

June 8, 2023
Sl. No.10
Court No.19
s.biswas

CO 1677 of 2023

Satyajit Patra @ Satya Patra and another
vs.
Babu Patra

Mr. Dhananjay Banerjee
Mr. Surojit Basu
Ms. Ranu Mandal
Ms. Oindrila Ghosh

... for the petitioners

Mr. Sukanta Das

... for the opposite party

The revisional application is directed against an order passed by the learned District Judge, Paschim Medinipur in Misc. Appeal No.21 of 2023. By the said order, the learned lower appellate court upheld the order of mandatory injunction passed by the learned Civil Judge (Junior Division), 3rd Court, Paschim Medinipur in Title Suit No.34 of 2017.

The petitioners are aggrieved because the learned appellate court failed to appreciate the factum of possession of the petitioners in the suit property and also the fact that an earlier application for restoration of possession was disposed of without any mandatory directions. The learned advocate for the petitioners submits that the subsequent order would be barred by the principles of res judicata.

The fact of the case in brief is that the plaintiff filed a suit for declaration, injunction and alternatively recovery of possession, in the court of learned Civil Judge (Junior Division), 3rd Court,

Paschim Medinipur. Upon contested hearing, the application for temporary injunction was disposed of by restraining and prohibiting the defendants/petitioners from interfering with the peaceful possession of the plaintiff in respect of the suit property, till the disposal of the suit. The defendants neither preferred any appeal from the said order, nor did the defendants file an application under Order 39 Rule 4 of the Code of Civil Procedure for variation, vacation or modification of the order of temporary injunction.

On or about August 19, 2022, the defendants trespassed into the property and forcefully dispossessed the plaintiff and their aged parents from the suit property.

The plaintiff filed an application seeking restoration of possession for the first time on September 8, 2022. Thereafter, the plaintiff again filed another application for restoration of possession on January 16, 2023. In the said application, the plaintiff had categorically mentioned the factum of his dispossession along with his aged parents. It was stated that the plaintiff and his parents were living in a makeshift arrangement. The father of the plaintiff was 70 years old and the mother was about 65 years and partially paralysed after suffering a cerebral attack. That the makeshift arrangement

was a tarpaulin shed structure. A police report had been called for by the learned trial judge.

The defendants denied such allegation and submitted that they had been in possession of the property in question for the last 20 years and the defendants furnished certain documents in support of their case.

On contested hearing, the learned trial judge allowed the application for restoration of possession and directed the Officer-in-Charge, Debra Police Station to assist the plaintiff in getting back possession. The learned trial court held that once there was an order of restraint by way of temporary injunction dated January 3, 2019 and an order of implementation of the same through police help dated October 7, 2021, the parties against whom the order had been passed, should comply with the same. In order to maintain sanctity of an order of the court, proper orders could be passed. If a party was allowed to disobey the order, as was in the present case, the same would amount to abuse of the process of court and the civil court would be rendered powerless if no steps were taken to check the atrocities of the defendants which were committed in violation of the order of injunction.

Considering the fact that the plaintiff had sufficient documents to show his possession and

further considering the fact that the parents of the plaintiff were old and ailing and could not live in a makeshift tarpaulin shed, the court held that if the atrocities of the defendants were not checked, then it would cause irreparable loss and injury to party dispossessed and result in miscarriage of justice.

Such order dated February 1, 2023 was challenged by the petitioners/defendants in Misc. Appeal No.21 of 2023. The appeal was heard by the learned District Judge, Paschim Medinipur and the order of the learned Trial Judge was upheld.

The learned lower appellate court framed the following issues:

- (i) Whether the learned Trial Court has erred in allowing the petition for mandatory injunction with a direction to restore possession.
- (ii) Whether the learned Trial Court should have gone slow in granting the order of mandatory injunction against the defendants.
- (iii) Whether the impugned order was required to be interfered with, by the appellate court

The learned lower appellate court discussed the fact in details and arrived at a conclusion that the learned trial court was justified in passing an order

of mandatory injunction, thereby, directing the defendants to restore possession to the plaintiff and the parents with a direction upon the police authorities to aid the plaintiff in such process of restoration of possession.

The points which heavily weighed upon the learned lower appellate court were as follows:

- a) Order 39 Rules 1 and 2 of the Code of Civil Procedure empowered the learned trial judge to grant a temporary injunction to restrain a party from disturbing the peaceful possession of the plaintiff in the suit property and accordingly the trial court restrained the defendants from disturbing the possession of the plaintiff in respect of the suit property;
- b) Section 94(e) of the Code of Civil Procedure empowered the court to pass interlocutory orders from time to time which would be just, proper and convenient;
- c) There was no, prima facie, confusion with regard to the fact that the defendants did not have any right, title and interest in the property;
- d) The learned trial judge had, prima facie, found possession of the plaintiff to be in possession. The title of the plaintiff was on

the basis of a deed of gift executed by the parents in favour of the plaintiff. The record of rights were also in the name of the plaintiff;

- e) The order of injunction was neither challenged by way of an appeal nor did the defendants file an application under Order 39 Rule 4 of the Code of Civil Procedure for variation, vacation and modification of the said order;
- f) On August 18, 2022, the plaintiff along with his aged and ailing parents were dispossessed and the police report supported such contention. It was in consonance with public policy that an order of injunction must be obeyed by the parties or else the same would amount to miscarriage of justice and the courts would be rendered powerless.

With regard to possession of the defendants in respect of the suit property, the learned lower appellate court observed as follows:

- a) The trade registration certificate dated February 11, 2023, receipts of trade licence fee dated September 16, 2019, February 3, 2021 and July 5, 2021, did not mention the address of the suit property.

b) Form No.-II of the panchayat dated October 17, 2019 and the tax receipt dated August 14, 2022, June 27, 2021, February 3, 2021 and August 30, 2019, did not have any description of the suit property.

c) The meter reading card did not contain the address of the suit property.

d) The documents which were submitted by the defendants in proof of his possession were either created or obtained after the date of dispossession. Most of the documents were bereft of any specific address of the suit property.

e) The police report also indicated that the defendants had refused to comply with the order of the learned Civil Court, despite efforts having been made by the police authorities. Whereas, the documents filed by the plaintiff indicated that the plaintiff had been gifted the property by his parents. The record of rights also indicated that the plaintiff was in possession. The earlier application for restoration of possession before the learned trial court had not been disposed of on merits.

Referring to the decision of Hon'ble Apex Court, in the case of ***Tanusree Basu and ors. v. Ishani Prasad Basu and ors.*** reported in ***AUR 2008 SC 1909*** the learned appellate court held that a party to a suit could not take law in his hands during the

pendency of the suit and thereby dispossess a co-sharer or any other person in possession. If such situation occurs either in violation of an order of injunction or otherwise, the court indisputably would have the jurisdiction to restore the parties back to the same position.

In the matter of ***Manash Kumar Maji and ors and Suman Maji and another*** reported in **2019 (1) ICC 829**, it was held that the court had every authority to invoke its inherent jurisdiction under Section 151 of the Code of Civil Procedure to ensure compliance and adherence to its orders.

Referring to the decision of ***Sujit Pal v. Prabir Kumar Sun and ors.*** reported in **AIR 1986 Calcutta 220** the learned appellate court held that the inherent power of the court to restore the possession to a party who was dispossessed during the pendency of the suit by another party, was in addition to the provision of Order 39 Rule 2A of the C.P.C.

Having considered the above aspects and the orders impugned, this court does not find any reason to interfere with the same. The power of a revisional court is limited. The revisional court can only interfere when an order is either perverse or suffers from lack of jurisdiction.

According to this court, an order is perverse on the following grounds:

- a) if such order has been passed contrary to the evidence;
- b) if such order has been passed contrary to law;
- c) if the order has been passed without considering the material facts.

In this case, the learned lower appellate court entered into the factual aspects and also discussed the law. The learned lower appellate court had factually found that the police report supported the version of the plaintiff. That the police report indicated that the plaintiff was living with his aged and ailing parents in a makeshift tarpaulin shed near the roadside shop. That the order of injunction clearly restrained the defendants from interfering with the possession of the plaintiff in respect of the suit property. The defendants did not take any recourse to the remedies under the law by challenging such order of injunction. The factum of dispossession was also mentioned in the police report. The documents which were produced by the defendants in support of their possession, were examined and it was found that there was no evidence in support of such contention of the defendants.

The learned trial court had rightly invoked the inherent power under Section 151 of the Code of Civil Procedure to do substantial justice by restoring the possession to the plaintiff and his parents, failure of which would amount to miscarriage of justice and the sanctity of the order of the court would be completely negated and destroyed.

In the matter of ***Bansidhar Sharma v. State of Rajasthan*** reported in ***(2019) 19 SCC 701***, the Hon'ble Apex Court held as follows:-

“18. In the present facts and circumstances, the respondents have not committed any error in taking decision to call upon the appellant for handing over possession of the subject property at least after the special leave petition filed at the instance of the appellant came to be dismissed under order dated 17-5-2018 and in sequel thereto, there was no other remedy left with the respondents than to file an application under Section 151 CPC before the High Court for restoration of possession of the subject property.

19. After we have heard the parties, find no error being committed by the High Court in passing of the order dated 21-8-2019 directing the appellant to hand over possession of the subject property in question which was handed over to the appellant under the interim orders passed by the High Court pending SB Civil First Appeal No. 86 of 1979 which finally came to be dismissed vide judgment dated 20-4-2018.”

In the matter of ***Sushil Kumar Dey Biswas v. Anil Kumar Dey Biswas*** reported in ***(2015) 3 SCC 461***, the Hon'ble Apex Court held as follows:-

“6. In the application filed under Section 151 CPC, the appellants have alleged as under:

“... in June 2011. ... they were forcefully dispossessed from the shop room of the Schedule B property without due process of law ... the matter was informed for the first time to the local MP who requested the local police to look into the matter, but instead to make an enquiry the plaintiff again dispossessed the defendants from the possession of the first floor room by chopping off the steps of the wooden staircase that leads to the first floor room. The rooms on the first floor and the shop room in the ground floor are in absolute occupation of Defendant 2 and Defendant 1 was in possession of the other room on the ground floor from where he was forcefully dispossessed in the year 2005....”

7. The courts below dismissed the application filed under Section 151 CPC mainly on the ground that for the alleged dispossession of the appellants from the suit property in June 2011, the application was filed only on 4-1-2012. According to the appellant-defendants, the respondent-plaintiff is a very influential person and since the appellants were threatened by the men of the respondent, they could not immediately lodge the complaint. We are not inclined to go into the merits of the rival contentions.

8. Admittedly, the suit was filed for ejectment indicating thereby that at the time of filing the suit in the year 2004, the defendants were in possession of the entire suit B schedule property. Application for restoration of possession of the room on the first floor and the shop room on the ground floor was negated by the courts below merely on the ground of delay. Without going into the merits of rival contentions of both the parties in order to meet the ends of justice, in our view, possession of the first floor along with staircase and the shop room on the ground floor should be restored to the appellant-defendants. Delay in filing the application for restoration of possession cannot be the reason for declining relief.

9. Insofar as another room on the ground floor on the western side, as seen from the averments in the application as extracted above, even according to the appellants they were evicted in the year 2005. For a long time, the defendants have neither raised any objection nor filed any application in the court at the relevant time

regarding the said room in the ground floor. The respondent-plaintiff contends that the defendants have voluntarily vacated the premises and the defendants have purchased a flat at Nadanagore, Belghoria and have left the suit property at their own will. Having regard to the rival contentions, in our view, so far as the restoration of room on the western side of the ground floor is concerned, the same can be decided along with the suit.

10. In the result, the impugned order of the High Court is set aside and the appeal is allowed. The respondent-plaintiff is directed to restore the staircase and the possession of one room, one bath and privy on the first floor and shop room on the ground floor to the appellant-defendants within a period of six weeks from the date of receipt of copy of this order. On failure to restore the possession, the appellant-defendants are at liberty to approach the trial court which shall pass appropriate order for ensuring compliance with the direction of this Court. Insofar as one room on the western side of ground floor, the same shall be decided along with the suit. We have not expressed any opinion on the merits of the rival contentions of the parties. The trial court shall expedite the trial of Title Suit No. 196 of 2004 and dispose of the same at an early date. Stay of further proceedings of the suit granted vide this Court order dated 30-9-2013, stands vacated.”

Under such circumstances, the revisional court must not interfere with the order of the learned lower appellate court.

The revisional application is dismissed.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)