

July 14, 2022
AD 15
Court No.1
SG

MAT 1118 of 2021
With
CAN 1 of 2021
CAN 2 of 2021

Saktipada Das and others
vs.
Badal Das and others

Mr. Rabindra Nath Datta,
Mr. Radhasyam Maiti,
Mr. Manoranjan Jana, Advocates

... for the appellants

Mr. Bibek Jyoti Basu,
Mr. Prithwish Kumar Basu, Advocates

... for the State

Mr. Partha Sarathi Bhattacharya,
Mr. Kapil Chandra Sahoo,
Mr. Raju Bhattacharya,
Mr. Kanailal Dutta, Advocates

... for the respondent No.1

This intra-court appeal is at the instance of private respondents in WPA 2274 of 2020 aggrieved with the order of learned single Judge dated 22.02.2021 whereby liberty has been granted to respondent No.1 i.e. writ petitioner to approach the police authority for protection of possession, if threatened.

Respondent No.1 had filed writ petition with the plea that his father had purchased 16.50 decimal land of RS Dag No.617 and got 27 decimal land of RS Dag no.617 by way of gift deed and got 18 decimal land of RS Dag no.617 by way of heirship, thus he had total 105 decimal land.

In the writ petition, a prayer was made to provide police help in respect of the above land in terms of decree

in the civil suit and also a direction was sought to official respondents to take appropriate legal action against the present appellants.

Learned single Judge by the order under appeal has taken note of the respective stand of the parties and also the report of the officer-in-charge of the concerned police station in respect of the initiation of proceedings under Section 107/116 of Cr.P.C. and has disposed of the writ petition by granting liberty to the respondent No.1 to approach the appropriate authority to give protection to him at personal costs in the event his possession is further threatened.

Learned counsel for appellants has submitted that as per the land record enclosed with the writ petition respondent No.1 i.e. writ petitioner is the owner entitled for possession of only his 0.18 acres of land but on the basis of the order of learned single Judge he is claiming possession of 105 decimal of land. He has further submitted that the civil suit between the parties is pending and that in the Title Suit No.303/1985, the appellants had not signed the solenama, hence they are not bound by that.

Learned counsel for respondent No.1 i.e. writ petitioner has placed reliance upon the order dated 11.07.1986 passed by the civil court in Title Suit No.303/1985 and has submitted that the suit was decreed in terms of the solenama, therefore the appellants are entitled to protection of their possession in

respect of the area of 105 decimal as claimed in the writ petition and even otherwise no effective order has been passed by learned single Judge in the suit.

We have heard learned counsel for the parties and on perused the record. It is undisputed that Title Suit No.101/2013 as also title suit No.244/2018 are pending in respect of the properties in question. The dispute which has been brought by way of the writ petition is a pure civil dispute. So far as the order dated 11.07.1986 passed in Title Suit No.303/1985 is concerned, it reveals that the suit was dismissed for non-prosecution in terms of the solenama. It has not been pointed out if on the dismissal of suit for non-prosecution any decree has been or could be prepared. Even otherwise once the appellants had taken the plea that they were not signatories to the solenama then unless otherwise established, they cannot be held to be bound by such a solenama.

It is settled that a civil dispute cannot be agitated in exercise of writ jurisdiction. Hon'ble Supreme Court in the matter of *Radhey Shyam and another vs Chhabhi Nath and others* reported in (2009) 5 SCC 616 has held that:

“9. From the aforesaid narration of events, it is clear that the proceedings in this case arose out of purely civil disputes relating to property and the parties have filed suits before the civil court, and the suits are pending. The parties to the proceedings are all private individuals. Neither the State nor “State” nor an authority under

Article 12 is a party to this proceeding. This is clear from the cause-title of this appeal. Now the question is: whether private individuals are amenable to the jurisdiction of writ court in connection with the private disputes relating to property, possession and title between private individuals?

10. As early as in 1957, a Constitution Bench of this Court in *Sohan Lal v Union of India* held that a writ of mandamus or an order in the nature of mandamus is not to be made against a private individual. A writ of and/or in the nature of mandamus normally is issued asking a person to do a particular thing which is in the nature of his public duty.

11. In *Sohan Lal* rival claims of property were in issue and the learned Judges held in para 5 that the writ courts should refrain themselves from entering the said field. Since in view of the Court such an exercise calls for

“entering into a field of investigation which is more appropriate for a civil court in a properly constituted suit to do rather than for a court exercising the prerogative of issuing writs” (emphasis supplied) (see AIR p. 531, para 5).

The learned Judges held that if only it can be proved that the appellant Sohan Lal acted in

collusion with Union of India in evicting the respondent Jagan Nath, then an order of mandamus can be issued (see *Sohan Lal case*, AIR p. 532, para 7), but it will not issue otherwise.

12. Only in the case of a writ of habeas corpus, can it be issued against a private individual, if it is proved that the private individual is illegally holding another person in detention.

13. Following the aforesaid principle, this Court fails to understand how can the writ court intervene in a dispute over property rights between private individuals.

14. Apart from the decision in *Sohan Lal*, subsequently in *Mohd. Hanif v State of Assam* a three-Judge Bench of this Court explaining the general principle relating to the High Court's jurisdiction under Article 226 held that the jurisdiction of the High Court is extraordinary in nature and is vested in the High Court not for the purpose of declaring the private rights of the parties but it is conferred for the purpose of ensuring that the law of the land is implicitly obeyed and that the various tribunals and public authorities are kept within the limits of the jurisdiction (see SCC p. 786, para 5).

15. The learned Judges in *Hanif Case* reiterated the principle further by saying: (SCC p. 786, para 5)

“5. ... In a proceeding under Article 226 the High Court is not concerned merely with the determination of the private rights of the parties; the only object of such a proceeding under Article 226 is to ensure that the law of the land is implicitly obeyed and that various authorities and tribunals act within the limits of their respective jurisdiction.”

16. The learned Judges in *Hanif* referred to the decision of this Court in *T.C. Basappa v T. Nagappa* and held that: (*Hanif case*, SCC p.786, para 5)

“5. ... It is obvious that the remedy provided under Article 226 is a remedy against the violation of the rights of a citizen by the State or statutory authority. In other words, it is a remedy in public law.”

This principle holds good till today.”

Considering the aforesaid circumstances of the case and especially the plea of the appellants that the order of learned single Judge is being used to claim possession of 105 decimal of land, we clarify that by the order of learned single Judge, no civil rights of any of the parties have been settled and by that order, no benefit in respect of right, title or interest in any land which is in dispute between the parties will be accrued.

Under the aforesaid circumstances, we are unable to uphold the direction of learned single Judge permitting

the writ petitioner to protect his possession through police. Such a direction is not warrant unless right to have the possession on a particular part of land is duly established by civil court or any other competent forum. Hence, that direction is set aside.

Accordingly, the appeal is disposed of.

Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]