

(2019) 08 GAU CK 0031

In the Gauhati High Court

Case No : Civil Revision Petition No. 48 Of 2019

Rabial Haque Mondal And 4 Ors

APPELLANT

Vs

Mozibar Rahman And Anr

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 115, Order 6 Rule 4, Order 39 Rule 1, Order 39 Rule 2

Citation : (2019) 08 GAU CK 0031

Hon'ble Judges : Mir Alfaz Ali, J

Bench : Single Bench

Advocate : R J Bordoloi, R Choudhury

Final Decision : Dismissed

Judgement

1. Heard Mr. JR. Bordoloi, learned counsel for the defendant/petitioner and Mrs. R Choudhury, learned counsel for the respondent/plaintiff.

2. Challenge in this revision petition is to the order dated 05.03.2019 passed by the learned Civil Judge Dhubri in Misc Appeal No.11/2017, whereby the learned Civil Judge allowing the appeal set-aside the order passed by the learned Munsiff and granted temporary injunction against the defendant/revision petitioner.

3. The brief facts leading to the present revision may be stated as thus:- the respondent herein as plaintiff, filed a suit being Title Suit No.281/2017, praying for declaration of right title and interest, cancellation of deed, confirmation of possession and permanent injunction. The case of the plaintiff was that he was the owner of the suit land having right title & interest. However, the defendants/petitioners got a sale deed executed in their favour by practicing fraud and coercion and therefore, the plaintiff filed the suit for relief as indicated above. The plaintiff also filed an application under Order 39 Rule 1 & 2 praying for temporary injunction restraining the defendants from interfering with the possession of the plaintiff over the suit land. The defendants contested the suit

as well as the petition for temporary injunction by filing written statement/objection stating inter-alia that the plaintiff sold the suit land to the defendants by executing a sale deed and by virtue of such sale deed, the name of the defendants were mutated and patta was also issued. It was further stated that at the behest of the plaintiff No.2, purported attorney of the plaintiff No.1, the suit was filed with concocted story for illegal gain.

4. Learned Munsiff after hearing the parties rejected the prayer for temporary injunction, sought by the plaintiff. Aggrieved, the plaintiff preferred an appeal which was allowed by the impugned judgment and order.

5. Learned counsel for the defendant/petitioner placing reliance on a decision of this Court submits, that granting or refusing injunction being within the ambit of judicial discretion of the Court, the appellate Court should not upset such discretionary order passed by the learned trial Court granting or refusing injunction, unless such order is grossly unreasonable capricious or arbitrary, or suffers from any jurisdictional error. The learned trial court rightly exercise its jurisdiction on appreciation of the pleadings and affidavit of the parties and therefore, the learned appellate Court ought not to have interfered with such order passed by the learned Munsiff in exercise of its judicial discretion, submits Mr. Bordoloi. Further contention of the learned counsel for the defendant/petitioner is that there was no prima-facie case, as the plaintiff did not aver in the plaint the detailed particulars of fraud as per requirement of Order 6 Rule 4 CPC and therefore, learned appellate Court ought not to have granted temporary injunction.

6. Learned counsel for the plaintiff/ respondent Mrs. R Choudhury submits, that the plaintiff filed the suit for declaration of right title & interest and permanent injunction restraining the defendant from interfering with the possession of the plaintiff and therefore, learned appellate Court rightly granted the temporary injunction, inasmuch as, all the ingredients of granting injunction were in favour of the plaintiff. Learned counsel further contended that refusal of temporary injunction, would have rendered the suit for permanent injunction infructuous, and as such, learned appellate Court has not committed any illegality by granting temporary injection in the instant case.

7. There is no gain saying, that the equitable relief of granting temporary injunction falls within the realm of judicial discretion of the Court and when the Court exercises its discretion judiciously and in a proper manner, the appellate Court should be very slow to interfere with such order of granting or refusing injunction by exercising judicial discretion.

8. A division bench of this Court in Bindeshwar Narayan Singh Vs. Managing Committee, Shri Sundarmai High High School reported in AIR 1982 GAU 69, dealing with the scope of interference with the order relating to injunction by appellate Court held as under:

The power of the appellate court in the matter of injunction is rather

circumscribed. The appellate Court would be slow to interfere with the exercise of discretion and would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not, justify interference with the trial Court's exercise of discretion. If it appears to the appellate Court that in exercising its discretion the trial Court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate Court to interfere with the trial Court's exercise of discretion (AIR 1967 SC 249). Where the trial Court had not exercised its discretion capriciously or arbitrarily, no case for interference would be made out (AIR 1969 SC 938). Only if the discretion is not exercised by the trial Court in the spirit of the statute or fairly or honestly or according to the rules of reason and justice, the order passed by the lower Court can be reversed by the superior Court (1977-2 SCC 457): (AIR 1977 SC 747).

9. In the order dated 19.07.2017, whereby the learned Munsiff refused to grant injunction, it was observed that the plaintiff failed to make out any cause of action for the injunction and therefore, the injunction was refused. It was also held by the learned Munsiff, that since the petitioner has not been able to make out a cause of action for temporary injunction by showing "realistic overt act on the part of the defendant", the balance of convenience and irreparable loss were against the plaintiff. Learned Munsiff did not record any reason as to why or how the balance of convenience and irreparable loss were held to be against the plaintiff. A bare reading of the order passed by the learned Munsiff would show, that the learned Munsiff disposed of the injunction petition in a slipshot manner, writing one sentence that question of balance of convenience and irreparable loss cannot be said to be in favour of the plaintiff without assigning any reason to support such finding. In view of above, the order passed by the learned Munsiff rejecting the prayer for temporary injunction appears to be ex-facie arbitrary and therefore, such order dehorse reason can by no stretch of imagination be said to have been passed exercising its discretion judiciously. When the learned Munsiff failed to exercise his discretion reasonably and judiciously and in a proper manner, the appellate Court cannot be faulted for interfering with such order, which does not satisfy the test of reasonableness, and judicious exercise of the discretion.

10. It is well settled by now, that before granting injunction, the Court must be satisfied about the existence of the three basic ingredients of granting temporary injunction -viz- prima facie case, balance of convenience and irreparable loss in a chain. Because, absence of any of the ingredient would disentitle a party for temporary injunction. Only when the Court finds that the prima-facie case, balance of convenience and irreparable loss are in favour of the party seeking injunction, the Court may grant injunction to protect and preserve the suit property until disposal of the lis. Therefore, before granting or refusing

temporary injunction, it is imperative on the part of the Court to give a clear finding with reason as to the three basic ingredients as indicated above.

11. The case of the plaintiff was that the defendant got the sale deed executed under coercion and therefore, sought for declaration and also permanent injunction restraining the defendant from interfering with the possession of the plaintiff over the suit land. The plaintiff claimed to be in possession of the suit land, however, the defendant took the stand that the sale deed was executed and mutation was granted in favour of the defendants by virtue of the sale deed, there was a presumption of possession in favour of the defendants. The nature of controversy between the parties relating the suit property as indicated above clearly shows that the matter needs adjudication by the Court and therefore, there is certainly a prima-face case for the purpose of temporary injunction. When the suit was for permanent injunction restraining the defendants from dispossessing the plaintiff with declaration of right title and interest, Court needs to see what may be the probable consequence of refusal or granting of temporary injunction on the fate of the suit, while considering the question of balance of convenience or irreparable loss. If as a consequence of refusal of the temporary injunction the plaintiff is dispossessed or some major change is made in the suit property, and thereby renders the relief of permanent injunction infructuous, in such a situation refusal of injunction would not only put the plaintiff in grave inconvenience, but the same may also amount to deciding the suit for permanent injunction even before adjudication of the matter. On the other hand, in a reverse situation allowing the suit property to remain in its existing position by way of granting temporary injunction is not likely to affect the ultimate result of the suit. Therefore, the balance of convenience and irreparable loss also appears to be tilted towards the plaintiff. Therefore, the findings of the learned appellate Court that the three basic principle of granting injunction were in favour of the plaintiff/respondent cannot be faulted. In the above facts and circumstances of the case, the impugned order granting temporary injunction, by the learned appellate Court cannot be said to have suffered from any jurisdictional error or material irregularity.

12. The interference with a order sought to be revised in exercise of revisional power under section 115 is called for only under the following three circumstances:

- a. When the trial Court has exercised a jurisdiction not vested in it by law, or
- b. It has failed to exercise jurisdiction so vested, or
- c. Acted any exercise of its jurisdiction illegally or with material irregularity.

13. As already indicated hereinabove that the order passed by the learned Munsiff was apparently arbitrary being without reason and therefore, the learned appellate Court was fully justified in interfering with the order passed by the learned Munsiff.

This apart, the impugned order passed by the learned appellate Court granting injunction is not found to have suffered from any jurisdictional error, and as such, interference with the impugned order by this Court in exercise of revisional power is not called for. Accordingly, this revision petition is held to be without merit and stands dismissed.