

(2013) 08 CAL CK 0024
In the Calcutta High Court
Case No : C.O. No. 1174 of 2010

Sri Achinta Roy @ Achinta Kumar Roy Ghatak Chowdhury and Others APPELLANT

Vs

The State of West Bengal and Another RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7, 115
Constitution of India, 1950 — Article 227
Enemy Property Act, 1968 — Section 9
West Bengal Land Reforms Act, 1955 — Section 51A(4), 51B

Citation : (2014) 1 CHN 60

Hon'ble Judges : Tarun Kumar Gupta, J

Bench : Single Bench

Advocate : Mrinal Kanti Das, Mr. Subhabrata Das and Ms. Ananya Das, for the Appellant; Sadananda Ganguli for State, for the Respondent

Final Decision : Disposed Off

Judgement

Tarun Kumar Gupta, J.—This application under Article 227 of the Constitution of India is directed against order No. 47 dated 26th of February, 2010 passed by the learned District Judge, Murshidabad in Miscellaneous Appeal No. 27 of 2010 in connection with Title Suit No. 357 of 1999. The petitioners' case, in short, may be summarized as follows:-

The suit property belonged to their mother Smt. Hasi Rani Roy Ghatak Chowdhury. She exercised her right of ownership over the same till her death in 1987. Thereafter, present petitioners along with other brothers and sisters were in possession of the suit property. The record of rights stood in the name of their mother. They paid rent to the O.P. No. 1 the State of West Bengal against Dakhilas. They constructed their building on the suit property after obtaining necessary sanctioned plan from the local municipality. One Md. Hiru Hossain prayed for correction of record of rights u/s 51A(4) of the West Bengal Land Reforms Act, 1955 relating to the suit property but the same was rejected. The

Government authority also initiated proceeding u/s 51B of the Act of 1955 for correction of records of rights relating to suit property which was dropped in 1991. At the instance of one Md. Hiru Hossain a proceeding under West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 was initiated in 1999. The petitioners filed a suit being Title Suit No. 357 of 1999 in the court of learned Civil Judge (Junior Division) Lalbagh praying for their declaration of title in the suit property as well as consequential relief of injunction. The petitioners' application for temporary injunction was ultimately dismissed by learned trial court vide order dated 6th April, 2000 by vacating ad interim order of injunction. The petitioner plaintiffs filed an appeal being Misc. Appeal No. 27 of 2000 in the court of learned District Judge, Murshidabad. During pendency of said Misc. Appeal the petitioner plaintiffs were illegally and forcibly dispossessed from the suit property. The petitioners filed a further application seeking for a mandatory injunction for restoration of the possession. Said Misc. Appeal No. 27 of 2000 was initially dismissed by the learned District Judge vide Order dated 5th of March, 2001. The petitioners moved an application u/s 115 of the CPC being C.O. No. 1332 of 2001 against said order of dismissal dated 5th of March, 2001. After contested hearing this Court allowed said revisional application after setting aside order of dismissal of Misc. appeal dated 5th of March, 2001 by directing learned District Judge to dispose of said pending appeal within a time frame in view of the observations made in the order dated 20.03.2007 of the High Court. After said order of remand the Misc. Appeal was again dismissed by the learned Additional District Judge by the order impugned dated 26th of February, 2010. Hence is this application under Article 227 of the Constitution of India.

2. Mr. Mrinal Kanti Das learned counsel appearing for the petitioner plaintiffs submits that at the time of disposing of earlier revisional application being C.O. No. 1332 of 2001 this Court noted the following facts as not disputed:-

(a) Smt. Hasi Rani Roy Ghatak Chowdhury purchased the property in question in auction sale in a certificate proceeding initiated under the Public Demand Recovery Act.

(b) She was in possession of the property in question after her purchase from the auction sale.

(c) Her name was duly mutated in the record of rights.

(d) No document has been produced before the courts below in support of the defence claim that the certificate sale by which Smt. Hasi Rani became the owner of the property in question was set aside in a subsequent proceeding.

3. According to Mr. Das, at the time of disposing of the pending Misc. Appeal learned lower court of appeal without noting those facts which were observed by this Court as undisputed, proceeded in a wrong line. He submits that learned lower appellate court went on presuming that the suit property which originally belonged to one Azizur Rahaman who migrated to Pakistan, vested to the State as enemy property under relevant provisions of Enemy Property Act, 1968 and

that the enemy property vested to the Central Government and that any requisition proceedings by virtue whereof the properties of Azizur Rahaman Khan were attached and put into auction and purchased by the mother of the petitioner plaintiffs were null and void by virtue of Section 9 of said Act, and that neither their mother nor the plaintiffs acquired any title over the same. According to him, learned District Judge further observed that the claim of adverse possession also did not lie relating to said property vested to the State. According to him, learned lower appellate court proceeded on wrong assumptions causing miscarriage of justice. Accordingly, he prays for setting aside the order impugned.

4. Mr. Sadananda Ganguli appearing for the O.P. defendant State of West Bengal submits that all the observations made by all the courts including the High Court in connection with hearing of the injunction matter were tentative in nature. He further submits that at this stage there is no scope of going into the merit of the suit by elaborate discussion. He submits that the suit was filed in 1999 and that it is 2013 and that written statement was filed long back. According to him, justice will be subserved if this revisional application is disposed of directing learned trial court to dispose of the pending suit within a time frame keeping all questions open. In this connection Mr. Ganguli further submits that the present petitioner plaintiffs cannot press for recovery of suit property through an order of mandatory injunction as no such prayer together with an interim prayer to that effect was made in this revisional application though there was a prayer for stay of all further proceedings in Title Suit No. 357 of 1999.

5. I have considered the submissions made by learned counsels of the parties. Perused the materials lying in this record as well as the order impugned.

6. There is no denial that the petitioner plaintiffs traced their title to the suit property through their mother Hasi Rani Roy Ghatak Chowdhury. It was alleged that their mother purchased said property belonging to Azizur Rahaman Khan by an auction purchase in 1962. Admittedly, no such averment was in the plaint and no document was also filed in the court during hearing. It is true that though O.P. defendant State took a plea that said auction purchase was later on cancelled but no document to that effect was also produced during hearing. It also came out that though present petitioner plaintiffs were in possession of the suit property but they were dispossessed therefrom in terms of an order of a proceeding initiated under West Bengal Public Land (eviction of unauthorized occupants) Act, 1962. Whether said eviction of the petitioner plaintiffs from the suit property on the strength of said order of the proceedings initiated under said Act of 1962 was valid or not can only be decided during trial and not during hearing of interlocutory matter like injunction or revisional application. The questions as to whether the suit property was an enemy property to be covered by Enemy Property Act, 1968 being vested to the State and whether one Hiru Hossain had any authority to act on the strength of the power of attorney alleged to be executed by Azizur Rahaman in a foreign country can only be decided during

trial. During hearing learned counsel for the petitioner plaintiffs referring a case law reported in Smt. Ajra Habib Vs. R.K. Gupta, tried to impress upon this court that even in the absence of a specific prayer in the plaint for mandatory injunction the court has the power to issue such an injunction in suitable case by invoking order VII rule 7 of the Code of Civil Procedure. Said proposition of law is not disputed. As the petitioner plaintiffs are admittedly out of possession since 2000 and the question as to whether their dispossession from the suit property on the strength of an order of the proceedings held under the provisions of the West Bengal Act of 1962 are valid or not can only be decided at the time of trial. However, if after trial it is found that the petitioner plaintiffs were dispossessed from the suit property illegally then the trial court has all the authority to award heavy cost towards compensation in favour of the petitioner plaintiffs by invoking order VII rule 7 of the CPC even in the absence of any specific prayer to that effect in the plaint. But if the petitioner plaintiffs are directed to be put into possession of the suit property at this stage when the relevant documents to be produced by the parties are not appearing before the court, and later on it is found that the petitioner plaintiffs were not entitled to recover possession then the loss of the O.P. State may be irreparable.

7. In view of the discussions as made above I am of the opinion that the ultimate findings of the order impugned may not be disturbed though on other grounds as stated above.

8. Learned trial court is hereby requested to dispose of the old suit of 1999 expeditiously without allowing unnecessary adjournments to either side, preferably within a period of six months but peremptorily within a period of nine months from the date of communication of the order. In order to avoid future complexity in the matter in question the parties are directed to maintain status quo in respect of the suit property relating to its nature and character till disposal of the suit. Parties are also restrained from creating any third party interest in the suit property till disposal of the suit. I make it clear that this court left open all the issues to be decided by the trial court according to law, and the observations made herein are tentative in nature.

9. The application stands disposed of accordingly.

10. No costs. Urgent photostat certified copy of this judgment be supplied to the learned counsels of the parties, if applied for.