

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 99 of 2024

Sri Ramnath Prasad

Versus

Sri Sawarmal Agarwal & Ors.

For the Petitioner	:	Mr.Nripen Das Mr. Bikramaditya Ghosh Mr. Debanjan Das
For the Opposite Party no.1	:	Mr. Partha Pratim Roy Mr. Debasish Mukhopadhyay Ms. Jeenia Rudra
Heard on	:	03.09.2024
Judgment on	:	24.09.2024

Ajoy Kumar Mukherjee , J.:

1. This application under section 227 of the Constitution of India has been directed against the order dated 9th May 2024 passed by learned District Judge, Jalpaiguri in Misc. Appeal no. 10 of 2021. By the order impugned learned court below has set aside the order of interim injunction dated 12.07.2019 passed by learned Civil Judge, (Junior Division), 2nd court, Jalpaiguri in Title Suit no. 186 of 2019 and also pleaded to dismiss

defendant's mandatory injunction petition and thereby allowed the said Misc. Appeal 10 of 2021 in part.

2. Opposite Party no.1 as plaintiff filed aforesaid Title Suit no. 186 of 2019 against the defendants /petitioners for permanent injunction in respect of the suit property. Plaintiff's case in a nutshell is that the plaintiff since purchase has absolute right, title, interest and possession in schedule mentioned suit property measuring 0.09 acre, appertaining to L.R Khatian no. 1729, corresponding to L.R Plot no. 983 derived from R.S Plot no. 50 and 51, sheet no. 5 derived from R.S. sheet no. 8 in Mouza Dabgram. Plaintiff's further contention is that he purchased the land by way of registered deed dated 05.06.1980 from the legal heirs of Paresh Chandra Bhowmick and acquired possession.

3. One Chikenswari Devi was the original owner in respect of suit land who during her lifetime transferred the suit land along with other land to said Paresh Chandra Bhowmick by a deed dated 09.07.1965 and delivered possession thereof to the transferee. After death of Paresh, his legal heirs transferred the suit land in favour of plaintiff/respondent. Accordingly mutation certificate has also been granted in favour of the plaintiff and plaintiff's name also recorded in the L.R Record of Right. Plaintiff further alleged that defendant tried to dispossess him from the suit land by demolishing the guard wall. He filed the suit for declaring his right, title and possession in the suit property along with a prayer for injunction restraining the defendant from interfering with the peaceful possession of the plaintiff and also for an ad interim injunction to that effect.

4. Defendant no. 2 is contesting the suit by filing written statement and the specific case of the defendant is that plaintiff has not come before the Trial court with clean hand, in so far as he earlier filed a suit against defendant no. 2 and others being Title Suit no. 261 of 2003, in connection with present suit land which he suppressed before the Trial Court. Further case of defendant no. 2 is that one Mahendra Kumar Agarwal also instituted a suit in the same court being Title Suit no. 295 of 2013 in respect of the selfsame suit land wherein Mahendra made a prayer for declaration and recovery of possession, admitting possession of the appellant/defendant no. 2. It is further submitted on behalf of defendant no. 2 that said Mahendra obtained ex-parte decree against defendant no. 2 behind his back and for which he filed Misc. case No. 45 of 2018 for setting aside the said exparte decree. Subsequently said Mahendra put the decree in execution being Title Execution no. 2 of 2017 and in the said execution case a specific report was submitted by Nazir on 05.07.2017 that the property in question was found in possession of the judgment debtor i.e. the petitioner herein.

5. In the aforesaid suit being T.S. 186 of 2019, plaintiff moved a prayer for exparte ad interim injunction and Trial Court by an order dated 12.07.2019 restrained respondent from entering into the suit land. Defence contention is, being armed with the said ad interim order plaintiff took forcible possession of the suit property. Defendant no.2 preferred Misc. Appeal No. 51 of 2019 against the said order of ad interim injunction dated 12.07.2019 and learned District Judge by an order dated 12.09.2019 was pleased to set aside the said ad interim order granted in favour of plaintiff.

6. Being aggrieved by the order dated 12.09.2019 passed by learned District Judge, Jalpaiguri in Misc. Appeal no. 51 of 2019, plaintiff/opposite party no. 1 herein preferred Revisional Application being C.O. 77 of 2019 and when it came up for hearing, this court was pleased to dismiss the Revisional Application with the observation that on comparison of land detail in the schedule of Title Suit no.261 of 2003 and Title Suit no. 295 of 2013 with the schedule of the present suit, it reveals similarity and non-discloser of such material fact in the plaint is not proper on the part of the plaintiff.

7. In the meantime the petitioner as defendant in the said suit filed an application under Order XXXIX Rule 1 and 2 of the Code praying for passing temporary mandatory injunction for restoration of the suit property in favour of the petitioner. Learned Trial Court upon hearing the parties in respect of both the injunction petitions filed by plaintiff and defendant no.2 granted temporary injunction in favour of plaintiff/opposite party no. 1 but rejected the prayer for mandatory injunction filed by petitioner /Defendant no.2 by an order dated 21st January, 2021.

8. Dissatisfied with that order, defendant no.2/petitioner preferred said Misc. Appeal 10/2021. By the impugned judgment learned Court below affirmed the trial courts observation by which he rejected defendants prayer for temporary mandatory injunction relating to recovery of possession but set aside trial court's order granting temporary injunction in favour of plaintiff.

9. Being aggrieved by that order petitioner herein/defendant No.2 contended that the Trial Court did not consider the relevant documents. He

did not consider that the learned District Judge while disposing Misc Appeal no. 10 of 2021 on 09.05.2024 was of clear opinion that the plaintiff/opposite party no.1 has no *prima facie* case and the Trial court's status-quo order is incorrect as plaintiff had no possession at all with respect to the suit property and plaintiff never assailed the same by preferring any appeal before the High Court. The plaintiff failed to submit any document in support of possession in the suit property since purchase, except the deed of sale and one Khatian obtained from the office of B.L.L.R.O. He further submits that though the plaintiff/opposite party no. 1 claimed that after purchase the plaintiff/opposite party no. 1 constructed a house over the suit property but he failed to submit any document in support of such contention, which clearly establish that plaintiff/opposite party no. 1 was never in occupation and he filed the suit with superficial claim. Moreover according to plaintiff's deed he purchased the property in sheet no. 8 and executed power of attorney in connection with sheet no. 8, being plot no. 50 and 51, which is adjacent to each other situated in the southern side in Sevoke road but filed the suit with respect to the property situated in sheet no. 5 in the northern side of Sevoke road which belongs to the petitioner and thereby had mislead the Trial Court. Plaintiff is neither owner nor was in possession of the same but occupied the suit property, after institution of the suit, illegally and forcibly being armed with blanket order of injunction dated 12.07.2019, passed by learned Civil Judge, (Junior Division), Jalpaiguri and therefore the defendant/petitioner herein is entitled to get order of mandatory injunction for restoration of possession. In this context petitioner relied upon following judgments

(a) AIR 1992 Delhi 197 (Seemax Construction Private Limited Vs. State Bank of India and another).

(b) (1994) 4 SCC 225 (Morgan Stanley Mutual Fund Vs. Kartick Das)

(c) (1990) 1 SCR (332) (Dorab Cawasji Warden Vs. Coomi Sorab Warden and Ors.)

(d) AIR 1985 Cal 248 (Indian Cable Company Limited Vs. Smt. Sumitra Chakraborty).

10. Mr. Roy on behalf of the opposite party no. 1/plaintiff argued that petitioner alleged that taking advantage of the interim order of injunction, plaintiff took forcible possession of the suit property and to substantiate the contention of the defendant, the complaint was lodged before the concerned police station alleging dispossession of property in question on 26.07.2019 but in written objection filed on 02.08.2019, defendant never stated regarding any fact of dispossession. Furthermore neither in the objection filed against injunction application nor in the application for mandatory injunction, petitioner has mentioned the date of alleged dispossession.

11. Mr. Roy further submitted that the petitioner heavily relied upon the bailiff report suggesting possession of the defendant no. 2 in respect of the suit property but it will appear that the scheduled property involved in the said suit is not identical with the scheduled property of the present suit. Mr. Roy strenuously argued that the plot in question was not partitioned and considering the same, the learned court below came to a *prima facie* finding that the plaintiff is claiming title over 9 decimal of land but the plot consist of 1.75 acres and therefore in absence of any partition in terms of

Section 14 of the West Bengal Land Reforms Act., the parties who are owners of the property can be termed to be the co-owners and a co-sharer of a plot of land cannot claim any mandatory injunction for restoration of possession against other co-owners of the suit plot. It is further argued that the Appellate Court came to a finding that the present Appellant purchased 5 decimal of land from Parshu Ram Agarwal and thus he cannot claim order of mandatory injunction in respect of the entire suit property. He also submitted that Sheet no. 2 and 5 derived from R.S sheet no. 5 and his claim is over plot no. 55(P) and not over plot no. 50 and 51. It is further argued that the schedule property involved in Title Suit 261 of 2003 and the schedule property of present suit are different and situated far from each other, which is an admitted position. He further submitted that defendant no. 2 prays for restoration of possession of the suit schedule property from the plaintiff but in the mandatory injunction application, the petitioner/defendant stated that the boundary of the suit land is imaginary.

12. Relying upon judgment reported in **1990 SCR (1) 332**, Mr. Roy submits that the test required for granting temporary mandatory injunction has not been fulfilled in the present context because defendant no.2 herein failed to prove a higher standard of case that is normally required for prohibitory injunction and in the absence of any positive pleading and proof regarding alleged dispossession of the defendant no. 2 from the suit property, the petitioner is not entitled to get any temporary mandatory order of injunction. In this context he further relied upon judgment passed in ***Mohd Mehtab Khan & Ors Vs. Khushnuma Ibrahim Khan & Ors***

reported in **(2013) 9 SCC 221** and contended that interim injunction/ interim relief which amounts to pre-trial decree must be avoided, wherever possible. Accordingly he contended that the instant revisional application is liable to be dismissed.

13. On a bare perusal of the plaint it appears that the plaintiff has claimed that after acquiring the schedule mentioned suit property he applied for mutation and accordingly the property has been mutated in favour of plaintiff on 30.08.1980 and it is further case of the plaintiff in the plaint that he constructed a pakka guard wall around the suit land and plaintiff is in lawful possession in the respect of the suit land measuring about 0.09 acre. Defence contention as appearing from the written application for mandatory injunction, is that plaintiff immediate after obtaining interim injunction which was passed on 12th July, 2019 trespassed into the suit land and forcibly occupied the property after demolishing the boundary wall and the building of the defendant. Defendant has not mentioned any specific date or time as to when the plaintiff took such forcible possession. Plaintiff on the other hand taken the plea that he being the co-owner and co-sharer of the property, is not liable to be ousted by any order of mandatory injunction. It is also not in dispute in the suit that the suit plot has been recorded in the name of opposite party no.1/plaintiff under sit no.5 which has been allegedly derived from R.S. sit no.8.

14. The Apex Court in various judgments has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition, only on the ground that prima facie case has been made out,

without taking care of other considerations. In the instant case as have been stated above, there are serious dispute on facts and the main relief sought for by the plaintiff in the plaint is for a declaration of plaintiffs possession over the suit land and for perpetual injunction restraining the defendants from disturbing plaintiffs possession and in contradiction of such prayer defendants contention is plaintiff after purchase did not get possession but after getting ad interim injunction from the trial court took forcible possession and such dispute is the real issue in controversy between the parties and needs to be adjudicated in the present suit. Accordingly if the defendants above mentioned claim of mandatory injunction is passed dispossessing plaintiff from the suit property, that may amount to decide the whole issue in controversy, without trial.

15. Learned Trial Court while dealt with defendants prayer for mandatory injunction came to a clear findings which may be reproduced below

“considering all of it, it appears to this court, that without taking evidence, it cannot be said in any way what was the situation of the suit land when this case was filed. As can be seen from the litany of judgments cited by both the parties, it is only for restoring status quo ante, that an order for interlocutory mandatory injunction can be passed. However, in this case, that fact cannot be ascertained without any inspection or otherwise. Further, the primary allegation of the defendant is that the plaintiff occupied the suit land, ransacked and destroyed the house and the boundary wall of the defendant. It is pertinent to note here, that time and again, the Ld. Advocate for the defendant stated that the defendant No 2 resides at Kalimpong and not at the suit land. Therefore, the residence of the defendant No.2 is not at peril here, nor there is a threat of any irreparable loss and /or injury that cannot be compensated otherwise. The existence of a strong prima facie case had to be established by the defendant and this Court was not satisfied in any manner that whether a defendant in any case has a locus standi to file an application for mandatory injunction. Considering all the aforesaid, the prayer for mandatory injunction is hereby refused.”

16. Being dissatisfied with the said order defendant preferred appeal before the appellate court and learned court below while affirmed the trial courts order has made the following observation:-

“There cannot be any denial to submission of learned lawyer for the respondent/plaintiff that the appellant has failed to specify any date on which he was actually evicted from the suit properties. The entire claim of the present appellant happens to be on the basis of a registered deed of sale bearing no.I-1891 for the year 2003. Copy of that document has been filed before this court. On careful reading of the recital in that document, it would appear that one Radhaballav Kundu purchased 10kathas of land mentioned therein which was sold to one Hanumandas Agarwal and thereafter said Hanumandas Agarwal sold 5 kathas or 0.0025 acre of land out of that 10 kathas of land to one Parshuram Agarwal, who ultimately sold his share to the present appellant. If that be the position, then there is also a cloud of doubt about absolute right, title and interest of the present appellant over the entire portion of the suit land. Most importantly, had undivided portion of 5 kathas of land was transferred to the present appellant by force of that registered deed of conveyance dated 03.05.2003, then it cannot be said that the present appellant has become absolute owner of the entire portion of the land mentioned therein. In course of argument, learned lawyer for the appellant admitted that there was no prayer for any local inspection or local investigation post alleged forceful dispossession by the plaintiff. So, there was no ground for the learned Trial Court to entertain the application for mandatory injunction in the facts and circumstances of the present suit. So, prayer for mandatory injunction filed before the learned Trial Court through his petition dated 20.09.2019 was liable to be rejected.”

17. The High Courts under Article 227 of the constitution of India have little scope to interfere with the orders of courts below as a matter of routine. This power cannot be taken as right of another appeal to the aggrieved party nor can this power be invoked to point out an error of law or fact in the order or decision of courts below as held in several judgments. In fact possibility of different view is no ground to interfere concurrent findings of the courts below in exercise of jurisdiction under Article 227 of the constitution of India which is supposed to be exercised sparingly and only in appropriate cases, in order to keep the courts below within the bounds of their authority.

18. From the orders impugned as quoted above, I do not find any illegality or irrationality or procedural impropriety. In such view of the matter interference of High Court on findings of fact is not called for as both the courts below have rendered findings on proper appreciation of

documents, adduced by the parties and I find no jurisdictional error. In the above backdrop reversal of finding of fact of the courts below on consideration of questions of fact, relating to possession, in absence of any jurisdictional error, may amount to commission of jurisdictional error by this Court, in exercise of its supervisory jurisdiction.

19. From the aforesaid discussion as there is nothing to show that the courts below have committed anything grossly wrong or unjust to the courts conscience, I do not find it necessary to interfere with the orders impugned

20. Thus **C.O. 99 of 2024** stands dismissed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)