

Ct. 20.02
No. 652
28
akb
2024

C.O. 144 of 2021
Prayash Merchant Pvt. Ltd. & Anr.
-Versus-
Md. Nasim & Ors.

Mr. Varun Kothari
Mr. Bhupendra Gupta
Mr. Hamidul Haque **...For the Petitioners**

Order dated 17th February, 2020 passed by the learned Additional District Judge, 1st Court, Sealdah, in Misc. Appeal No. 33 of 2019 has been challenged by the petitioners in the present application.

Petitioners claimed themselves as joint owners in respect of the premises No. 39, Darga Road, Kolkata under Beniapukur Police Station. Petitioner no. 1 purchased an area of 26 cottah 4 chittak 21 sq. ft. together with an old structure at aforesaid 39, Darga Road. Thereafter he sold 1 cottah 9 chittak 10 sq. ft. in favour of petitioner no. 2 by a registered deed dated 5th March, 2019. Accordingly by the Deed of Conveyance dated 27th July, 2007 and 5th March, 2019, they are lawful owners in respect of the aforesaid property and they have every right to enjoy, use, occupy and possess the property. In fact petitioners are in possession of the aforesaid property and have every right to make full utilisation thereof.

Petitioners further state that the plaintiff/opposite party No. 1 filed Title Suit No. 82 of 2019 against the

petitioner and three others for declaration and permanent injunction. In the said suit opposite party claimed right title interest in respect of 'B' schedule property to the plaintiff i.e. one eating house measuring about 210 sq. ft. situated at 39, Darga Road.

Petitioners further contended that an injunction application containing false and fabricated statements was also filed in order to obtain an order of injunction. The opposite party No. 1 as plaintiff moved application for ad interim order of injunction before the Trial Court on 27th January, 2019 and after hearing learned Trial Court passed ex parte order of injunction directing both the parties to maintain status quo as regards nature, character and possession over the 'B' Schedule property. Being aggrieved by that order petitioners herein preferred an appeal before the Court below and the Court below after hearing the parties dismissed the Misc. Appeal on contest and affirmed the order of status-quo passed by the Trial Court dated 27th June, 2019.

Being aggrieved by that order petitioners herein submits that from the Deed of Conveyance it does not transpire that the plaintiff has any right title interest in respect of the suit property and the Courts below on the basis of assumption that the plaintiff is the owner of the suit

property and that the plaintiff is in possession of the said property, has passed order of status quo. In fact, the said Deed of Conveyance dated 15th July, 1965 is pertaining to premises situated at 39B, Darga Road, Calcutta whereas the schedule property is 39, Darga Road, Calcutta. He further submits that from the Deed of Conveyance dated 15th July, 1965 it reflects that the plaintiff cannot claim ownership or any right in respect of the schedule property and in fact the said Deed of Conveyance was in respect of sale of business of goodwill of eating house in favour of the plaintiff and that too it is situated in premises No. 39B, Darga Road, Kolkata and not in premises no. 39, Darga Road, Kolkata. In fact plaintiff did not purchase any portion of the schedule mentioned suit property but the Court below on the basis of surmise and conjectures has passed the order of injunction. Accordingly, the petitioners prayed for setting aside both the impugned orders passed by the Courts below.

I have considered the submissions made on behalf of the petitioners. The admitted position as appearing from the plaint is that the schedule property comprises of an 'eating house' measuring about 210 sq. ft. being forming part or portion of the premises facing to Darga Road situated at Premises No. 39, Darga Road (formerly known as 39B, Darga Road), Kolkata 700 017.

In paragraph 8 of the injunction application plaintiff has clearly admitted that in the schedule mentioned property, defendant no. 1 and his men and agent criminally trespassed on 24.04.2019 and demolished and removed the entire structure and dispossessed the plaintiffs from the hutment measuring 210 sq. ft. It is submitted on behalf of the petitioner that the plaintiff in his injunction application has also not prayed for passing any temporary or ad interim injunction.

He further pointed out that the alleged Deed of Conveyance by which the plaintiff is claiming right title interest in the suit property, goes to show that alleged Deed of Sale was for Rs. 1000/- and that too for goodwill of an 'eating house' with tenancy right.

Accordingly, it is submitted that plaintiffs were never owners of the schedule property and the plaintiffs are not in possession of the suit property, so balance of convenience and inconvenience also does not lean in favour of the plaintiffs nor plaintiff has a prima facie case in respect of the suit property, since he has only purchased the goodwill of the schedule-mentioned eating house with tenancy right. However, ignoring all these the Trial Court passed blanket order of ad interim injunction directing both the parties to maintain status quo as regards nature and

character and possession over the schedule property as on that date without ascertaining the status of the plaintiff in respect of possession in the suit property. Now interpreting said order in illegal manner plaintiffs are trying to grab defendant's other properties.

The Appellate Court also concurred the view observing that if the possession is not protected by an ad interim order of injunction, there would be possibility of multiplicity of suit.

Having considered the facts and circumstances of the case, I find that the plaintiff has failed to make out any prima facie case in respect of suit property nor he has able to show that balance of convenience and inconvenience leans in his favour and since the plaintiff admittedly is out of possession and that plaintiff himself admitted that subject matter of suit i.e. eating house structure measuring 210 sq. ft. (app.) has already been removed, the orders impugned prima facie suffers from perversity and is not sustainable in the eye of law.

The word "status quo" implies the existing state of things on the date of passing order. Therefore before granting such relief the Court has to consider the relevant principles of prima facie case, balance of convenience and irreparable injury or loss likely to be caused to one of the

parties. Court is also to make an endeavor to clarify the conditions in which or subject to which, the order is passed. In fact when the order of status quo in respect of nature and character and possession of 'B' schedule property was passed, admittedly 'B' schedule property was not in existence and plaintiff was not in possession of 'B' schedule property. Accordingly, the impugned injunction order in the form of status quo which has been passed indiscriminately and without qualifying the conditions, if allowed to be continued, it will lead to ambiguity, difficulty, uncertainty and confusion and may create dangerous consequences also.

In such view of the matter the order impugned dated 17th February, 2020 as well as the order of the Trial Court passed vide order dated 27th June, 2019 are hereby set aside.

The revisional application, being C.O. 144 of 2021 is accordingly allowed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)