

Prabirendra Nath Nanday and anr. Vs. Narendra Nath Nanday

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Court : Kolkata

Decided On : Feb-07-1957

Reported in : AIR1958Cal179

Judge : Renupada Mukherjee, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100 and 101; ;Specific Relief Act, 1877 - Sections 54, 55 and 56

Appeal No. : A.F.A.D. No. 1282 of 1953

Appellant : Prabirendra Nath Nanday and anr.

Respondent : Narendra Nath Nanday

Advocate for Def. : Basari Lal Sarkar, Adv.

Advocate for Pet/Ap. : Sarat Chandra Jana and ;Arun Kumar Jana, Adv.

Disposition : Appeal allowed

Judgement :

Renupada Mukherjee, J.

1. This appeal raises a pure question of law which does not appear to be covered by any direct authority of this court, viz., whether the owner of an immoveable property can, on the termination of a license, maintain a suit against his licensee

for a mandatory injunction directing him to vacate the property.

2. In order to appreciate how the above question of law has arisen in this appeal it is necessary to state the following facts:---

3. One deceased Bhabani Nath Nandi, a Superintendent of Police owned a house in Raja-shahi town which is now in East Pakistan. After the partition of Bengal he migrated to West Bengal and rented a house in Berhampore town within Murshidabad District belonging to a Muhammedan named Afazuddin Ahmed a Muk-tear of the local courts. The latter in his turn migrated to East Pakistan and occupied Bhabani Nath Nandy's house at Rajashahi as a tenant. Neither party paid any rent as the rents of the two houses being of the same amount were mutually set off. Bhabani's nephew Naren-dra Nath Nandy, respondent of this appeal was a defendant in the trial court. He was a dependent of Bhabani and was allowed to occupy a part of the Berhampore house which is now in dispute as a caretaker and licensee. After the death of Bhabani his widow Sm. Mokshada Nandi and the two appellants of this appeal, who are grandsons of Bhabani by a predeceased son, terminated the alleged license and brought the present suit asking the defendant respondent to vacate the portion of the house occupied by him. The latter did not comply with this request and so the present suit was instituted by them. Mokshada died during the pendency of the suit in the trial court.

4. The defendant respondent contested the suit claiming that he was a co-sharer of Bhabani and co-tenant in the house and as such he was not ejectable at the instance of the plaintiffs. This plea was repelled by the trial court which held that the defendant was a mere licensee and on that finding it passed a decree against the defendant directing him to vacate the disputed house permanently.

5. On an appeal being preferred by the defendant the lower appellate court maintained the finding of the learned Munsiff that the defendant was merely a licensee, but it dismissed the suit because, in its opinion, the plaintiffs were not in possession of the house and because they could get equally efficacious relief more certainly by bringing a suit for declaration of their title to, and recovery of khas possession of the disputed house. The plaintiffs have preferred this second appeal from the Judgment and decree of the lower Appellate Court.

6. The only point requiring decision in this appeal is whether upon the facts found concurrently by the courts below the decree of dismissal passed by the lower Appellate Court is correct in law.

7. The finding of the courts below that the respondent was a licensee of appellants' prede-cessor-in-interest Bhabani Nath Nandy being a finding of fact and being based upon a consideration of the evidence adduced by the parties, is not open to challenge in this second appeal. It is on the strength of this finding that the trial court passed a decree against the defendant respondent directing him to vacate the disputed house. In substance the decree amounts to a mandatory injunction under Section 55 of the Specific Relief Act although the trial court thought that it passed a decree on the principle contained in illustration 'O' of Section 54 of the Specific Relief Act. That illustration runs as follows:

'A, the owner of certain houses in Calcutta, becomes, insolvent. B buys them from the Official Assignee and enters into possession, A persists in trespassing on and damaging the houses and B is thereby compelled, at considerable expense to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.'

8. Section 54 of the Specific Relief Act, however deals with prohibitory injunctions forbidding future action on the part of the personsought to be enjoined. In the present case theinjunction was apparently issued under Section 55 andit was a mandatory injunction directing the respondent to do something positively. It does nothowever, matter for practical purposes which ofthe above two sections, namely, Sections 54 and 55of the Specific Relief Act the learned Munsif had in his view when he passed the decree mentioned above. What matters for my presentpurpose is whether that decree has been reversed by the lower Appellate Court in accordancewith law.

8a. The decree of the trial Court has been reversed on two grounds, first, because the appellants are not in possession of the disputedhouse and secondly, because the appellants would have got equally efficacious and more certain relief by bringing a regular suit for declaration of their title and for ejectment of the defendant respondent. I shall consider the validity and legality of both the grounds

one after another.

9. As to the first ground for reversal of the decree of the learned Munsif, I am of opinion that upon the facts found, the lower Appellate Court has committed an error in law in holding that the appellants are out of possession of the disputed house. Both the courts below found that the respondent is a mere licensee of the appellants. As a licensee, the respondent has got no interest in the disputed house and his possession cannot therefore exclude the possession of the rightful owners viz., the appellants in the eye of law. The appellants came into possession of the disputed house as soon as the license was revoked before the institution of the suit, it was not necessary for them to bring a suit for possession upon declaration of their title. The learned Appellate Court referred to a case in support of its view that a suit for injunction is not maintainable like the present because the appellants were not in possession at the date of the suit. This case is reported In Bhramar Lal v. Nanda Lal. 18 Cal WN 545: (AIR 1915 Cal 23) (A). But that case is clearly distinguishable on facts from the present case. In the case cited the plaintiffs brought the suit on the footing that the defendants were trespassers. It was, therefore, held that in such a case the plaintiffs could not sue the defendants simply for an injunction but must sue for recovery of the land in suit. In the present case the plaintiffs alleged and established that the defendant respondent was merely a licensee. That being the case the possession of the house lay with the appellants through the respondent and not with the respondent who had no independent or separate interest in the house. The lower Appellate Court, therefore, committed an error in law in holding that the appellants were out of possession and so they must sue for recovery of possession. The first ground of reversal of the judgment of the trial Court is therefore untenable in law.

10. The second ground given by the lower appellate Court for reversing the decree of the trial court is that the plaintiffs might have obtained an equally efficacious relief in a more certain way by bringing a suit for ejectment and so the trial Court should not have issued an injunction against the defendant in a case like this. In support of his contention the lower Appellate Court relied on the provisions of Clause (i) of Section 55 of the Specific Relief Act which runs as follows:

An injunction cannot be granted 'when equally efficacious relief can certainly be obtained by other usual mode of proceeding except in case of breach of trust.'

11. The learned Munsif, as I have already observed, apparently issued a mandatory injunction under Section 55 of the Specific Relief Act which runs as follows:

'When to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing the court may, in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts.'

12. The lower Appellate Court seems to have been of opinion that Section 55 is controlled by Section 56 (i) of the Specific Relief Act and where an equally efficacious relief can certainly be obtained by other usual mode of proceeding, the court cannot grant an injunction except in a case of breach of trust. The lower Appellate Court has also cited a case reported in Kesho Prasad Singh v. Srinibash Prasad Singh, ILR 38 Cal 791 (B), in support of its view that the present case is not a fit case for injunction. I shall refer to this case a little later. In my opinion Section 56 (1) of the Specific Relief Act can control Section 55 of the same Act only where the 'other usual mode of proceeding' referred to in Section 56 (i) is based on the same set of facts and allegations as constitutes the foundation of a suit for injunction, otherwise the provisions of B. 55 of the Act would be completely stultified, and a suit for injunction would be frustrated in every case by a defence that the plaintiff may get a better and more efficacious remedy by bringing a suit in a different form. In the present case the allegations of the appellants are that the respondent is their licensee and as such he is under an obligation to vacate the house on the demand of the appellants and as he has not vacated the house in spite of such demands the appellants prayed for a mandatory injunction upon the respondent to compel the performance of an act which would prevent the breach of the obligation the act being the vacating of the house. Such a suit undoubtedly falls within the scope of Section 55 of the Specific Relief Act and no relief can be given 'by other usual mode of proceedings' there being no prayer for a declaration of title and recovery of khas possession. If these prayers are to be made in the

plaint, then the suit would be a different kind of suit for different reliefs. The case reported in ILR 3B Cal 791 (B), can be distinguished from the present case because the former suit was brought for an injunction against a trespasser who was in possession and the plaintiff of the suit was out of possession. It was therefore held in that case that the plaintiff had another adequate remedy and if an injunction were issued, it would be of the vaguest description, in my opinion the lower Appellate Court took an erroneous view of law in its interpretation of Section 56 (i) of the Specific Relief Act by holding that this clause would prevail over Section 55 even where the 'equally efficacious relief' referred to in Clause (i) of Section 58 can be obtained in a suit different in form and substance from the suit for pure injunction. The second ground given by the lower Appellate Court for reversal of the decree of the Munsif, is therefore, incorrect in law.

13. In the result I hold that the decree of the trial court has been reversed on grounds which are not tenable in law and that the decree of the learned Munsif must, therefore, be restored. This appeal is, therefore, allowed. The judgment and decree passed by the lower appellate Court are hereby set aside and those of the Munsif restored.

14. The appellants will get their costs in all the courts from the respondent including the costs of this Court.

15. Leave to appeal under Clause 15 of the Letters Patent is prayed for and is refused.