

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CIVIL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CO 92 of 2023

BIKI PRASAD JAISWAL & ORS.
VS.
DINESH PRASAD JAISWAL

For the Petitioners	: Mr. Bikramaditya Ghosh, Adv. Ms. Supriya Singh, Adv.
For the Opposite Party	: Mr. Kunaljit Bhattacharjee, Adv. Mr. Alok Shah, Adv.
Hearing concluded on	: 29 th August, 2023
Judgement on	: 5 th September, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Article 227 of the Constitution of India impeaches the order dated 1st August, 2023 passed by learned Civil Judge (Junior Division), Alipurduar in Title Suit No. 552 of 2015. By the order impugned learned Trial Court in exercise of inherent power conferred under Section 151 of the Code of Civil Procedure directed the Officer-in-charge, Jaigaon Police Station to ensure proper implementation of order of status quo passed by learned Trial Court while disposing off the petition for injunction and also to ensure restoration of possession of the plaintiff to the suit property and to submit a report of compliance.

2. For the sake of convenience and brevity the parties would be referred to as they have been arrayed before the learned Trial Court.
3. Briefly stated, the plaintiff Dinesh Prasad Jaiswal filed the suit for declaration and injunction against the defendants registered as Title Suit No. 552 of 2015, contending, *inter alia*, that the defendant no. 1 inducted the plaintiff as tenant in respect of suit property at monthly rental of Rs. 3000/- per month which was increased from time to time and last paid rent amount was Rs. 15,000/- per month which was tendered by the plaintiff, but defendant no. 1 refused to accept the rent for the month of June, 2015 when offered.
4. It is further contended that on or about 10th October, 2010, pursuant to an agreement, the plaintiff paid a sum of Rs. 3,00,000/- as security deposit and it was agreed the defendants would reconstruct the property, accommodate the plaintiff and the said amount would be returned to the plaintiff at the time of surrender of tenancy. But the defendants failed to act in terms of such agreement which led the plaintiff to issue a notice upon the plaintiff on 19th March, 2015.
5. On 22nd June, 2015, the defendants in collusion with each other forcibly removed CI sheets from the roof of the verandah of the suit property in absence of the plaintiff, disconnected the electric line with a view to evict him from the suit property. On 4th July, 2015, the defendant again came and asked him to vacate the suit property. There was a threat of forcible dispossession. Hence by filing the suit the plaintiff prayed for declaration as to his status as tenant under the defendant no. 1 and for injunction coupled with other relief.

6. By way of amendment, the plaintiff further incorporated the following facts to the plaint.

“During pendency of the suit the plaintiff came to know that the defendants do not have any right title interest in the suit property. Supriya Mukherjee and Subrata Mukherjee are the owners of the property and they transferred the property in suit in favour of the plaintiff by way of sale. Since after purchase thereby acquiring title the plaintiff has been possessing the property by mutating his name and by paying rates and taxes.”

7. The plaintiff then filed an application for temporary injunction. The order of temporary injunction was passed on 4th April, 2016 on consent and learned Trial Court was pleased to direct the parties to maintain status quo with regards to the possession of the parties in respect of suit property.
8. The defendants contested the suit by filing written statement denying all material allegations made therein. It is contended that the plaintiff assured the defendants that he would quit and vacate the suit property after the adjustment of Rs. 3,00,0000/- at the rate of Rs. 15,000/- per month. The plaintiff took back a sum of Rs. 1,00,000/- out of Rs. 3,00,000/- he gave to the plaintiff. But despite adjustment the plaintiff did not surrender the possession of the property. He has made a false claim to have acquired ownership of the property by purchase. Subsequently, on 9th August, 2023, the plaintiff filed an application under Section 151 of the Code of Civil procedure stating, *inter alia*, that during pendency of the suit on 5th May, 2020 during Pandemic Covid-19 the defendants and their men illegally trespassed into the shop of

the plaintiff by breaking open the padlock and ransacked his shop, looted his shop and dispossessed the plaintiff from the suit property. The petition was contested by the defendants by filing written objection denying all material allegations.

9. It is further contended that prior filing of the application under Section 151 of the Code of Civil Procedure the plaintiff took out an application under Section 144 of the Code of Civil Procedure before the Sub-Divisional Executive Magistrate Court at Alipurduar vide petition no. 111/20 dated 22nd June, 2020 and prayed before the learned Executive Magistrate to restrain the defendants from entering upon the schedule land, as mentioned in the schedule of the plaint of the present suit and this averment in the petition under Section 144 of Cr.P.C. indicates the hollowness in the claim of the plaintiff.
10. It is further contended that report was called for. BL & LRO in his report indicated that defendants have been possessing the suit property. Learned Trial Court considering the pleadings of the parties passed the order impugned.
11. Mr. Bikramaditya Ghosh, learned Counsel for the petitioner assailing the order impugned submits that the learned Trial Court before passing the order for restoration of possession, ought to have ascertained the correctness in the claim of the plaintiff regarding dispossession. Without ascertaining the fact learned Trial Court could not have passed the order impugned.
12. According to Mr. Ghosh, the order impugned is in the nature of mandatory injunction but learned Trial Court allowed the petition without any specific finding. Before filing the application under Section

151 of the Code of Civil Procedure the plaintiff filed a petition under Section 154 of the Code of Civil procedure and in the said petition it was adverted that defendants were trying to disturb the possession of the plaintiff. Having adverted the said apprehension in the petition the plaintiff filed this application under Section 151 of the Code of Civil Procedure subsequent to the filing of the petition alleging dispossession. The discrepancies between two versions of the plaintiff make the case of the plaintiff doubtful. It is further contended that the alleged dispossession took place on 5th may, 2020 and after elapsed of three years, on 28th March, 2023 the petition was filed.

13. Under such circumstances, according to Mr. Ghosh, learned Trial Court ought to have treated the petition under Section 151 of the Code of Civil Procedure as one under Order 39 Rule 2A of the Code of Civil Procedure and ought to have ascertained the fact by recording evidence of the parties. Learned Trial Court, according to Mr. Ghosh, fails to exercise jurisdiction while passing the order impugned.
14. Refuting such contention of Mr. Ghosh, Mr. Kunaljit Bhattacharjee, learned Counsel representing the opposite parties submits that the plaintiff was a tenant under the defendants. In their written objection if the defendants did not claim that the suit property was surrendered by the plaintiff. Having admitted his possession in written objection the defendants stated that in course of enquiry by the order of the Executive Magistrate, BL & LRO in his report dated 4th September, 2020 indicated that the defendants were in possession of the suit property.

15. This report leads to irresistible conclusion that in absence of surrender of tenancy, the plaintiff was dispossessed otherwise than following in due process of law. In such situation learned Trial Court was absolutely justified in invoking the inherent jurisdiction and to pass the order for restoration of possession.
16. Mr. Bhattacharjee further submits that Order 39 Rule 2A of the Code of Civil Procedure prescribes punishment for a wrong doer, who violates the order of injunction. But it does not alleviate the trauma of the plaintiff caused by illegal dispossession.
17. In support of his contention Mr. Bhattacharjee places his reliance in a judgement of Hon'ble Division Bench of this Court in **SUJIT PAL VS. PRABIR KUMAR SUN & ORS.** reported in **AIR 1986 Cal 220**, wherein it is held :-

“8. It may be that O.39, R.2A is in the nature of an execution proceeding, but the question before us is whether the Court has inherent power to grant a temporary mandatory injunction for the purpose of granting relief to a person who has been dispossessed despite an order of interim injunction. In the instant case, there is no question of execution of the order of interim injunction that was granted in favour of the opposite party restraining the defendants including the petitioner from interfering with the possession of the opposite party of the room in question. The petitioner has forcibly dispossessed the opposite party from the room and has taken possession thereof in utter violation of the interim injunction. If the opposite party is asked to pursue the remedy under O.39, R.2A, it will be doing a great injustice to him inasmuch as under the said provision, the Court cannot grant immediate relief to the opposite party. So

there is no question of execution of the order of interim injunction. The real question is the granting of immediate relief to the opposite party by restoring his possession of the room. The analogy of O.21, R.32 of the Civil P.C. in our opinion, has no manner of application for the purpose of granting relief to the opposite party. We do not also think that there is any relevance in considering the applicability of the provision of S.51 of the Civil PC. which relates to the powers of Court to enforce execution. The injury is grave and serious; ends of justice demands that the Court should at once take steps in granting relief to the opposite party. In this connection, we may refer to an observation from Kerr on Injunctions, 6th Edition, Page 41:

"But where the injury is of so serious or material a character that the restoring things to their former condition is the only remedy which will meet the requirements of the case, or the defendant has been guilty of sharp practices or unfair conduct, or has shown a desire to steal a march upon the plaintiff, or to evade the jurisdiction of the Court, the injunction will issue, notwithstanding the amount of inconvenience to the other party, and though the expense thereby caused to him will be out of proportion to any advantage the plaintiff may derive from it."

9. In a case like the present one where the 'restoring things to their former condition is the only remedy' the Court, in our opinion, has to take steps for the purpose in the exercise of its inherent power. In *Bhagat Singh v. Dewan Jagbir Sawhney*, AIR 1941 Cal 670, it has been observed by Lord Williams J. that the Code is not exhaustive; there are cases which are not provided for in it, and the High Court must not fold its hands and allow injustice to be done. Further, it has been observed by his Lordship that the law cannot make express provisions against all inconveniences, and that the Court had,

therefore, in many cases where the circumstances warranted it, and the necessities of the case required it, acted upon the assumption of the possession of an inherent power to act ex debito justitiae and to do that real and substantial justice for the administration of which it alone exists.”

18. True it is in absence of any narrative regarding surrender of possession by the plaintiff in favour of the defendants, the possession of the defendants in respect of property in suit, as claimed by the defendants in their written objection to the petition under Section 151 of the Code of Civil Procedure, unerringly indicates dispossession of the plaintiff and such dispossession cannot be presumed to have taken place following due process of law, in absence of any cogent and convincing document supporting the averment.
19. But there is no explanation as to why three years after dispossession the plaintiff filed this application under Section 151 of the Code of Civil Procedure. Once dispossessed plaintiff could have approached the Court for restoration of his possession by taking recourse to the provision of Section 6 of the Specific Relief Act within six months from the date of mischief, or six months after the restriction imposed because of Pandemic Covid-19 was relaxed. By the order of the Hon’ble Apex Court the period in between was exempted from limitation. No step was taken by the plaintiff even after lifting of the restriction, the plaintiff did not approach the Court immediately at the first available opportunity with his grievance.
20. In *Sujit Pal (supra)* the alleged dispossession took place in the year 1985 after an order of injunction was passed in Title Suit No. 887 of

1985 and the order of restoration of possession was taken on 4th July, 1985 and the Hon'ble Court decided the lis on 2nd September, 1985. Therefore, the judgement pronounced in *Sujit Pal (supra)* is not applicable in this case as precedent because of inordinate delay on the part of the plaintiff in approaching the Court. The sole object was to extend immediate relief to the person at the receiving end.

21. The entire sequence of events in the said case suggests the exigency in the matter which is missing in this case at hand. Learned Trial Court ought to have considered this factum of delay while exercising the inherent jurisdiction.
22. Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.
23. Authority of Court undoubtedly exists for the advancement of justice if any abuse of process leading to injustice is brought to the notice of the Court, then Court would be justified in preventing injustice by invoking inherent jurisdiction but in absence of any specific provision in the statute. As I have indicated, the plaintiff could have taken out a petition under Section 6 of the Specific Relief Act within the prescribed period of limitation after the exempted period was over but plaintiff did not do so. He could have filed petition for temporary mandatory injunction. The inherent power could have been invoked, had there been any petition immediately after the alleged mischief by way of illegal

dispossession. But when the plaintiff came before the Court breaking his slumber after 3 years, learned Trial Court could not have passed the order impugned in absence of any exigency.

24. Hon'ble Supreme Court in the judgement in **STATE OF UTTAR PRADESH & ORS. VS. ROSHAN SINGH (DEAD) BY LRS. & ORS.** reported in **(2008) 2 SCC 488** held :-

“7. The principles which relate the exercise of inherent powers by a court have been highlighted in many cases. In matters with which the Code of Civil Procedure does not deal with, the court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require. If there are specific provisions of the Code of Civil Procedure dealing with the 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 powers of the court cannot be invoked in order to cut across the powers conferred by the Code of Civil Procedure. The inherent powers of the court are not to be used for the benefit of a litigant who has a remedy under the Code of Civil Procedure. Similar is the position vis-à-vis other statutes.

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.”

25. Learned Trial Court had no reason to exercise the inherent jurisdiction at a belated stage of alleged dispossession, as there was no exigency.
26. In my humble opinion, the order impugned manifests the erroneous exercise of jurisdiction by the learned Trial Court. The order impugned is set aside. This petition under Article 227 of the Constitution of India is allowed on contest but without cost. Connected application, if any, stands disposed off.
27. This order shall not preclude the plaintiff to take out application for restoration of possession.
28. Let a copy of this judgement be sent down to the learned Trial Court immediately.
29. Urgent photostat certified copy of this judgement if applied for, should be made available to the parties upon compliance of requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)