
(2011) 04 CAL CK 0116
In the Calcutta High Court
Case No : C.O. No. 1285 of 2009

Sudhangshu Sekhar Maity

APPELLANT

Vs

Santi Gopal Jana and Others

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2011) 04 CAL CK 0116

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Suprobhat Bhattacharya, for the Appellant; Sandip Das, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the Defendant and is directed against the order No. 20 dated March 26, 2009 passed by the learned Civil Judge (Senior Division), Kakdwip in Title Suit No. 65 of 2008.

2. The Plaintiffs/opposite parties herein instituted a suit being Title Suit No. 65 of 2008 against the Petitioner and the other opposite party Nos. 3 & 4 before the learned Civil Judge (Senior Division), Kakdwip for declaration of title, permanent injunction and other reliefs. The Petitioner is contesting the said suit by filing a written statement denying all the material allegations as made in the plaint. At the time of filing of the suit, the Plaintiffs prayed for temporary injunction. Upon hearing both the sides, the learned Trial Judge directed both the parties to maintain status quo in respect of the tank in suit. Thereafter, the Plaintiffs contended that in spite of that order, the Defendants, in violation of the said order of injunction, caught hold of 30 kgs. of fish from the tank in suit. For that reason, they filed an application for rendering police help for implementation of the order of status quo. It is their specific case that they are in possession of the suit land. The learned Trial Judge has allowed the application for police help.

Being aggrieved, this application has been preferred.

3. Now, the point for consideration is whether the impugned order should be sustained.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that so far as filing of the suit for the reliefs stated, grant of order of status quo upon both the parties in respect of the suit land by the learned Trial Judge and allowing the application u/s 151 of the CPC directing the concerned police station to maintain peace and tranquility, are not matters of dispute.

5. Mr. Bhattacharya has submitted that the Plaintiffs have no possession over the suit property at all. The Plaintiffs have obtained the order of status quo and police help by suppressing the real fact. Such fact would reveal from the documents referred to in the application that the Plaintiffs filed an application u/s 144 of the Criminal Procedure Code, before the learned Executive Magistrate and on the basis of that application, the local police authority held a spot enquiry and upon enquiry, police authority has found that the Defendant is in possession over the suit land and the Plaintiffs have no possession of the suit property. The Plaintiffs have obtained the order of status quo. It is not a matter of dispute that the Court is empowered to grant injunction by way of status quo directing both the parties to maintain status quo in respect of the suit property and that if the situation demands, the either party is at liberty to pray before the learned Trial Judge for implementation of the said order at the intervention of the local police authority.

6. Mr. Das, learned Advocate has referred to the decision reported in Shipping Corporation of India Ltd. Vs. Machado Brothers and Others, in support of such proposition of law.

7. Mr. Das has also referred to the decision of V.M. Shah Vs. State of Maharashtra and another, to show that the findings of the civil code got precedence over the findings of the criminal code in a summary trial. In the instant case a commissioner was appointed to hold local inspection and on inspection, the learned commissioner has observed that the Plaintiffs are in possession of the suit property. Thus, he submits that the report of the police authority after holding spot enquiry pursuant to the order of the Executive Magistrate should not get precedence over the findings arrived at by the learned commissioner appointed by the learned Trial Judge over the suit property. He submits that such report that the Plaintiffs have possession over the suit property, should be accepted. What I find that the police authority held an inspection independently pursuant to the order of the Executive Magistrate and opined by a report dated September 16, 2008 to the effect that the Defendant of the said title suit has been possessing the suit property, that is, danga, pond, bank of the pond, etc. and the trees situated on the bank of the pond. It is the Defendant, Sudhangshu Sekhar Maity who is in possession of the suit land and he is a raiyat in respect of

the property. Such order of injunction was passed on September 12, 2008 but before that the Plaintiffs lodged a proceeding u/s 144 of the Criminal Procedure Code. Thereafter, the learned Executive Magistrate passed order for spot enquiry and then by a report dated September 16, 2008, the police authority has held that the Defendants are in possession of the suit property. So, an independent agency has inspected and this report shall be given due respect because such spot enquiry was held upon issuance of notice upon both the parties. But the Plaintiffs were not present at the time of holding spot inspection though they initiated the 144 proceedings and notices were served upon them on two occasions. Such a report has been totally suppressed at the time of disposal of the application u/s 151 of the CPC for rendering police help. The commissioner also submitted a report on April 27, 2008 but at the time of field work, the Defendants were not present. There is no note in the report of the commissioner that notice was served upon the Defendants. So, I hold that the said report will not be taken into consideration for the purpose of disposal of the present application.

8. Thus, I find that the impugned order has been obtained by the Plaintiffs by suppressing the fact that the Defendants are in possession of the suit property. Therefore, the impugned order cannot be sustained.

9. Accordingly, the revisional application is allowed. The impugned order is hereby set aside.

10. Considering the circumstances, there will be no order as to costs.

11. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.