
(1977) 03 GAU CK 0001
In the Gauhati High Court
Case No : M.A. (F) No. 56 of 1972

Lalta Prasad Pathak

APPELLANT

Vs

Kamal Kishore Chandak

RESPONDENT

Date of Decision : 15-03-1977

Acts Referred:

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

Citation : AIR 1978 Guw 18

Hon'ble Judges : K.M. Lahiri, J;Baharul Islam, J

Bench : Division Bench

Advocate : D.K. Deka and T.C. Khetri, for the Appellant; D.K. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

Baharul Islam, J.—This appeal is by defendant No. 17 and is directed against the order dated 24-3-1972 passed by the Assistant District Judge, Tezpur under sub-r. (3), of R. 2 of O. 39 of the Civil P.C.

2. The respondent, who is a minor represented by his mother Smt. Mohini Debi Chandak, brought Title Suit No, 10 of 1971 for a declaration that the Giftcum-Trust Deed No. 2025 of 1971 of Tezpur Sub-Registry was null and void. He also prayed for a perpetual injunction against the defendants restraining and prohibiting them from disturbing the peaceful possession of the suit premises by him. Along with the plaint he also filed an application for grant of temporary injunction. The petition was supported by an affidavit.

3. In the petition for injunction, as it appears from the notice of injunction issued by the Court, the plaintiff prayed for an injunction restraining the defendants (i) from entering and interfering in the peaceful possession of the plaintiff of the land and premises in the suit; (ii) for restraining and prohibiting them from taking forcible possession of the premises; (iii) from collecting any rent from the tenants occupying the suit premises; and (iv) to maintain status quo of the suit

premises until the disposal of the suit.

4. The Court issued an order of ad interim injunction granting relief Nos. (i), (ii) and (iv) mentioned above, but did not grant injunction restraining the defendants from "collecting any rent from the tenants occupying the said premises".

5. On 28-5-1971 the appellant issued two notices on two tenants. Tukaram Baid and Ramjatan Tewary, of the suit premises demanding rents and terminating the tenancy after 15 days of the receipt of the notice and demanding of them delivery of khas possession of the premises to him. The plaintiff then filed an application on 18-6-1972 intimating the Court that the appellant had violated the order of ad interim injunction granted by the Court and prayed for action under sub-r. (3), of R. 2 of O. 39.

6. The parties examined witnesses. It is not necessary to refer to the evidence on record inasmuch as the relevant facts, namely, that there was an order of injunction by the Court, that defendant No. 17 had issued two notices to the tenants mentioned above and asked them to pay the arrear rents and demanding of them delivery of khas possession after the period of notice was over, are not in dispute.

7. The learned trial Court held that the action of the appellant amounted to violation of the order of the Court "to maintain status quo", and, as such he passed the impugned order.

8. The only point that falls for our consideration in this case is whether the action of the appellant amounts to disobedience of the order of ad interim injunction granted by the Court.

9. Sub-rule (3) of R. 2 of O. 39 of Civil P. C. is in the following terms:

2. Injunction to restrain repetition or continuance of breach?

(1). . .

(2). . .

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

10. The relevant order directed against the appellant was "to maintain status quo of the suit premises". Premises means building with adjuncts etc. It does not include any act of a party relating to such premises. What the order, therefore, in the context meant was not to make any physical change in premises, such as demolition of the premises or part thereof, or addition to or alteration in the premises and the like. In the instant case no such allegation has been made against the appellant. Demanding of rents and asking the tenants to vacate the

house and delivery of khas possession, in our opinion, do not mean disturbance in the status quo of the premises, and as such, the learned Court below was in error in holding that there was disobedience of the order granting injunction.

11. Mr. D.K. Bhattacharjee, learned counsel appearing for the respondent, submits that the act of the appellant will be covered by the first injunction, namely, the injunction restraining the appellant from "entering and interfering in the peaceful possession of the plaintiff". In our opinion what the above expression means is that the appellant cannot enter the premises and cannot do such an act as disturbs the peaceful possession of the respondent. The mere issue of a notice issued in pursuance of certain provisions of the law, in our opinion, cannot be construed to be interference with the physical possession of the premises by a party.

12. In the result we set aside the impugned order of the learned Assistant District Judge, and allow the appeal. As the respondent is a minor we make no order as to costs.

K. Lahiri, J.

13. I agree.