

Santosh Kumar Singh Vs. Savitri Devi and Ors

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Court : Jharkhand

Decided On : Jul-29-2016

Appellant : Santosh Kumar Singh

Respondent : Savitri Devi and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Misc. Appeal No.350 of 2016 ----- Santosh Kumar Singh, S/o Sri Satya Narayan Singh, Resident of Sector III/B, Quarter No.572, P.O. & P.S. Bokaro Steel City, District-Bokaro Plaintiff/Appellant Versus 1. Savitri Devi, W/o Sri Prayag Chandra Kerjriwal, resident of Purulia Road, Chas, P.O. & P.S.Chas, District-Bokaro 2. Prayag Chandra Kejriwal, S/o late Ram Bilash Kejriwal, resident of Purulia Road, Chas, P.O. & P.S.Chas, District-Bokaro 3. Sanjay Kumar Singh, S/o Sri Janardhan Singh, resident of Rana Pratap Nagar, Chas, P.O. & P.S.Chas, District-Bokaro Defendants/ Respondents CORAM: HON'BLE MR. JUSTICE RAVI NATH VERMA For the Appellant : Mr. Pratyush Kumar, Advocate Mr. Ganesh Pathak, Advocate For the Respondents : ----- Dated, 29th July, 2016 By Court Plaintiff has questioned the legality of the order dated 16.06.2016 passed by learned Civil Judge (Senior Division) 1st, Bokaro in Original Suit No.16 of 2015 whereby and whereunder the petition filed under Order XXXIX, Rules 1 & 2 of the Code of Civil Procedure (in short the Code) for restraining the respondents from interfering in possession of the plaintiff, has been rejected.

2. Bereft of unnecessary details, the relevant pleading of the plaintiff, which is necessary for the proper adjudication of the issue involved in this appeal, in short, is that the property in dispute under Khewat No.2 corresponding to Khata No.566, Plot No.7018 was recorded under the name of the then landlord Shashi Bhushan Mishra and others in the last cadastral survey operation. The said landlord settled 4.17 acres of land of the said Khewat in the name of Rohini Kumar Chatterjee on 30th December, 1936 after receiving Salami and granted rent receipt. After vesting of 2 Misc. Appeal No.350 of 2016 Zamindari, the then D.C.L.R., Baghmara, Dhanbad by initiating a proceeding under Section 4 (h) of Bihar Land Reforms Act annulled the settlement made by the then landlord. On appeal, the then Deputy Commissioner, Dhanbad upheld the order but on a civil writ bearing no.134 of 1980(R), filed by Rohini Kumar Chatterjee, the Honble Ranchi Bench of High Court set aside the order of D.C.L.R. as well as D.C., Dhanbad. The said Rohini Kumar Chatterjee became the absolute raiyat of the schedule land but prior to the above order of the Honble Court, the co-sharers of the Khewat holder/ex-landlord brought a Title Suit bearing no.226 of 1962 before Munsif 2nd court, Dhanbad in which the dispute between the parties was settled by way of compromise. Rohini Kumar Chatterjee in the said compromise got 3.67 decimals of land in Khata No.566, Plot No.7018 which is the land in dispute the details of which is given in Schedule- 'A' at the foot of the plaint. After mutation of his name, he constructed two asbestos rooms over the schedule land covering 870 sq. ft. and after his death his son Anjan Kumar Chatterjee became absolute owner. The said Anjan Kumar Chatterjee due to some family requirements requested this plaintiff to purchase the said land, who after scrutiny of the related documents and finding that the land was recorded as Gairabad Khata during last C.S. operation, requested his vendor to obtain permission from the Government to avoid future complication. After grant of necessary permission, the plaintiff purchased the land in dispute by sale deed dated 02.07.2015 on payment of valuable consideration and took the physical possession of the land, got his name mutated and paid rent to the State but when after few days he came back to the plot on 15.07.2015 for renovation of the rooms for opening his own business, the nearby shop keeper Umakant Dubey informed him 3 Misc. Appeal No.350 of 2016 that few months back some people came from civil court, Bokaro and got the land and house vacated from possession of one

Sanjay Singh. The plaintiff on enquiry found the existence of one Execution Case No.01 of 2012 arising out of Eviction Suit No.32 of 2004 filed by the present defendant-respondent against one Sanjay Singh and that the defendant had purchased the suit land by virtue of sale deed dated 13.07.1986 from Sushila Devi Khedia to whom Rohini Kumar Chatterjee had sold.

3. The further pleading is that the said sale deed was false and concocted one and was never acted upon and the present defendant in collusion with Sanjay Singh the defendant of eviction suit obtained a collusive decree and filed the Execution Case No.01 of 2012. The identity of the land as given in the schedule of the execution case was similar to the details as given in the plaint of the instant suit. Hence, the present suit was filed for declaration of right, title and interest of the plaintiff over Schedule-'A' land and that the sale deed dated 13.01.1986 executed in favour of the defendant-respondent is void ab-initio, and for further declaration that the judgment and decree passed in Title Eviction Suit No.32 of 2004 is not binding on the plaintiff besides the relief of permanent injunction and in alternative for recovery of possession if the plaintiff is found dispossessed during pendency of suit by any means or order or by the defendants.

4. It appears from the record that the plaintiff filed the instant suit on 29.07.2015 and on the same day a petition under Order XXXIX, Rules 1 and 2 read with Section 151 of the Code was also filed with averment that the defendants without any right, title and interest over the suit property have been trying to disturb the peaceful possession of the plaintiff on the strength of collusive decree obtained in Title (Eviction) Suit No.32 of 2004 and since the 4 Misc. Appeal No.350 of 2016 claim of the appellant is based on sale deed, strong prima facie case is there in his favour and from the eviction suit itself, it can be inferred that defendant nos. 1 and 2 who were plaintiffs of the eviction suit, were never in possession over the suit land, and that on the strength of the said collusive decree if the plaintiff is dispossessed, he will suffer irreparable loss and the balance of convenience is also in his favour.

5. The court below after hearing the plaintiff-appellant rejected his prayer for grant of interim injunction by order impugned holding that the plaintiff is in fact seeking

temporary injunction against the execution of the decree passed in the above eviction suit and that disputed property of this suit is the same which is mentioned in the eviction suit. The balance of convenience is not in favour of the plaintiff and he would not suffer any irreparable loss.

6. Aggrieved by the said order, the plaintiff preferred this appeal.

7. Mr. Pratyush Kumar, learned counsel appearing for the appellant assailing the order impugned as bad in law and perverse, seriously contended that the court below erred in holding that the three ingredients responsible to grant injunction were not in favour of the appellant though on the date of execution of his sale deed, the vendor had given him possession of land in dispute and a Pleader Commissioner appointed during pendency of the suit also found his possession over the suit land but the court below in a mechanical manner without considering the report of the Pleader Commissioner rejected his prayer relying upon the collusive decree passed in favour of defendant-respondent in eviction suit. Learned counsel relying upon the judgments reported in (1996) 2 SCC225 Smt. Rajnibai alias Mannubai Vs. Smt. Kamla Devi and Ors. and 5 Misc. Appeal No.350 of 2016 another judgment reported in (1997) 4 SCC472 State of Madhya Pradesh and Anr. Vs. Brijesh Kumar Awasthi and Ors. submitted that in a suit for declaration of title simpliciter, the court has power to grant interim injunction pending suit and even otherwise also and it is settled law that even under Section 151 of the Code, the Court has got inherent power to protect the rights of the parties pending the suit. Hence, the order impugned is fit to be set aside and the defendant be restrained from interdicting in peaceful possession of the plaintiff appellant.

8. Power to grant injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. It is a well settled principle that the grant of injunction is the discretion of the court but such discretion must be exercised in favour of the plaintiff only if the court is satisfied that unless the defendant is restrained by an order of injunction, irreparable loss or damage will be caused to the plaintiff. If there is evidence of threatening or dispossession, the court may grant a temporary injunction to restrain such act or dispossession until the disposal

of the suit or until further orders. However, the burden lies on the plaintiff to show by evidence supported by affidavit or otherwise that there is a prima facie case in his favour which needs adjudication at the trial. The court has to further satisfy that non-interference by the court would result in irreparable injury to the parties seeking relief and besides that the plaintiff need protection from the consequences of the apprehended injury or dispossession.

9. In the instant suit, undoubtedly the plaintiff has sought relief to set aside the decree which was passed in earlier eviction suit on the ground that the defendant-respondent has obtained the collusive decree by playing fraud but it would be pertinent to mention that the eviction suit on behalf of present respondent was 6 Misc. Appeal No.350 of 2016 filed in the year 2004. When this plaintiff-appellant was not even in existence as his claim is based on the sale deed executed in his favour on 02.07.2015. Even the execution case was filed in the year 2012 and the possession was delivered to the defendant-respondent in satisfaction of the decree much before the execution of sale deed in favour of the appellant. The plaintiff has himself pleaded that the land in dispute of eviction suit and the present suit are same. Undoubtedly, even in a suit seeking to set aside the decree with respect to the same subject matter of earlier suit, the court in an appropriate case can grant ad-interim injunction if it has been prayed on the ground of fraud but the court would be cautious before granting the injunction and look to the conduct of the plaintiff, probable injury and the result thereof whether he could be adequately compensated if injunction is refused. The plaintiff has himself pleaded that he came to know from one Umakant Dubey that few months back employee of civil court had come and got the house and land vacated from possession of one Sanjay Singh. It means the possession of the disputed land was given to the defendant-respondent who were plaintiff in eviction suit by the process of the court. Normally, where the plaintiff is prima facie proved to be in a peaceful possession and such possession is not as a trespasser or as an encroacher, the court would grant interim injunction but if the plaintiff has not come up with clean hands, or has supported material or relevant facts, his own conduct is responsible, the court may refuse to grant relief.

10. The existence of a prima facie case is sine qua non or condition precedent for the exercise of power to grant injunction in favour of the plaintiff, it is not necessary for the plaintiff to establish title not to prove the case to the hilt. The sale deed executed in favour of the defendant-respondent was earlier in time 7 Misc. Appeal No.350 of 2016 when even the plaintiff was not in existence rather he purchased the land in dispute only in the year 2015 without making enquiry about the land in dispute. So on the face of it, there appears to be no prima facie case or any irreparable injury to the plaintiff.

11. The third condition for grant of injunction is that the balance of convenience must be in favour of the plaintiff and for that the court must be satisfied that the comparative mischief or inconvenience which is likely to be caused to the plaintiff by refusing the injunction will be greater than that which is likely to be caused to the defendant. But in the instant case, even balance of inconvenience is not in favour of the plaintiff as he is a subsequent purchaser.

12. I have gone through the impugned order and the judgments cited by the learned counsel for the appellant. The court below after considering the factors responsible for grant of interim injunction, has rightly rejected the prayer of the present appellant. Learned counsel for the appellant has not pointed out any plausible ground to interfere in the order impugned.

13. This miscellaneous appeal, being devoid of any merit is, hereby, dismissed. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 29th July, 2016 Anit/N.A.F.R.

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