

In the High Court at Calcutta
Civil Jurisdiction
Appellate Side

C.O. No. 692 of 2020

Abdul Alim Molla & Ors.

Vs.

Nazrul Molla & Ors.

(Via video conference)

Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta
...for the petitioners

Mr. Manas Kumar Das,
Mr. Sagir Ahmed
... for the opposite party nos. 1 and 2

Learned counsel appearing for the opposite party nos. 1 and 2, the principal contesting opposite parties, submits at the outset that, due to unavoidable circumstances, the opposite parties could not file their affidavit-in-opposition pursuant to a previous direction of a co-ordinate Bench of this Court.

However, upon a perusal of the conspectus of the revisional application, grant of further time extending the period for filing affidavit-in-opposition appears to be unnecessary, since the revisional court cannot go into new facts and/or appreciate new evidence at this belated juncture.

By virtue of the impugned order dated January 14, 2020 (Order No. 59), the petitioners' execution case, filed in connection with a decree for declaration and permanent injunction, was dismissed as a whole. Consequently, the other impugned orders, being respectively Order No. 58 dated January 14, 2020 and Order No. 49 dated September 20, 2019, were also passed, respectively rejecting the petitioners' application under Order VI Rule 17 of the Code of Civil Procedure and police help application under Rule 208 of the Civil Rules and Orders framed by this Court.

Learned counsel appearing for the petitioners contends that, by the amendment, the petitioners claimed that the judgment-debtors/opposite party nos. 1 and 2, during pendency of the execution case, dispossessed the decree-holders/petitioners from the suit property. Since specific findings regarding the possession of the petitioners was arrived at in the decree passed in the connected suit, there is no further scope or necessity for the petitioners to prove the petitioners' initial possession of the property.

Learned counsel for the opposite party nos. 1 and 2, by placing reliance on the amendment

application of the petitioners, indicates that the petitioners' specific subsequent case is that, the petitioners were dispossessed after filing of the execution case, which was never substantiated by the petitioners at any point of time before the executing court. Hence, the executing court was justified, it is argued, in rejecting the applications of the petitioners, including the parent execution case.

A mere perusal of the decree, which has attained finality due to lack of challenge before any appellate court, reveals that the trial court specifically declared the plaintiffs' ownership in respect of the suit property as well as right, title, interest and possession over the same. In addition, the decree provided for a permanent injunction restraining the defendants/opposite party nos. 1 and 2 from disturbing the peaceful possession of the plaintiffs over the suit property and from entering into the suit property and changing the nature and character of the same as well as from dispossessing the plaintiffs from the suit property. Such repeated use of the expressions "possession" and "from dispossessing" in the decree clearly discloses the

possession of the plaintiffs in respect of the suit property even on the date of the decree.

Subsequently, both the parties admit that the plaintiffs/petitioners are no longer in possession, in view of the contention of the opposite party nos. 1 and 2 that the opposite parties are co-sharers of the suit property and in joint possession thereof as per law.

Juxtaposing the two facts, there is no scope of doubt that the petitioners were in possession of the premises at the point of time when the decree was passed, subsequent to which they were dispossessed from the suit property, as sought to be averred in the amendment application to the execution case as well as virtually admitted by the opposite parties. The order of rejection of the execution case itself on the mere technicality of the petitioners being unable to prove the exact date of dispossession, particularly at the premature stage of hearing the amendment application to the execution case, was entirely beyond the jurisdiction of the executing court. Although the executing court found to the contrary, in effect, the executing court went behind the decree and assailed the veracity of the decree itself, which is not permitted in law.

As such, the amendment being relevant and the execution case being very much maintainable on the face of it, the court below acted palpably without jurisdiction in passing the impugned orders.

Accordingly, C.O. No. 692 of 2020 is allowed on contest, thereby setting aside Order No. 49 dated September 20, 2019 and Order Nos. 58 and 59, both dated January 14, 2020, all passed in Miscellaneous Case No. 28 of 2018 by the Civil Judge (Junior Division), Third Court at Krishnanagar, District-Nadia and directing the executing court to rehear on merits the petitioners' application for amendment and the application under Rule 208 of the Civil Rules and Orders and, thereafter, to hear the execution case on its own merits and to dispose of the same as expeditiously as possible, without being prejudiced in any manner by any of the observations made in the impugned orders.

It is, however, made clear that the observations made in the present order are tentative in nature and restricted to the purpose of disposal of the revisional application. Such observations shall not influence the executing court in any manner while re-hearing the

applications-in-question, which the executing court shall decide afresh in accordance with law.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)