
(1990) 07 GAU CK 0021
In the Gauhati High Court
Case No : Civil Revision No. 93 of 1983

Sudhangshu Mohan Deb

APPELLANT

Vs

Smt. Nirode Sundari Deb Dhupi and Others

RESPONDENT

Date of Decision : 17-07-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 144

Citation : AIR 1991 Guw 75

Hon'ble Judges : J.M. Srivastava, J

Bench : Single Bench

Advocate : M.C. Deb Roy, for the Appellant; P.M. Palit, for the Respondent

Final Decision : Dismissed

Judgement

Srivastava, J.—This is plaintiff's revision against the judgment and order dt. 30-6-1983 passed by the learned District Judge, West Tripura, whereby the plaintiff's appeal against the order dt. 30-5-1982 passed by the learned Additional Subordinate Judge, West Tripura dt. 5-3-90 refusing the prayer for temporary injunction, was dismissed.

2. Briefly, the relevant material facts are that the petitioner had filed suit for declaration of title and confirmation of possession on the land in suit and for injunction, on the allegations, that originally one Sanatan Dhupi had been in possession of the land in suit which was "acquired" by the Government for "public purpose". After utilisation of the land for aforesaid public purpose, the land in excess of requirement by the Government with Dhirendrajit Singha Roy in Takshishi rights (intermediary rights). One relative of Sanatan Dhupi had filed objection. The Government made enquiry and the objection was rejected. The khatian was posted in favour of Dhirendrajit Singha Roy. In 1956 A.D. Dhirendrajit Singha Roy was dispossessed by one Jagabandhu Dhupi. A miscellaneous case under the Government Premises Eviction Act was commenced and during its pendency the present plaintiff petitioner purchased the land from Dhirendrajit Singha Roy by registered sale deed dt. 10-12-1957 and became

party in the said case. The Government premises Eviction Act was declared ultra vires and the miscellaneous case was rejected, whereupon the plaintiff the present petitioner had filed Title Suit No. 30 of 1959 (Renumbered T. S. 47 of 1962) which was decreed against Jagabandhu Dhupi on 25-3-1963. Appeal No. 7 of 1963 by Jagabandhu was dismissed on 28-4-65 and on 28-5-65 in execution of decree, the petitioner obtained possession of the land in suit. Jagabandhu Dhupi had died and his heirs had preferred Second Appeal No. 17 of 1965 which was allowed, by judgment dt. 12-4-71 whereby the judgment and decree of the courts below were set aside. They applied for restitution of the property u/s 144 of the Civil P. C. hereinafter referred as the "Code".

3. The plaintiff filed the present suit No. 13 of 1980 and simultaneously filed an application for temporary injunction to restrain the defendants the present opposite parties from entering the land in suit and also from proceeding with the Misc. Case No. 69 of 1978 for restitution of property. The present opposite parties opposed the prayer for temporary injunction. The learned trial court on consideration of the matter while holding that the plaintiff was in possession of the suit land refused to grant temporary injunction prayed on the ground that the defendants were trying to obtain possession by due process of law. The appeal against the order was dismissed by the learned District Judge.

4. Aggrieved, the plaintiff has come in revision and Shri M. C. Deb Roy, learned counsel appearing on his behalf has submitted that the learned District Judge has made observations on merits of the questions, raised in the suit which was not proper as the observations were likely to adversely prejudice the trial of the suit. Shri M. C. Deb Roy has also submitted that status quo in relation to the property in suit should be maintained until the Misc. Case No. 69/78 was decided and that the aforesaid miscellaneous case and the title suit filed by the appellant should be heard together.

5. Shri P. N. Palit, learned counsel for the Opposite parties has submitted that the defendants were just pursuing their rights u/s 144 of the Code and accordingly no temporary injunction can be issued.

6. On consideration of the submissions, I think the learned courts below in refusing to grant temporary injunction as prayed, did not commit any error in exercise of jurisdiction as may require interference by this Court in exercise of revisional powers, for the reasons that, even if it be accepted that the plaintiff had a prima facie case of claim to the land in suit, it could not be said that the defendants opposite parties had committed any such illegal or improper acts for which temporary injunction could be issued. The defendants opposite parties had only prayed to competent court for restitution of the property after the judgment and decree of the courts had been set aside in Second Appeal No. 17 of 1966. It should therefore be clear that no temporary injunction could issue to restrain the defendants from pursuing the remedy u/s 144 of the Code.

7. Shri M. C. Deb Roy, learned counsel for the petitioner has submitted that the

defendants opposite parties be restrained from threatening to dispossess the plaintiff otherwise than in due pursuit of the remedy u/s 144 of the Code. Shri P. M. Palit, learned counsel for the opposite parties has submitted that the defendants opposite parties had not done any such act and they have only sought the relief u/s 144 of the Code. I, therefore, see no justifiable ground for temporary injunction as prayed.

8. However, on perusal of the judgment of the learned appellate court below, it does appear that the plaintiffs apprehension due to some observations therein on the merits of the question raised by the parties in the suit, are not unjustified. It is accordingly necessary to direct that any observation made by the learned appellate court below on merits of the question raised by the parties shall not be taken into consideration by the trial court while deciding the suit.

9. For the aforesaid reasons this appeal fails and is dismissed. The Misc. Case No. 69 of 1978 and Title Suit No. 13 of 1980 are pending in the same court. The learned court shall endeavour to expeditiously dispose of the same separately or together, as may be considered proper and necessary. The parties shall bear their own costs.