

(2002) 03 CAL CK 0020
In the Calcutta High Court
Case No : C.O. No. 733 of 1997

Kamala Dutta alias Sujaya Dutta and Others

APPELLANT

Vs

Parbati Banerjee and Others

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2002) 2 CALLT 465

Hon'ble Judges : Asit Kumar Bisi, J

Bench : Single Bench

Advocate : Sabyasachi Bhattacharya, for the Appellant; S.P. Roychowdhury, S.P. Dutta, M.K. Sadhu and I. Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Bisi, J.—The instant revisional application preferred by the petitioners is directed against the judgment and order passed by Shri N.N. Ghose, the learned Assistant District Judge, 5th Court, Alipore, on 28.2.97 in Mise. Appeal No. 364 of 1995. By the order impugned the learned Assistant District Judge allowed the appeal in the following manner :

"That the appeal be and the same is allowed on contest with costs of Rs. 300/- ; the respondents are hereby directed by an order of mandatory interim injunction to remove the padlock from the entrance gate both on the western and eastern side of the suit premises and restore possession of the appellant at once. The respondents are further directed not to disturb peaceful possession and enjoyment of the suit property of the appellant after restoration of such possession till disposal of the injunction petition; that the order, appealed against, is set aside."

2. The said Misc. Appeal arose out of the order dated 14.8.95 passed by the learned Munsif (now designated as Civil Judge Junior Division) 3rd Court, Alipore, in Title Suit No. 283 of 1995 rejecting the prayer for interim injunction. Being

aggrieved by the said order of rejection of the prayer for interim injunction the plaintiff presently O.P. No. 1 as appellant preferred the said Misc. Appeal No. 364 of 1995 which, as stated above, was allowed by the learned assistant District Judge, 5th Court, Alipore, in the manner as already indicated.

3. The facts of the case may briefly be stated thus. As per the case of the plaintiff presently O.P. No. 1 she was a tenant under her father Sashi Bhusan Debnath at a rental of Rs. 300/- per month payable according to English calendar month. The said tenancy is in respect of the entire first floor comprising two bed rooms, one kitchen, bath privy and a covered verandah. After demise of her father the plaintiff used to pay rent to her mother Sarojini Debnath who was one of the joint executors of the Will executed by Sashi Bhusan Debnath. Subsequently, Sarojini Debnath died and the plaintiff has been paying rent to the other executor Shri Girija Sankar Banerjee who is her husband. The plaintiff being daughter of Sashi Bhusan claims herself to be a co-sharer in respect of 1/7th share. Further case of the plaintiff is that she is a tenant in respect of 6/7th share of the suit property under defendant Nos. 1 to 12. It has been alleged by the plaintiff that the defendants are trying to dispossess her from the suit property and as such the petition under Order 39 Rule 1 and 2 read with Section 151 of the CPC was filed by the plaintiff in the trial Court. The learned trial Court issued notice upon the defendants to show cause why the petition being temporary injunction filed by the plaintiff would not be allowed. However, the learned trial Court rejected the prayer of the plaintiff for ad interim injunction whereupon being aggrieved by the said order of rejection of prayer for ad interim injunction the plaintiff as appellant preferred Misc. Appeal No. 364 of 1995 which was allowed by the learned Assistant District Judge, 5th Court, Alipore in the manner as already indicated.

4. The instant revision application u/s 115 of the CPC has been preferred by the petitioners defendants against the impugned order passed by the learned Assistant District Judge, 5th Court, Alipore in Misc. Appeal No. 364 of 1995 contending inter alia that the learned Appellate Court below acted illegally and with material irregularity in exercise of its jurisdiction in granting mandatory and prohibitory interim injunction in respect of the same property, that the learned Appellate Court below acted illegally and with material irregularity in exercise of its jurisdiction in granting interim prohibitory injunction in respect of future possession of O.P. No. 1 after restoration thereof in view of the admitted that she was not in possession of the suit property and that the learned Appellate Court below acted in exercise of its jurisdiction illegally and with material irregularity in granting injunction without following the well established legal principles which are required to be followed in granting interim injunction.

5. From the materials on record I find that against the order of rejection of prayer for interim injunction passed by the trial Court the plaintiff as appellant preferred Misc. Appeal No. 364 of 1995 which was admitted by the learned District Judge, Alipore, South 24-Parganas. It further appears that the application

under Order 39 Rule 1 and 2 read with Section 151 of the CPC was filed by the plaintiff as appellant in the Court of the learned District Judge, Alipore in Misc. Appeal No. 364 of 1995 and the said petition was moved before the learned District Judge on 21.8.95 whereupon the learned District Judge gave direction to issue notices to show upon the respondents and directed the parties to maintain status quo in respect of the suit property till 11.12.95. By the subsequent order dated 11.12.95 the learned District Judge extended the interim order for maintenance of status quo till disposal of the appeal. It is to be noted in this context that the application under Order 39 Rule 1 and 2 read with Section 151 of the CPC was filed by the plaintiff as appellant in the Court of the learned District Judge in the above noted Misc. Appeal praying for an order restraining the defendants from dispossessing her from the suit property till disposal of the Misc. Appeal whereupon the interim order for maintenance of status quo as stated earlier was passed by the learned District Judge till disposal of the Misc. Appeal.

6. During pendency of the Misc. Appeal the plaintiff as appellant filed another application for direction upon the defendants to open the padlock of the main entrance alleging inter alia that the defendants put padlock on the main entrance with a view to creating obstruction in the plaintiffs ingress to and egress from the first floor of the suit premises. The plaintiff further prayed for restoration of possession of the room on the southern portion of the first floor wherefrom she has been allegedly dispossessed. The learned assistant District Judge has heard the Misc. Appeal along with the said application filed by the plaintiff and passed an order of interim mandatory injunction for removing the padlock from the entrance gate both on the western and eastern side of the suit premises and restored possession of the plaintiff/appellant presently O.P. No. 1. As already referred to, the learned Assistant District Judge also directed the defendants not to disturb peaceful possession and enjoyment of the suit property of the plaintiff after restoration of such possession till disposal of the injunction petition.

7. The sole point arising for decision in the instant revision application is whether or not the order impugned is legally sustainable on the face of the materials on record.

8. It has been contended by Mr. Bhattacharya the learned advocate appearing for the petitioners that the ad interim mandatory injunction passed by the learned Assistant District Judge is not legally sustainable. He has argued that the learned Assistant District Judge as appellate Court has to decide whether the learned trial Court was justified in refusing prayer for ad interim injunction made by the plaintiff on the basis of the materials available before the learned trial Court. He has cited the decision reported in 2002(2) CHN 856 , (Jitesh Pandey v. Smt. Urmilata Sinha and Ors.) wherein in the facts and circumstances of the said case it was held by the learned single Judge of this Court that it was the duty of the first appellate Court to merely see whether the learned trial Judge was justified in passing the ad interim order of status quo on the basis of the materials before

the learned trial Judge. Relying on this decision Mr. Bhattacharya has submitted that the learned Assistant District Judge being the first appellate Court cannot go beyond the materials which were available before the learned trial Judge at the time of consideration of prayer for ad interim order of injunction made by the plaintiff. Mr. Bhattacharya has cited another single Bench decision of Kailash Nath Singh Vs. The District Judge, Mirzapur and anothers, wherein it has been held that the scope of appeal under Order 43 Rule 1(r) CPC is limited and the challenge is regarding grant of an interim injunction and as such, the appellate Court does not exercise power of jurisdiction over the suit. It has been further held in the said case of Kailash Nath Singh (supra) that the Court ceases to have any jurisdiction for granting temporary injunction in a suit and the power of amendment will only be with the Court where the suit is pending. Mr. Bhattacharya has further cited case of Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others, and Anr. case Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, to show the circumstances where inherent power can be exercised by the Court. However, I find that in Dorab Cawasji Warden (supra) Interim mandatory injunction against vendors and vendees regarding possession had been Issued in the facts and circumstances of the said case.

9. Mr. Roychowdhury the learned senior counsel appearing for the plaintiff/O.P. has drawn my attention to the order of status quo passed by the learned District Judge on 21.8.95 in the above noted Misc. Appeal. On perusal of copy of Order No. 2 dated 21.8.95 passed by the learned District Judge, Alipore, South 24-Parganas in the said Misc. Appeal No. 364 of 1995 I find that a petition under Order 39 Rule 1 and 2 of the CPC was filed by the plaintiff presently the O.P. as appellant whereupon the learned District Judge issued notice to show-cause upon the defendants/respondents presently the petitioners and directed both the parties to maintain status quo in respect of the suit property till 11.12.95. It further appears from the materials on record that the learned District Judge by an order dated 11.12.95 passed in the said Misc. Appeal extended interim order for maintenance for status quo till disposal of the said appeal. It has been argued by Mr. Roychowdhury that during pendency of the Misc. Appeal the plaintiff/O.P. was dispossessed from the room in question and padlock was put by the defendants/petitioners on the main entrance of the suit premises causing obstruction in the matter of the plaintiffs ingress to and egress from the premises in question and this subsequent event which took place during pendency of the Misc. Appeal necessitated filing of the petition by the plaintiff seeking interim mandatory injunction before the first appellate Court. Mr. Roychowdhury has further pointed out that the plaintiff/O.P. claims tenancy in respect of 6/7th share of the property in question under the defendants/petitioners and claims the remaining 1/7th share of the property as co-owner. The defendants/ petitioners have not disputed the plaintiffs claim of cosharership in respect of 1/7th share of the property in suit but they have disputed the tenancy right claimed by the plaintiff/O.P. in respect of 6/7th share of the suit

property under the defendants. Such dispute relating to the tenancy of the plaintiff in respect of 6/7th share of the suit property under the defendants cannot be gone into at this stage for the plain reason that the said dispute is involved in the suit itself. But the admitted fact remains that the plaintiff is co-sharer to the extent of 1/7th share in respect of the property in suit. Mr. Roychowdhury has drawn my attention to the fact that even if the tenancy of the plaintiff is disputed by the defendants, the factum of plaintiff's possession of one room on the southern side of the first floor of the suit premises was admitted by the defendants/petitioners and during pendency of the Misc. Appeal the defendants dispossessed the plaintiff from the said room and put padlock on the main entrance with a view to creating obstruction in the matter of plaintiff's ingress to and egress from the first floor of the suit premises. Mr. Bhattacharya appearing on behalf of the defendants/petitioners has submitted that the said one room was in occupation of the plaintiff but subsequently she of her own accord left her matrimonial home. To repudiate such contention Mr. Roychowdhury has argued that when the litigation is pending and order of status quo was passed in respect of the property in question it is hardly credible that the litigating party would voluntarily leave the room in question over which the litigation is pending and order of status quo is in force. On consideration of the materials on record and the facts and circumstances emerging therefrom I find sufficient force in the contention raised by Mr. Roychowdhury appearing for the plaintiff/O.P.

10. The learned Assistant District Judge has referred to some decision in the impugned judgment and considered it a fit case to grant interim mandatory injunction to restore possession in the manner as prayed for by the plaintiff as appellant before him. Mr. Roychowdhury has drawn my attention to some documents to substantiate the claim of tenancy of the plaintiff in respect of the property in suit. He has further contended that the defendants/petitioners dispossessed the plaintiff/O.P. from the premises in suit in utter violation of the order of status quo passed by the learned District Judge, Alipore and because of such dispossession of the plaintiff in violation of the interim order of status quo the learned Assistant District Judge was perfectly justified in granting interim mandatory injunction by invoking inherent power u/s 151 of the Code of Civil Procedure. Mr. Roychowdhury has pertinently cited the case of Sujit Pal Vs. Prabir Kumar Sun and Others, . In the said case the plaintiff filed a suit for declaration of his tenancy and for permanent injunction restraining the defendants from interfering with the possession of the plaintiff. The interim injunction was granted restraining the defendants from interfering with the possession of the plaintiff and the defendant forcibly dispossessed the plaintiff and took possession thereof in utter violation of the interim injunction. It has been held by the Division Bench of this Court in the case of Sujit Pal (supra) that the Court can grant temporary mandatory injunction u/s 151 of the CPC by directing the Police to restore possession of the plaintiff. It has been further held in the above noted case at page 223 that the inherent power of the Court as recognized in Section 151 of

the code is in addition to the power conferred on the Court under the provision of the code and all that the Court is concerned is to prevent abuse of the process of the Court and to do justice by immediately intervening under circumstances which require such intervention by the Court. In my view, the ratio of the decision in the case of Sujit Pal (supra) applies with full force to the facts and circumstances of the instant case since the facts and circumstances of both the cases are more or less identical.

11. In *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, it has been held that the inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it. In *Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. and others*, the Supreme Court made the following observations :

"Since the letter of the law should strictly be adhered to, we find that high-handed action taken by respondents 1, 3 and 6 in having the appellant dispossessed without due process of law, cannot be overlooked nor condoned. The Court cannot blink at their unlawful conduct to dispossess the appellant from the demised property and would say that the status quo be maintained. If the Court gives acceptance to such high-handed action, there will be no respect for rule of law and unlawful elements would take of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law-abiding citizens and rule of law would remain a mortuary."

12. In *Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another*, the Supreme Court had held that imposition of punishment for contempt would not denude the Court of its power to issue directions to remedy the wrong done by the contemner including those so as not to enable the contemner to retain the benefit derived by the contempt and this power cannot be defeated on procedural or other technical objections.

13. Mr. Roychowdhury has referred to the case of *Arundhuti Nan and Others Vs. P.M. Daryanani*, wherein at page 1032-1033 (para 7) the Division Bench of this Court held as follows :

"Going, as we must, by these tests, we do not think that in the instant case there has been either any non-exercise or any illegal exercise or any illegal assumption of jurisdiction by the trial Court or the first appellate Court to warrant our intervention u/s 115 of the Code of Civil Procedure. In the suit, giving rise to this revision, the plaintiff/tenant complained inter alia that the defendant-landlord bolted and locked the back door of the tenanted flat and thereby prevented the plaintiff-tenant from having any ingress and egress to and from the back portion of the tenanted premises. The trial Judge, as it appears from his order dated 23.9.85, has considered the materials on record in considerable details and has also considered as to whether the plaintiff has made out a prima facie case, whether irreparable injury would be caused to the plaintiff if the injunction as

prayed is not granted and whether the balance of convenience or inconvenience is in favour of the plaintiff and after such consideration as aforesaid, has granted temporary injunction both mandatory and prohibitory, mandating unlocking and unbolting of the said back-door and prohibiting any further obstruction to or interference with the opening of the said door so that the plaintiff may have easy access to the back portion to which the door leads. The trial Judge also granted some other orders of injunction, but those not having been assailed before us do not require any consideration. On appeal, the appellate Court has confirmed those orders after due consideration of the relevant facts and the principles of law. The trial Court having jurisdiction under the law to grant or not to grant such an injunction, the case at hand cannot amount to non-exercise or illegal assumption of jurisdiction within the meaning of Clauses (a) and (b) of Section 115(1) of the Code of Civil Procedure. The trial Court and the Court of Appeal also do not appear to have acted in breach of any provision of law or to have committed any such error of procedure, and far less any error so material as to affect the decision arrived at and therefore, the Courts below cannot be said to have acted illegally or with material irregularity in exercise of their jurisdiction."

14. Applying the tests formulated by the Division Bench of this Court in the case of Sujit Pal (*supra*) as well as in the case of Arundhuti Nan (*supra*) to the instant case I find no scope for interference with the order impugned. From the factual background of the present case as narrated earlier it is quite evident that there was an order of status quo passed by the learned District Judge, Alipore in Misc. Appeal No. 364 of 1995. There are *prima facie* materials to indicate that the plaintiff/O.P. No. 1 was dispossessed from the room which was in her occupation and the entrance gate both on the eastern and western side of the suit premises was padlocked by the petitioners for causing obstruction in the matter of plaintiffs ingress to and egress from the premises in violation of the order of status quo which was in force during pendency of the Misc. Appeal. Under such circumstances the learned first appellate Court considered it a fit case to grant interim mandatory injunction to restore possession of the plaintiff. The learned appellate Court below, as it appears from the order impugned, has considered the materials on record in detail and has also considered the *prima facie* case made out by the plaintiff and the question of balance of convenience or inconvenience as well as irreparable loss or injury and after proper consideration has granted interim injunction, both prohibitory and mandatory, mandating removal of the padlock from the entrance gate on the eastern and western side of the suit premises and restoration of possession of the plaintiff and prohibiting any further obstruction to plaintiffs possession of the premises in question till disposal of the injunction petition. Such order passed by the learned first appellate Court in exercise of its inherent power is based on the principle that no party can be allowed to take advantage of his own wrong in spite of the order to the contrary passed by the Court. Reference can be made in this context to *State of Bihar v. Usha Devi* AIR 1955 Pat455 and *Kanakku Kumara Pillai Thanu Pillai Vs. Mathevan Mathevan of Aravamkadu Karakkattu Madathu Veedu* and

Another, .

15. For the foregoing reasons I find no jurisdictional error warranting interference of this Court in revision with the order impugned. There is no merit in the instant revision application. The revision application is accordingly dismissed. The present petitioners/defendants are directed to remove the padlock from the entrance gate both on the western and eastern side of the suit premises and restore possession of the room in question to the plaintiff/O.P. No. 1 within fifteen days from the date of communication of this order failing which the plaintiff will be at liberty to take proper steps for removal of the padlock with the Police assistance if required. However, I make it clear that the findings arrived at by me at the time of disposal of the instant revision application are based on the materials now on record and such findings will not influence the learned trial Court while disposing of the pending application for temporary Injunction on merits.

There will be no order as to costs.

Xerox certified copy of this judgment, if applied for, be given to the parties as expeditiously as possible.