

24th August,
2021
(AK)
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C.O. 925 of 2021

**Sri Bimalesh Upadhyay
Vs.
Sri Parshuram Bhagat Singh**

Mr. Ayan Banerjee
Ms. Debjani Sengupta
...For the Petitioner.

Mr. Tarak Nath Halder
...For the Opposite Party.

The present revisional application has been preferred against an order whereby the trial court rejected the petitioner's application under Section 151 of the Code of Civil Procedure for restoration of the petitioner's possession.

The petitioner had alleged that, in violation of an order of injunction subsisting in the suit, filed by the petitioner inter-alia for permanent injunction restraining the opposite party from disturbing the petitioner's possession, the opposite party illegally dispossessed the petitioner during the latter's absence when he went to his native place.

Learned counsel for the petitioner, by placing reliance on the findings of the trial court in the order of injunction initially granted, categorically submits that the said order has attained finality.

Moreover, it is contended that, in view of the order having been extended from time to time, lastly in the presence of the opposite party and after the alleged date of surrender, the trial court acted patently without jurisdiction in disbelieving the case of dispossession made out by the petitioner on the premise that the petitioner could not prove his possession.

Learned counsel for the opposite party contends that it was for the petitioner to establish his possession in respect of the suit property, since the specific allegation of the opposite party is that the petitioner himself surrendered the suit property in favour of the opposite party but refused to give anything in writing in that regard.

Learned counsel for the opposite party places reliance on the judgment of *Meera Chauhan Vs. Harsh Bishnoi and another* reported at (2007) 12 SCC 201, for the proposition that an order for restoration of possession cannot be granted unless the party alleging dispossession clearly proves his previous possession in respect of the suit property prior to such alleged dispossession.

A glance at the cited report reveals that the factual context of the said case was completely different from the instant case. A suit had been filed in the matter, from which the reported judgment arises, under Section 6 of the Specific Relief Act, alleging illegal dispossession. Subsequently, by taking advantage of an order of

injunction restraining the defendant from transferring, alienating or encumbering the suit property, the petitioner therein claimed dispossession subsequently.

In such context, the Supreme Court held that it was for the person alleging dispossession to prove his previous possession.

First, the entire scope of adjudication in a suit under section 6 of the Specific Relief Act revolves around the fact that the plaintiff was in possession in respect of the suit property prior to the alleged dispossession. The plaintiff being the *dominus litis*, the burden and initial onus of proof of prior possession obviously lies on the plaintiff in such a suit.

That apart, the Supreme Court specifically considered in the second paragraph of the cited report that the ex-parte interim order of injunction granted in the suit from which the said judgment arose was from transferring, alienating or encumbering the suit property and not pertaining to the possession in respect of the suit property.

However, in the instant case, the trial court, vide order no.1 dated December 11, 2014 specifically restrained the defendant/opposite party and his men and agents from creating any sort of disturbance and/or obstruction in the peaceful enjoyment of the suit property by the plaintiff/petitioner and from ousting the

plaintiff/petitioner from the suit property in any manner whatsoever.

Although such order was passed for a limited period, subsequently the same was extended from time to time, lastly by the impugned order itself, by dint of which the application for restoration of possession was also rejected by the trial court. Strangely enough, the last previous order of extension was passed subsequent to the alleged date of surrender of tenancy by the petitioner, in presence of the learned Advocate for the opposite party, without any objection being raised on behalf of the opposite party regarding surrender by the petitioner in the meantime.

Moreover, the opposite party miserably failed to produce an iota of evidence to establish his case that the petitioner had voluntarily surrendered the suit property in favour of the opposite party; rather, the opposite party sought shelter under the pretext that the petitioner refused to give anything in writing with regard to such surrender.

Keeping in view the above facts, this court cannot be gullible enough to accept the contention of the opposite party that the plaintiff suddenly grew altruistic and voluntarily surrendered the suit property in favour of the contesting opposite party, although fighting tooth and nail in the suit and enjoying an order of injunction protecting the possession of the petitioner.

Hence, the trial court refused to exercise jurisdiction vested in it by law in rejecting the petitioner's application for restoration of possession, thereby causing a gross miscarriage of justice.

Hence, C.O. 925 of 2021 is allowed on contest, thereby setting aside the order dated March 18, 2021 passed by the Civil Judge (Junior Division), Second Court at Sealdah, District-South 24 Parganas in Title Suit No.377 of 2014, insofar as the application filed by the petitioner for restoration of possession under Section 151 of the Code of Civil Procedure was rejected.

It is made clear that the portion of the impugned order, whereby the existing order of injunction was extended by the trial court, is maintained and not interfered with by this court.

The application for restoration of possession of the petitioner, hereby, stands allowed and the opposite party is directed to hand over vacant and peaceful possession of the suit property, subject to the result of the suit, to the petitioner before the midnight of August 25, 2021.

In default, the opposite party shall not only expose himself to the risk of contempt but the petitioner will be at liberty to approach the local police station for adequate police assistance to hand over possession of the suit property in favour of the petitioner from the opposite party within two days from the petitioner approaching the

said authorities, upon the petitioner depositing requisite costs for police help.

The parties, the court below as well as the police authorities shall act on the written communication of the learned advocate for the parties, accompanied by a server copy of this order, without insisting upon prior production of a certified copy.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)