

Item No. 6
04.08.2023
Court. No. 19
GB

C.O. 2698 of 2022

Sri Prasenjit Dey & Ors.
Vs.
Sri Gopal Dey

*Mr. Kartick Kr. Bhattaharyya,
Ms. Soumashree Dutta*

...for the Petitioners.

Ms. Abhimanyu Banerjee

...for the Opposite Party.

This revisional application has been filed challenging an order dated March 5, 2022, passed by the learned Civil Judge (Senior Division), Kharagpur in Title Suit No.278 of 2020.

By the order impugned, the learned court below rejected an application under Section 151 of the Code of Civil Procedure.

The petitioners as plaintiffs, filed a suit for partition, declaration and injunction before the learned court on the ground that the Bastu land measuring about 8 Satak situated at Dag Nos.345 and 289 under R.S. Khatian No.165 of Mouza-Bhawanipore corresponding to Kharagpur Municipality Holding No.60, Subhash Pally, Police Station – Kharagpur, was an undivided property belonging to the plaintiffs and the defendant. That the defendant was enjoying the property all by himself, although each of the plaintiffs and the defendant had 1/4th share in the property in question. Prayer for permanent injunction restraining the defendant and his men and agents from disturbing the possession of the plaintiffs in respect of the suit property and

from changing the nature, character and possession of the suit property was also made.

An application under Order 39, Rules 1 and 2 of the Code of Civil Procedure was filed, by which the plaintiffs prayed for an injunction restraining the defendant from alienating the property, changing the nature and character of the property and from disturbing the plaintiffs' possession.

The learned court below initially passed an ad interim order which was extended from time to time. Thereafter, by an order dated March 5, 2022, the ad interim injunction was made absolute and the defendant was restrained from changing the nature and character of the suit property, from alienating the suit property and from disturbing the plaintiffs in respect of the suit property. On the same day, an application was filed by the plaintiffs under Section 151 of the Code of Civil Procedure, for an order directing the defendant to allow the plaintiffs to use some of the rooms in the suit property, by vacating the same, and for appointment of receiver to collect rent from the tenants, was also rejected.

Aggrieved by the rejection of the application under Section 151 of the Code of Civil Procedure filed by the plaintiffs, this revisional application has been filed.

Heard the parties.

By an application under Section 151 of the Code of Civil Procedure, the petitioners prayed for a mandatory injunction directing the police to vacate some rooms in the suit property allegedly occupied by tenants, for appointment of receiver to collect the rent from the tenants inducted by

the defendant and for implementation of the order of injunction

In my opinion, such application could not have been filed under Section 151 of the Code of Civil Procedure. Secondly, there is no finding of the learned court below that the plaintiffs were ever residing at the premises. The plaintiffs have always maintained that the defendant was in possession and the plaintiffs' enjoyment of the suit property should not be disturbed.

The learned court found that the plaintiffs had failed to establish that the defendant had inducted tenants after the ad interim order of injunction had been passed. From the prayers in the plaint, it is revealed that they were pre-existing tenants. Hence, the learned court below rejected the application under Section 151 of the Code of Civil Procedure. The prayers for appointment of receiver and for mandatory injunction directing the police to vacate some rooms, which were made under Section 151 of the Code, were misconceived. The Code of Civil Procedure makes specific provisions for prayers of such nature. Such prayers cannot be granted by invoking Section 151 of the Code. Moreover, these are issues which have to be proved on the basis of evidence. A mere allegation would not suffice.

“In the decision of *Arjun Singh v. Mohindra Kumar*, reported in *AIR 1964 SC 993*, the Hon'ble Apex Court held as follows:-

“**20.** It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words if there are specific provisions of the Code dealing with a particular topic

and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code.”

In the decision of ***Vareed Jacob v. Sosamma Geevarghese***, reported in **(2004) 6 SCC 378**, the Hon’ble Apex Court held as follows:-

10. In the case of *Jagjit Singh Khanna v. Dr. Rakhal Das Mullick* [AIR 1988 Cal 95 : (1988) 92 CWN 190] it has been held that a temporary injunction may be granted under Section 94(c) only if a case satisfies Order 39 Rule 1 and Rule 2. It is not correct to say that the court has two powers, one to grant temporary injunction under Section 94(c) and the other under Order 39 Rules 1 and 2. That Section 94(c) CPC shows that the court may grant a temporary injunction thereunder, only if it is so prescribed by Rule 1 and Rule 2 of Order 39. The court can also grant temporary injunction in exercise of its inherent powers under Section 151, but in that case, it does not grant temporary injunction under any of the powers conferred by CPC, but under powers inherent in the constitution of the court, which is saved by Section 151 CPC.

11. The above discussion shows that the source of power of the court to grant interim relief is under Section 94. However, exercise of that power can only be done if the circumstances of the case fall under the rules. Therefore, when a matter comes before the court, the court has to examine the facts of each case and ascertain whether the ingredients of Section 94 read with the rules in an order are satisfied and accordingly grant an appropriate relief. It is only in cases where circumstances do not fall under any of the rules prescribed that the court can invoke its inherent power under Section 151 CPC. Accordingly, the courts have to grant relief of attachment before judgment, if the circumstances fall under Order 38 CPC. Similarly, courts will grant temporary

injunction if the case satisfies Order 39. So depending on the circumstances falling in the prescribed rules, the power of the court to grant specified reliefs would vary. Therefore, each set of rules prescribed is distinct and different from the other and therefore, one cannot equate rules of temporary injunction with rules of attachment before judgment although all are broadly termed as interlocutory orders.

In the decision of ***State of U.P. v. Roshan Singh***, reported in **(2008) 2 SCC 488**, the Hon'ble Apex Court held as follows:-

8. The object of Section 151 CPC is to supplement and not to replace the remedies provided for in the Code of Civil Procedure. Section 151 CPC will not be available when there is alternative remedy and the same is accepted to be a well-settled ratio of law. The operative field of power being thus restricted, the same cannot be risen to inherent power. The inherent powers of the court are in addition to the powers specifically conferred on it. If there are express provisions covering a particular topic, such power cannot be exercised in that regard. The section confers on the court power of making such orders as may be necessary for the ends of justice of the court. Section 151 CPC cannot be invoked when there is express provision even under which the relief can be claimed by the aggrieved party. The power can only be invoked to supplement the provisions of the Code and not to override or evade other express provisions. The position is not different so far as the other statutes are concerned. Undisputedly, an aggrieved person is not remediless under the Act.

Thus, the learned court below did not act illegally and with material irregularity by rejecting the application under Section 151 of the Code.

As the suit is at the stage of evidence, the learned court below is directed to dispose of the said suit within a period of six months. However, if there is any misc. appeal pending from the order of injunction, the learned lower

appellate court shall dispose of the misc. appeal within a month from the next date fixed.

The defendant submits before this Court that neither any tenant had been inducted after the order of ad interim injunction, nor any change to the nature, character and possession of the property has been made. It is further undertaken that no steps had been taken to alienate the property. This submission of the defendant is also recorded.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)