

Court No. 652

CO 1835 of 2016

19.06.2023

(AD 39)

(S. Banerjee)

Biswanath Das

Vs.

Bela Das & Ors.

Mr. Dilip Kumar Maity

... for the petitioners

Service of notice upon learned counsel for the opposite party is taken on record. Opposite party is not represented inspite of service.

This is an application under Article 227 of the Constitution of India, challenging order dated 23rd July, 2015 passed in Title Suit No. 1626 of 2010 by the Civil Judge (Junior Division) 5th Court, Alipore. By the impugned order learned court below was pleased to reject plaintiff's prayer for hearing on the compliance report sent by OC, Watgunge Police Station.

Petitioner contended that the petitioner is a co-owner of premises no. 81B Manasatala Lane, Kolkata. Plaintiff filed the instant suit as defendant nos. 5 and 6 by dint of alleged purchase were trying to enter into the property and as such the plaintiff prayed for permanent injunction against defendant nos. 1 to 4, restraining them from parting with possession of the suit property as described in the schedule to the plaint and upon

considering such application and upon hearing the parties, the court below was pleased to direct both the parties to maintain status quo in respect of possession of the suit property. During pendency of the aforesaid suit violating the order of status quo, defendant nos. 5 and 6 entered into the suit premises and claimed that they got possession in the suit property on 11th May, 2010 by dint of conveyance.

Under the compelling circumstances the petitioner moved an application before the court below praying for mandatory injunction as also restoration of status quo as on 1st June, 2010 and in consideration of such application the court below was pleased to direct defendant nos. 5 and 6 to get out of possession of the suit property till disposal of the suit. Being aggrieved defendant nos. 5 and 6 herein, preferred appeal before learned District Judge, Alipore, being Misc. Appeal No. 114 of 2011 and the Appellate court affirmed the order of the Trial court. The opposite party nos. 5 and 6 again assailed the order by filing Revisional application before this court being CO 2231 of 2013 and this court while disposed of said Revisional application observed that there is no error apparent on the face of the order. In the said order it was also made clear that the defendant nos. 5 and 6 will not resist dispossession in terms of the order dated 7th February, 2011. Despite the said order defendant nos. 5 and 6 did not vacate. By an order

dated 3rd December, 2014 the court below directed Deputy Commissioner of Police to remove the defendant/opposite party nos. 5 and 6 from the suit property and to ensure that there was no disturbance or violation of the court's order. After the aforesaid order was passed, defendant nos. 5 and 6 inducted third-party or parties in the suit premises. As such when the police visited the suit premises on 12th January, 2015, they did not find the possession of defendant nos. 5 and 6 in the suit property. The police also did not take any action as the defendant nos. 5 and 6 were not there. One Ashok Mullick in their place had taken possession and claimed that he is a licensee in respect of said property under the vendor of defendant nos. 5 and 6. Though it is admitted position that in place of defendant nos. 5 and 6 one Ashok Mullick had taken the possession of the property, but unfortunately the court below came to a finding that the suit property is now under the possession of the defendant nos. 1 to 4 and for that reason the court below mechanically came to a conclusion that defendant nos. 5 and 6 are not in possession of the suit property and as such enforcement of the earlier order dated 7th February, 2011 is not relevant any further.

Having considered the facts and circumstances of the case it appears that the main grievance of the petitioner is that, in spite of specific direction by the

court below that the parties will maintain status quo in respect of possession of the suit property but, in violation of the order of status quo, the defendants have parted with possession to the outsiders in respect of the suit property.

Be that as it may, the present application is in connection with impugned order dated 20th July, 2015 which relates to the eviction of defendant nos. 5 and 6 from the suit premises and as per police report said defendant nos. 5 and 6 are not therein the suit property and as such in terms of the police report, the order impugned does not call for any interference. However, this order will not preclude the petitioner from taking any appropriate step before the court below, if any, in case of violation of injunction order, if any.

CO 1835 of 2016 is accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)