order of injunction against the defendants in respect of the entire suit property although the defendants have only 1/7th share and thereby, he was pleased to recall the said order. The learned Additional District Judge while affirmed the impugned order passed the order of status quo. In the case reported in [Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh](#), the Hon"ble Supreme Court observed that it was not appropriate for the Additional District Judge to pass an order, simply directing the parties to maintain status quo without indicating what the status quo was, is not an order that should be passed at the initial stage of the litigation, especially when one court had found no reason to grant an ex parte order of injunction. It was further observed in that case that the court has first to consider whether the plaintiff has proved that he was in possession on the date of suit and on the date of the order and unless a prima facie finding that plaintiff was in possession on those dates, is entered, an order for interim injunction could not have been passed. In the case of *Ajay Mohan and Ors. v. H.N. Rai*, which was relied upon on behalf of the petitioners, it was observed by the Hon"ble Supreme Court that once the appeal was permitted to be withdrawn by the High Court, as such the court became functus officio. It was further observed that the High Court without hearing the parties and assigning any reason passed an order of status quo. The Hon"ble Supreme Court held that after granting permission for withdrawal of appeal, the court became functus officio. On the other hand, naturally it was contended by the learned Advocate that the learned first appellate court was not justified in passing the order of status quo after dismissing the appeal. Relying upon the case of *Babhutmal v. Laxmibai*, the learned Advocate, appearing on behalf of the opposite parties, urged before this Court that by the power of superintendence under Article 227 of the Constitution of India, the court cannot exercise its jurisdiction by interfering with the findings of fact recorded by the subordinate court. In that case the Hon"ble Supreme Court held that the High Court was not justified in interfering with the order of the appellate authority in exercise of its jurisdiction under Article 227 of the Constitution of India.

17. Another decision reported in the case of *Ouseph Mathai and Ors. v. M. Abdul Khadir*, was also cited before this Court, in this context, by the learned Advocate for the opposite parties, in support of his submission that Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which the High Court exercises the jurisdiction, but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. It was observed in the above cited case that Article 227 casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and they do not cross the limits, ensuring

the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactment creating such courts and tribunals.

18. In reply, on jurisdiction point under Article 227 of the Constitution, the learned Advocate for the petitioners placed reliance on the case of Kishore Kumar Khaitan wherein it has been clearly held that power vested under Article 227 is to be invoked only to correct errors of jurisdiction. It was further held that appellate court's order was without jurisdiction, but the High Court failed to exercise its jurisdiction under Article 227 by not setting aside that order. It was also made clear that when a court approaches the question in an improper manner, even if it comes to a finding of fact, it will still be amenable to correction at the hands of the High Court under Article 227 of the Constitution. In my mind, such principle is applicable to the present case as the learned first appellate authority committed error by passing an order of status quo after dismissing the appeal. In other words, this Court is in a position to interfere with the order impugned in exercise of its jurisdiction under Article 227 of the Constitution.

19. At this juncture, I am inclined to recapitulate the case law reported in [Ajay Mohan and Others Vs. H.N. Rai and Others](#), , wherefrom it can be safely gathered that when the court dismissing the appeal, the subsequent order of status quo practically has lost its force as the court became functus officio and no such relief of status quo should have been granted. There is also no finding of the said learned court that the opposite parties/plaintiffs have made out any prima facie case that they are in possession of the suit property in any way and accordingly, the decision reported in [Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh](#), supports the case of the petitioners.

20. In the light of the foregoing discussion and considering the materials available on record, I am of the view that the learned Additional District Judge, First Court, Alipore was not correct in passing the order of status quo after dismissing the appeal and accordingly, interference of this Court is very much needed and as such, the impugned order is liable to be set aside.

21. In the result, the instant revisional application succeeds and the order impugned is hereby set aside. But considering the circumstances, there will be no order as to costs.

22. Urgent Xerox certified copy of this order may be supplied to the learned Advocates of the respective parties, if the same is applied for.