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Court : Kolkata

Decided On : Sep-08-1982

Reported in : AIR1983Cal266

Judge : Nirmal Chandra Mukherji, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 151 - Order 39, Rule 1

Appeal No. : Civil Order No. 2340 of 1982

Appellant : Sunil Kumar Halder and ors.

Respondent : Nishikanta Bhandari and ors.

Advocate for Def. : Mantu Maity, Adv.

Advocate for Pet/Ap. : Pradip Kr. Chakraborty, Adv.

Disposition : Application allowed

Judgement :

ORDER

Nirmal Chandra Mukherji, J.

1. This is an application under Section 115 read with Section 151 of the Code and is directed against order No. 98 dated June 24, 1982, passed by the Minsif, First Court, Diamond Harbour, in Title Suit No. 509 of 1979. By the above order the

learned Munsif rejected the petitioners' application praying for police protection for cultivating the suit lands, The petitioners filed a suit for declaration of title and injunction on May 1979 being Title Suit No. 509 of 1979 against the opposite partyNos. 1 to 14 in the first. Court of the Munsif, Diamond Harbour. The defendants appeared and filed written statement. The petitioners made an application under Order 39, Rule 1 of the Code. The defendants opposed the said application and the learned Munsif by order No. 95 dated April 20, 1982 passed an order in favour of the petitioners restraining the defendants from interfering with the petitioners' possession in the suit lands except Plot No, 1529/2080. A copy of the said order of injunction has been made annexure 'A' to the petition. On June 21, 1982 an application was filed by the petitioners praying for police protection at the time of cultivation as the defendants were threatening to disturb the peaceful possession of the petitioners in the suit lands. The learned Munsif by his order No. 98 dated 24-6-82 rejected the said application on the ground that no overt act was committed by the defendants and the petitioners only apprehended that there would be disturbance in the matter of cultivation. Being aggrieved by the aforesaid order, the petitioners have come up to this Court.

2. Mr. Chakraborty, learned Advocate appearing on behalf of the petitioners, submits that earlier the petitioners were compelled to bring a Criminal Proceeding Case No. 828 of 1979 before the learned Sub-Divisional Magistrate, Diamond Harbour. In the said proceeding, enquiry report was submitted by the J.L.R.O. pathar Paima and the petitioners obtained an order of injunction against the defendants and further obtained an order of police protection and with the help of police the petitioners completed cultivation. Mr. Chakraborty submits that the learned Munsif rejected the application without any reason whatsoever when the plaintiffs came out with a case that the order of injunction obtained by them would be infructuous. In view of the fact that the defendants were threatening to disturb their possession and when in such circumstances an application was made for police help the learned Munsif ought to have allowed the application. It is true that for violation of the order of injunction the petitioners can take steps, but that would be only for the purpose of punishing the defendants. The adoption of that procedure would not help the petitioners in cultivating the lands and to rear) the benefits obtained by them by getting the order of injunction. In support of his

contention, Mr. Chakraborty refers to a decision reported in (1981) 85 Cal WN 958 (Saudamini Roychowdhury v. Satyendra Nath Sarkar). In this case, the petitioner got an order for temporary injunction in his favour. The opposite party went on with the construction work causing interference with the petitioner's possession. An application under Section 151 of the Code was filed by the plaintiff wherein it was prayed that police be directed to see that the order of injunction passed by the Court was not violated. Upon the Court rejecting the application, the petitioner came up to this Court. It was held in the facts and circumstances of the case that 'the court had failed to exercise the jurisdiction vested in it by law and the impugned order could not be allowed to stand'. The court, below was directed to pass appropriate directions upon the police as prayed for. In deciding the case His Lordship relied on a Bench decision reported in : AIR 1971 AP53 (Rayapati Andemma v. Pothineni Narasimham).

3. Considering the facts and circumstances of the present case, I am of the opinion that the learned Munsif rejected the application without any reason whatsoever and as such, he failed to exercise the jurisdiction vested in him by law.

4. In the result, the application is allowed. The order passed by the learned Munsif is set aside. The learned Munsif is directed to give appropriate directions upon the police as prayed for in the application Pled by the petitioners under Section 151 of the Civil P. C. within two weeks from the receipt of the order from his Court. There will be no order for costs in this application. The order may be communicated by a spl. messenger at the cost of the petitioners.