

26.07.2023
Court No. 19
Item No.04
CP

C.O. 948 of 2023

Mita Saha & anr.
Vs.
Santosh Saha & ors.

Mr. Kallol Basu
Mr. Samik Sarkar
Mr. R. Sinha

.....for the petitioners.

Mr. Debjit Mukherjee
Mrs. Susmita Chatterjee
Mr. Kaustav Bhattacharya

....for the opposite party nos. 1, 2 & 4.

The heirs of one Asutosh Saha, as plaintiffs, filed Title Suit No. 707 of 2018 before the learned Civil Judge (Junior Division), 1st Court, Howrah. The suit was for eviction, khas possession, mesne profits. The petitioners claim to be heirs of the deceased son of late Asutosh Saha, namely, late Niranjan Saha. They are also the plaintiffs in the suit. Admittedly, late Asutosh Saha was the owner. The facts of the case are as follows:

- a) The father of the plaintiffs , namely Asutosh Saha was the absolute owner in occupation of a property, measuring 1 katha 8 chittaks 14 sq. ft. together with the pucca structure thereon situated at R.S. Dag No. 7326 corresponding to L.R. Dag No. 24433 of Mouza – Bally. Asutosh Saha died intestate

on March 29, 1991 leaving behind his widow, six sons namely, plaintiff nos. 1 to 5, Niranjana Saha (predecessor of the petitioners), and two daughters, the plaintiff nos. 6 and 9.

- b) The widow died intestate on June 10, 2010 leaving behind six sons and two daughters as her legal heirs. Niranjana Saha, the predecessor-in-interest of the petitioners died intestate on February 22, 2014.
- c) The plaintiffs as joint owners of the Schedule 'A' property jointly filed the suit for eviction. The ground for eviction was default, subletting, use and occupation of the plaintiffs and commission of acts, contrary to provisions of clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act, 1982. The tenancy was terminated by a notice dated March 15, 2018. The tenanted property was 'B' Schedule property, in the plaint.
- d) The tenant refused to vacate the premises. The suit was filed. The tenant entered appearance in the said suit and filed a written statement, denying the allegations made in the plaint.

It is submitted by the petitioners that an amicable settlement had been entered into between the heirs of late Asutosh Saha. The tenanted property, i.e. the 'B' Schedule property, fell within the share of the petitioners. Subsequent to such amicable settlement, the tenant surrendered the tenancy in respect of the 'B' Schedule property to the petitioners. Hence, the petitioners filed an application under Order 15 Rule 1 of the Code of Civil Procedure for dismissal of the suit, upon taking into consideration the subsequent events.

According to the petitioners, no lis, was surviving as the tenant had handed over possession to the lawful owners, namely, the petitioners who had acquired the right, title and interest exclusively in respect of 'B' Schedule property, on the basis of an amicable settlement which although had not been recorded in writing, was acted upon.

Mr. Mukherjee, learned advocate appearing on behalf of the other plaintiffs, submits that the suit was filed jointly by all the heirs of late Asutosh Saha. The plaintiffs are owners in occupation of the property, by themselves and through tenants. The averments in the plaint would indicate that the plaintiffs had jointly claimed ownership in respect of the property and they were also claiming to be the landlords of the defendant who was in occupation of

the B Schedule property as a tenant. The factum of amicable settlement, which was neither documented nor registered as per law, could not have any legal value. Such verbal agreement could not be taken into consideration at the first instance. The learned court rightly did not dismiss the suit on the prayer of the petitioners.

According to the learned advocate, the factum of oral amicable settlement between the parties, would have to be proved at the trial. The petitioners could not, at their instance, get the suit dismissed where there were other landlords/co-owners who wanted to proceed with the suit. A clandestine arrangement between two plaintiffs/landlords with the tenant, could not be a ground for dismissal of the suit, which has been filed jointly, by all the landlords.

The learned court below, upon recording the facts, arrived at the following conclusions:

- a) The plaintiffs were co-sharers as also co-landlords.
- b) The defendant could not enter into a settlement, only with the petitioners..
- c) Order 15 Rule 1 of the Code of Civil Procedure provided if at the first hearing of the suit it appeared to the court that the parties were not at issue, the court could, at

once, pronounce judgment. Such provision was not attracted in the facts of this case.

- d) The petitioners, alone, could not have accepted the surrender of the 'B' Schedule property from the tenant, when there were other owners in respect of the property who had jointly filed the suit for eviction and wanted to continue the suit.

Learned counsel for the petitioners relies on a decision of the Hon'ble Apex court in the matter of Om Prakash Gupta vs. Ranbir B. Goyal, reported in (2002) 2 SCC 256.

In the said decision, the Hon'ble Apex Court held that the court was entitled to take note of the subsequent events and had the power to mould the reliefs accordingly. Such exercise of power was subject to certain conditions, namely,

- (i) The relief claimed originally, had by reason of subsequent events, had become inappropriate or could not be granted.
- (ii) The litigation would be shortened.
- (iii) Subsequent events were brought to the notice of the court, in accordance with the rules of procedural law so that the opposite party would not be taken by surprise.

However, the Apex Court also cautioned, that the subsequent events based on which the court could mould the reliefs, were dependent on specific conditions.

- a) The event should be one as would stultify or render inept the decretal remedy.
- b) Rules of procedure could be bent if no specific provision or fair play was violated.
- c) Cognizance of such subsequent events and development, should be cautiously taken.
- d) The rules of fairness to both sides should be scrupulously obeyed.

In the opinion of this court, the conditions which were laid down by the Hon'ble Apex Court in the aforementioned decision, have not been satisfied in the facts of this case.

All the co-owners as landlords, jointly filed a suit for eviction against the tenant. The averments in the plaint categorically indicate such co-ownership. The suit cannot be dismissed at the instance of the petitioners.

The petitioners allege that by virtue of an oral agreement, B Schedule property (tenanted property) fell within the share of the petitioners. Subsequently, the tenant surrendered the tenancy. This was the only ground for the prayer of dismissal of the suit.

Whether the immovable property was partitioned, as per law, would have to be proved. The other co-owners deny such partition.

The legal value of such amicable settlement could not have been decided by the learned court at the stage of hearing an application under Order 15 Rule 1 of the Code of Civil Procedure. Such issue is a matter of trial.

The Hon'ble Apex Court had cautioned that rules of fairness to both sides should be scrupulously examined. In this case, the suit could not be dismissed at the stage of hearing an application under Order 15 Rule 1 of the Code of Civil Procedure, because the plaintiffs now, seem to be at issue.

The other plaintiffs want to continue the suit for eviction on the ground that the tenant had not surrendered the property and was still in possession.

The right of the petitioners to accept such alleged surrender from the tenant, has been questioned. The Hon'ble Apex Court also added that rules of procedure could be bent only if there were no specific circumstances repelling resort to the course in law or justice.

In the case in hand, the subsequent development urged before the court and the prayer for the dismissal of the suit at the instance of the petitioners alone, could not be taken cognizance of,

as the other plaintiffs as co-owners and landlords of the property denied the alleged amicable settlement as also the surrender of tenancy. Rather, an issue of suspicious circumstances and a clandestine arrangement between the petitioners and the tenant has been raised by the other plaintiffs.

Thus, the decision relied on by the petitioners is not applicable.

Under such circumstances, this court is of the view that the learned court below rightly rejected the application filed by the petitioners.

The order impugned is neither without jurisdiction nor contrary to law. The scope for interference with the order under Article 227 of the Constitution of India, is very limited.

Accordingly, the revisional application is dismissed.

However, the dismissal of the revisional application, will not prevent the petitioners from raising the issues at the trial and they may also take recourse to the other provisions of law.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)