
(2003) 09 CAL CK 0001
In the Calcutta High Court
Case No : F.M.A.T. No. 2584 of 2003

Bijan Behari Manna

APPELLANT

Vs

Sudhir Chandra Maity and Others

RESPONDENT

Date of Decision : 22-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (2004) 1 CHN 19

Hon'ble Judges : Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : S.P. Roychowdhury, Ashok Kumar Jana and Pampa Dhabal, for the Appellant; Mrinal Kanti Roy and Soumen Kumar Dutta, for the Respondent

Judgement

D. K. Seth, J.—This appeal will be heard.

Let the records be called for.

Notice need not be issued since Mr. Roy appears on behalf of the respondents.

Re: CAN 8170 of 2003

2. When this application was being opposed by Mr. Roy, virtually he had addressed on the merit of the appeal. Mr. Roychowdhury when contesting the same had also addressed the Court on merit of the appeal itself. Therefore, by consent of parties, the appeal is treated as on day's list for hearing.

3. It appears that in a suit for partition, the respondents had filed an application for injunction. Though this application for injunction was pending for a long time but no interim order was granted for some reason or other. The appellant filed an application u/s 24 of the CPC (CPC) before the learned District Judge, whereupon the records were called for by the learned District Judge. C. O. 1761 of 2003 was moved by the respondent before this Court. This was disposed of on 20th August, 2003. In the said order it was directed that the learned District Judge may pass appropriate order considering the application for injunction made by

the respondents. On 25th August, 2003 when the application u/s 24 of the CPC was fixed, the appellant filed an application for adjournment. This was objected to by the respondents. After hearing the parties, the application for adjournment was allowed. However, the learned District Judge had directed maintenance of status quo with regard to the possession, nature and character of the suit property till the hearing of the application for injunction and fixed the application for injunction for hearing on 20th September, 2003. This is the order, which has since been appealed against.

4. Admittedly, the application pending before the learned District Judge was an application u/s 24 of the CPC out of which J-Misc. Case No. 86 of 2003 was registered. The records of the suit were called for by learned District Judge. Admittedly, no order transferring the suit to the file of the learned District Judge has been passed. The order that has been passed appears to have been passed in a Misc. case, not in the suit, while passing an order on an application for adjournment. The injunction application was not before the learned District Judge. Neither he could fix the hearing of the injunction application without transferring records of the partition suit to his own file.

5. The scope of the jurisdiction conferred upon the learned District Judge u/s 24 CPC is confined to the consideration as to whether the records should be transferred from one Court to other or to the file of the learned District Judge itself. Admittedly, the learned District Judge is the appellate authority from the Court before which the suit was pending. There is no scope for granting injunction in a Misc case u/s 24 of the CPC and that too on an application for adjournment until the suit is transferred to its own file.

6. That apart, the order that has been passed seems to have been passed without any application of mind. Inasmuch as the injunction application was not pending before the learned District Judge. The order has been passed in a Misc. case on the injunction petition and till the hearing of the injunction petition and the injunction petition was fixed on 20th of September, 2003, which it could not do without transferring the suit to its own file and that too before the Appellate Court. If he had transferred the suit, he would have transferred the suit to another Judge of co-ordinate jurisdiction but not to the Appellate Court. Therefore, there was no scope for fixing any date for hearing injunction application which was not pending before him though the record might be before him.

7. Mr. Roy had attempted to make a capital out of the order dated 20th August, 2003 passed in C. O. No. 1761 of 2003. This order had directed the learned District Judge to pass appropriate order considering the application for injunction made by the respondents. The direction was to pass an appropriate order on the injunction application. Every order is required to be interpreted having regard to the facts and circumstances of the case and the context in which it is passed. This appropriate order is to be understood to be an order, which the learned District Judge was competent to pass in respect of the application for injunction

made by the respondents. This order does not imply that the learned District Judge will assume jurisdiction in respect of a matter, which is beyond its competence. An order of the Court can never be interpreted to authorize a Court to pass an order, which the Court is incompetent to pass. An order passed by the Court does not create jurisdiction when the Court upon whom the direction is given has none. The learned District Judge was free to pass an appropriate order. In these circumstances, the appropriate order that could have been passed by the learned District Judge on the application for injunction made by the respondents would have been an order remitting the record to the original Court, directing the Court to pass an appropriate order on the injunction application or by passing immediate order of transfer to some other Court with direction to decide the application for injunction. The indication in the order dated 20th August, 2003 was sufficient hint to the learned District Judge for disposal of the application u/s 24 immediately. It ought not have adjourned the matter. It should have disposed the matter on merit either allowing or rejecting it. Even if the adjournment was allowed, the records ought to have been remitted to the Court from which it was called for with a direction for disposing of the application for injunction forthwith. Filing of an application u/s 24 does not operate as a stay unless the Court specifically passes an order of stay. It is also not an appeal, which will enable the Court to call for the records in normal course. The Court is empowered and free to call for the records, if it requires, to look into the same. But that does not mean that it would withhold the record and forestall the further proceedings without specific order of stay, and that too in appropriate cases when the circumstances so warrant, simply by calling for the records and keeping the same pending before it. Therefore, we do not find any justification in the passing of the order, which the learned District Judge had passed on an injunction application in respect of which it had no jurisdiction since normally the learned District Judge being the Appellate Court could not have transferred the case to its own file.

8. In the circumstances, the order so far as it relates to the injunction application and the grant of order for maintenance of status quo cannot be sustained. Neither it could fix the injunction application for hearing before it. In the circumstances, we set aside the impugned order only to that extent directing the learned District Judge to dispose of the application u/s 24 on or before 7th of November, 2003 in accordance with law.

9. However, Mr. Roy had contended that the appellant is attempting to make construction over the suit property which is an imminent danger for which injunction was called for. Mr. Roychowdhury, on the other hand, contends that construction is almost complete and it is going on for a long time. However, Mr. Roychowdhury contends that it may be recorded that his client will not claim any equity with regard to the construction made with regard to the suit property. Therefore, as submitted, it is hereby recorded that Mr. Roychowdhury's client shall not be entitled to claim any equity in respect of the construction made on the disputed property. In the circumstances, the appeal and the application are

thus disposed of as indicated above.

10. There will be no order as to costs.

11. This order is passed without prejudice to the rights and contentions of the respective parties.

12. Let xerox plain copies of this order, duly countersigned by the Assistant Registrar (Court), be supplied to the learned Counsel appearing on behalf of the parties on their usual undertakings.

R. N. Sinha, J.

13. I agree.