

27.04.2021
Court No. 19
Item no.05
CP

C.O. 416 of 2019

Shri Om Prakash Jhawar
vs.
Smt. Kana Dutta & ors.

(via video conference)

Mr. Amrita Lal Dhar

.....for the petitioner.

Mr. Saptarshi Roy

.....for the opposite parties.

This revisional application arises out of an order dated December 18, 2018 passed by the learned Civil Judge (Senior Division), 2nd Court, Barasat, North 24 – Parganas.

By the order impugned, the learned court below rejected an application for injunction filed by the petitioner praying for an order of restraint upon the opposite parties from changing the nature and character of the suit property and/or alienating the same. The suit is for recovery of possession. The learned court below came to the conclusion that the plaintiff/petitioner was not entitled to any order of injunction, as, the plaintiff would be put back in possession if the suit was decreed in his favour. Learned court below further held that the defendants being the owner of the property could not be

restrained by an injunction from changing the nature and character of the said premises or developing and transferring the same. According to the learned court, the transfer would be hit by the doctrine of lis pendens.

It is submitted by the plaintiff that the agreement for tenancy and the deed of assignment will clearly prove that the plaintiff was put in possession of the suit property as a tenant upon payment of a lumpsum amount of Rs.3 lakhs which was to be adjusted with the monthly rent. Accordingly the rent was being adjusted.

The said deed of agreement is on record. The deed of assignment is also on record. There is a clause in the said agreement that the landlord shall not have any right with regard to the tenanted portion till the agreement is terminated.

It is the further contention of the plaintiff that the agreement was not terminated but because the plaintiff was living elsewhere and the tenanted portion was under lock and key, the landlord forcefully entered the premises dispossessing the plaintiff. It is also contended that valuable articles of the plaintiff are lying in the suit premises.

Mr. Roy, learned advocate appearing on behalf of the opposite parties, submits that the tenancy was relinquished and that the opposite parties also got an

order of eviction against the brother of the plaintiff in Title Suit No. 167 of 2016. The decree has been placed on record. He further submitted that the plaintiff was not in possession since 2006.

In view of the aforementioned rival contentions, the question arises as to whether the learned court below erred in passing the order impugned. Both parties agree that the petitioner was in possession earlier. The opposite parties contend that the petitioner relinquished the possession and the original tenant suffered a decree of eviction. The petitioner is the brother of the original tenant. The petitioner also contended that the decree was collusive and not binding on him.

Per contra, the records reveal that there is an agreement of tenancy between the opposite parties and the petitioner. This court is of the opinion that the learned court below erred to the extent of observing that even if the property was transferred or alienated, the petitioner could be put back in possession. This situation, in my opinion, would not only lead to multiplicity of proceedings will also affect third party rights, if created. Specially because the opposite parties could not show any document with regard to relinquishment of the tenancy and execution of the decree of eviction against the brother of the petitioner, justice would be subserved

considering the prima facie case, balance of convenience and inconvenience if the right of the plaintiff is protected to a limited extent in respect of the suit property.

The contention of the learned advocate for the opposite parties that no rent receipt could be shown in support of the contention that until the date of dispossession, the plaintiff was in possession, is not prima facie, accepted at this stage in view of the clause in the tenancy agreement that the monthly rent would be adjusted against the deposit of Rs.3 lakhs made by the plaintiff at the time of being inducted as a tenant.

Hence, it is ordered that the opposite parties shall be at liberty to own, possess and enjoy the suit property including the ground floor as their own personal property and repair works and reconstruction as may be sanctioned by the concerned municipal corporation can be carried out. But, the ground floor of the premises shall not be alienated or transferred or encumbered in any way.

However, if the opposite parties decide to develop the property by construction of a multistoried building, in that case, one flat consisting of two rooms, a bathroom and a kitchen and a parking area shall be kept free from all

encumbrances till the disposal of the suit. No third party rights will be created.

The opposite parties shall file their written statement, if not already filed, within a period of ten days from date.

The learned court below is directed to dispose of the suit within a period of one year from date.

All the observations made hereinabove are prima facie in nature and the learned court below shall decide the issues with regard to this dispute independently and in accordance with law.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)