

30.04.2024
Sl. No.28(DL)
srm

C.O. No. 78 of 2024
Smt. Aditi Dutta
Versus
Amar Nath Dey & Ors.

Mr. Krishna Das Poddar

...for the Petitioner.

1. The revisional application arises out of an order dated October 5, 2023 passed by the learned Judge, 13th Bench, City Civil Court at Calcutta, in Title Suit No.486 of 2022.
2. By the said order, an application under Section 151 of the Code of Civil Procedure was rejected. By the application, the petitioner as the plaintiff prayed for repossession of the suit property.
3. The allegation was that she was dispossessed in violation of the order of *status quo*. When the order of *status quo* was passed, the plaintiff was in possession. The defendants opposed such application on the ground that the plaintiff was never in possession. She was the married daughter of the deceased sebaite. As per the Will of late Lalit Mohan Dey, the married daughters of sebaits

were not entitled to assume the role of a sebaite. The suit property was admittedly a debuttar property.

4. Learned Advocate for the petitioner relies on the gas connection and the electricity connection which have been transferred in her name after the demise of the petitioner's father. The learned trial judge found that the gas connection was obtained by the petitioner in 2022, after the suit was filed. Thus, the gas connection in respect of the premises in question, which was obtained after the suit was filed, would not indicate that the petitioner was in possession.
5. The next issue which the learned court decided is that the petitioner applied for transfer of the meter in her name after her father died. As an heir of the deceased father, the meter connection was transferred by the CESC in the name of the petitioner. That itself, would not prove that the petitioner was in possession. The voters' list submitted by the defendants indicated that the petitioner was a voter of Part 131 of Chowringhee Assembly Constituency. The Aadhar card also denoted a separate address. Thus, on these documents, the learned court came to the finding that the defendants had, *prima facie*,

proved that the petitioner was not in possession of the property.

6. Under such circumstances, nothing remains to be decided in the revisional application. The learned court rightly decided that the question of possession and the rights of the parties, should be decided at the final hearing of the suit.
7. The order passed under Section 151 of the Code of Civil Procedure was a discretionary order. Repossession of a property by way of a mandatory direction could not be granted on the mere asking. The person claiming dispossession would have to establish the timing, mode, method and manner in which the dispossession had taken place. In the facts of the present case, the plaintiff has not been able to prove anything with regard to how she was dispossessed and under what circumstances she had been dispossessed. The ad interim order of *status quo* does not record who was in possession.
8. Under such circumstances, the order impugned does not call for any interference.
9. The observations made in this order shall be restricted to the disposal of this revisional application. The plaintiff is at liberty to take all points at the trial.

10. The learned court is requested to dispose of the application for injunction expeditiously and preferably within a period of three months from the next date fixed.
11. The revisional application is, thus, disposed of.
12. There shall be no order as to costs.
13. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)