

Item No. 08
Ct 22

C.O. 1314 of 2021

**Minor Narayan Chandra Singha
Vs
Naranjan Kirtania & Ors.**

Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Somanta. ... For the petitioner.

Ms. Swapna Roy. ... for the opposite party.

1. Affidavit-in-opposition is filed and taken on record.
2. This revisional application has been filed challenging the order No. 08 dated 02.03.2021 in connection with Title Execution Case No. 09 of 2020 passed by the learned Civil Judge (Junior Division), 2nd Court, Krishnanagar, Naida, wherein learned Judge dismissed the execution petition by recording an order that issue of dispossession agitated in the execution case cannot be ascertained only on G.D. Entry (Exhibit-1).
3. The background fact of this revisional application is that petitioner/decreed-holder filed a Title Suit being No. 74 of 2015 with a prayer for permanent injunction which was decreed ex parte. Decree was drawn up restraining the defendant/JDR/opposite party from interfering with the peaceful possession of the petitioner in the suit property in any manner and also from changing the nature and character or from dispossessing the DHR/petitioner by force.

4. According to petitioner after the decree was passed, the petitioner/decreed-holder was dispossessed in the month of January, 2020 and for the reason he lodged a General Diary before the officer-in-charge, Nakashipara Police Station.
5. Learned counsel appearing on behalf of the petitioner has submitted that the learned Judge passed the impugned order without making any enquiry or taking evidence and came to erroneous findings only on presumption.
6. Learned counsel on behalf of the petitioner has drawn my attention to the G.D. addressed to officer-in-charge of Nakashipara Police Station as well as decree passed in the suit.
7. Learned counsel appearing on behalf of the opposite party/JDR has submitted before this Court that subject property is under control of petitioner/decreed-holder and the opposite party never captured the suit property. It is further submitted that the subject property is the area, which is being used as Panchayet road.
8. Learned counsel appearing on behalf of the opposite party has drawn my attention to the annexures to the affidavit-in-opposition.
9. It is not disputed that decree was passed in favour of the petitioner and at the time of passing the decree, petitioner was in possession of the property.

It is also seen from the record as well as order impugned that petitioner lodged GD before the officer-in-charge Nakashipara Police Station alleging all the facts including his dispossession from the subject property at the instance of opposite party/JDR forcibly.

10. The order impugned only focused on the GD Entry without making any further enquiry.
11. The issue before the Executing Court was as to whether petitioner was dispossessed forcibly by the opposite party/JDR and unfortunately on that issue no decision was taken by the learned Judge after necessary enquiry within the meaning of explanation to Order 21 Rule 32(5) of the Code of Civil Procedure.
12. That apart, learned counsel appearing on behalf of the opposite party/JDR took an issue over the possession of the subject property.
13. On careful scrutiny of the entire order impugned, I find that learned Judge did not resolve the issue of dispossession in any manner and only refrained himself by taking a presumption.
14. Given facts and circumstances, the order No. 08 dated 02.03.2021 stands set aside with a direction upon the Executing Court to re-hear the application on the issue of dispossession raised in the petition after giving an opportunity to both the parties for

adducing evidence, if necessary.

15. Learned Judge is also requested to dispose of the said Execution Case as expeditiously as possible without giving any unnecessary adjournment.
16. With this observation and direction, the revisional application stands disposed of.
17. All the parties shall act on the server copy of this order duly downloaded from the official web site of this Court.
18. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)