Sailendra Singh Vs Rabindra Singh and Another

C.O. No. 2585 of 2013

Court: Calcutta High Court

Date of Decision: Aug. 26, 2013

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 39 Rule 2A, 151

Citation: (2013) 08 CAL CK 0096

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Probal Kumar Mukherjee, Mr. B. Bhattacharya, Mr. Debanik Banerjee and Mr. Arkaprava Sen, for the Appellant;S.P. Roychowdhury, Ganesh Srivastava and Mr. Sukanta Das for Opposite Party No.1, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.
Challenge is to the Order No. 100 dated June 13, 2013 passed by the learned Civil Judge (Senior Division), Sealdah

in Title Suit No. 6 of 2006 thereby allowing an application u/s 151 of the C.P.C. filed by the plaintiff for implementation of the order of injunction.

The plaintiff/opposite party herein instituted the aforesaid suit for permanent injunction restraining the defendants from encroaching "A" and "A1"

schedule of properties and also from raising any kind of construction on "A" and "A1" schedule of properties and disturbing the possession of the

plaintiff. An order of injunction has been granted by the First Appellate Court in Misc. Appeal No. 102 of 2006 arising out of that suit. On the

allegation of the plaintiff to the effect that the said order of injunction is not being complied with by the defendants, an application u/s 151 of the

C.P.C. filed by the plaintiff was allowed by the impugned order directing the Officer-in-Charge, Maniktala P.S. to render necessary police help for

the purpose of implementation of the order of injunction passed in the Misc. Appeal. Being aggrieved, this application has been preferred by the

defendant no. 1.

2. Now, the question is whether the impugned order should be sustained.

3. Having heard the learned Advocates of both the sides and on perusal of the materials on record, I find that the facts as recorded above are

correct. The First Appellate Court allowed the said Misc. Appeal No. 102 of 2006 on May 5, 2008 on contests without costs. Both the parties

had been directed to maintain status quo in respect of possession, nature and character of "A" and "A1" schedule of properties till the disposal of

the suit. The said order has not been set aside.

4. Mr. Probal Kumar Mukherjee, learned Advocate appearing for the petitioner, has contended that the prayer for police help for implementation

of the order as made in the application is not maintainable. If the plaintiff thinks that the order of injunction in the nature of status quo has been

violated, appropriate steps may be taken under Order 39 Rule 2A of the C.P.C. and thus, he has submitted that the impugned order should be set

aside. With due respect to Mr. Mukherjee, I am of the view that this submission cannot be accepted.

5. In the case of violation of the order of injunction, no doubt, the aggrieved party is at liberty to take appropriate steps under Order 39 Rule 2A

of the C.P.C. and even appropriate punishment may be awarded against the person who has violated the order of injunction. But, in that case,

appropriate relief may not be rendered to the plaintiff to justify the sufferings that the aggrieved party, i.e., the plaintiff may suffer. In order to get

the relief, the plaintiff may take appropriate steps u/s 151 of the C.P.C. for implementation of the order with the help of the police.

6. Accordingly, I am of the view that the impugned order does not suffer from any illegality or material irregularity. There is no scope of

interference with the impugned order.

7. The application is, therefore, dismissed.

8. 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.