

Central Model School Vs. Gojer Brothers Private Limited and ors.

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Court : Kolkata

Decided On : Apr-04-2001

Reported in : (2001)1CALLT331(HC)

Judge : Bhaskar Bhattacharya, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rule 99;; [Constitution of India](#) - Article 227;; Haryana Public Premises Land (Eviction and Rent Recovery) Act, 1972 - Sections 4, 5 and 7

Appeal No. : Civil Revisional Jurisdiction C.O. No. 498 of 2001

Appellant : Central Model School

Respondent : Gojer Brothers Private Limited and ors.

Advocate for Def. : Mr. Ajoy Krishna Chatterjee and ;Mr. Abhijit Guha Roy, Advs.

Advocate for Pet/Ap. : Mr. Ashok Banerjee, ;Mr. Soumya Ghosh and ;Mr. Sankar Biswas, Advs.

Disposition : Application dismissed

Judgement :

B. Bhattacharya, J.

1. This revisional application is at the instance of a plaintiff in a suit for declaration and injunction and is directed against order dated December 20, 2000 passed by the learned Civil Judge, Senior Division Sealdah in Misc. Appeal No. 32 of 1999 thereby setting aside order No. 27 dated April 20, 1999 passed by the learned Civil Judge, Junior Division, 2nd Court, Sealdah in Title Suit No. 502 of 1997.

2. The present petitioner filed a suit being Title Suit No. 502 of 1997 in the 2nd Court of learned Civil Judge, Junior Division, Sealdah for declaration that the plaintiff is a tenant in respect of the ground floor of the building in the suit property mentioned in Schedule A of the plaint and has acquired right, title and interest over and in respect of the vacant plot of land by long user adversely to the real owner as described in Schedule-B thereto and for permanent injunction restraining the opposite parties from interfering in any way with the plaintiffs occupation and possession in respect of suit properly mentioned in Schedules A and B.

3. According to the petitioners they took a tenancy in the name of defendant No. 2, since deceased, for the use and occupation of the plaintiff for housing and locating the plaintiff's school and the said school was running in the said tenanted property. It is further stated in the plaint that the petitioner had been using the building portion for imparting education to the students and the land portion being Schedule B of the plaint was being used as play ground for holding physical education classes of its students as well as for other, recreational activities. During the hours when the school was closed, the plaintiff used the said plot as a parking space for parking its school vehicles. The further case of the plaintiffs as stated in the paragraph 5 of the plaint is that the opposite party No. 1 did not possess and occupy the said plot of land from 1956 and the petitioner had therefore acquired and asserted 'tenancy right' over and in respect of the suit premises to the exclusion of all others including defendant No. 1 and asserted right, title and interest against the rightful owner by virtue of such adverse possession.

4. In such a suit, the petitioner came up with an application for temporary injunction restraining the opposite party No. 1 from creating any disturbance in the suit property.

5. The aforesaid application was contested by the opposite party No. 1 by filling written objection thereby stating that they purchased the property in the year 1964 and became owner of the same and in 1969 they filed a suit for eviction being Title Suit No. 100 of 1969 against defendant No. 2 which was decreed. It was further stated that during the pendency of the said Title Suit No. 100 of 1969 the members of the Managing Committee of the petitioner tried four times to be added as party for representing the school but their prayers were rejected. Against the judgment and decree passed in Title Suit No. 100 of 1960 the defendant No. 2 preferred an appeal being Title Appeal No. 14 of 1980 but said appeal was dismissed. In the meantime in the year 1987 a writ petition was filed by the Central Model School Guardians Association against defendant No. 2 and in that writ petition a Special Officer was appointed for looking after the school affairs. On May 14, 1990 the opposite party No. 1 filed an application for execution of decree passed in Title Suit No. 100 of 1969 and the said decree was executed and the possession of the suit premises was recovered by defendant No. 1. Thereafter, the suit premises was let out to Arora Jute Agency Private Limited on June 6, 1990. On the same date an order was . obtained in the writ application whereby Officer-In-Charge of the concerned Police Station was directed to restore possession of the suit premises and hand over the same to the Special Officer already appointed. The opposite party No. 1 moved an application in the said writ application praying for vacating the said order dated June 6, 1990. It was further alleged that the petitioner earlier filed a suit being Title Suit No. 59 of 1994 on the selfsame property wherein ad interim order of injunction was refused at the first instance. In Misc. Appeal No. 312 of 1994 the school obtained status quo order in respect of possession. The opposite party No. 1 filed an application for vacating that order and suppressing all these facts the present suit has filed.

6. The learned trial Judge however disposed of the application for temporary injunction by restraining the defendants from dispossessing the plaintiff from the suit property forcibly except through due process of law till the disposal of the suit.

7. Being dissatisfied, the opposite party No. 1 preferred an appeal before the learned first appellate Court below and by the order impugned herein the said Court has set aside the order passed by the learned trial Judge and has dismissed

the application for temporary injunction.

8. Being dissatisfied, the plaintiff has filed the instant revisional application.

9. After hearing Mr. Banerjee in support of the application and Mr. Chatterjee appearing on behalf of the opposite party No. 1 and after going through the materials on record I find that so far the building portion is concerned which was the subject matter of the earlier suit being Title Suit No. 100 of 1969, a fresh suit for declaration of title over the said portion is prima facie barred. The plaintiff should file appropriate application under Order 21 Rule 99 of the Code of Civil Procedure claiming that they are the real tenants and as such the present suit is prima facie not mentionable so far building portion is concerned.

10. As regards the vacant land adjoining the subject matter of Title Suit No. 100 of 1969 I have already indicated that in paragraph 5 of the plaint the plaintiffs have asserted that it has acquired 'tenancy right' over and in respect of the said portion. It is now settled position of law that a tenancy can also be acquired by adverse possession if a tenant encroaches any land adjoining the tenanted portion and owned by the landlord and asserts his tenancy right over that encroached portion. In spite of such assertion if the landlord does not file a suit for eviction of the tenant in respect of that encroached portion within 12 years, after the expiry of the said period the tenant can acquire tenancy right over that portion: but in such a case, on the expiry of the tenancy he will be bound to hand over possession in favour of the landlord. In this case there is no dispute that the decree has already been executed and possession has been taken. If the present petitioner is not entitled to dispute the correctness of the decree passed in favour of the opposite party No. 1 in this suit and if the said decree attains finality, the present petitioner cannot also claim tenancy right by adverse possession over the adjoining property when the tenancy has prima facie come to an end.

Moreover, the learned first appellate Court below has found that ingredients of adverse possession could not be prima facie established. The present petitioner did not produce any material to show that they have mutated their names in the Calcutta Municipal Corporation over the vacant portion nor have they claimed to have paid any taxes to the Corporation for the land portion. Therefore, even if they

are in possession, such possession cannot be said to be 'open and adverse' to the lawful owner.

11. Thus, the learned first appellate Court below rightly held that the petitioner was not entitled to get any injunction.

12. Mr. Banerjee, the learned counsel appearing on behalf of the petitioner however strenuously contended that even if his client is in wrongful possession, his client cannot be dispossessed except by the due process of law and as such the learned trial Judge did not commit any illegality in passing such order. In support of such contention Mr. Banerjee has placed strong reliance upon the decision of the Apex Court in the case of Lallu Yeshwant Singh v. Rao Jagadish Singh and Ors. reported in AIR 1968 SC page 620.

13. In the aforesaid case of Lallu Yeshwant Singh, the defendants took possession of the land occupied by the plaintiffs on the ground of nonpayment of rent. The defence of the defendants was that the plaintiffs having failed to pay revenue and their right having extinguished, the defendants were entitled to take possession of the land. Such suit was decreed by the Tahasildar and such decree was upheld by the Collector on appeal and Commissioner on further appeal. On a revision by defendants before Board of Revenue, the Board affirmed the order passed by the authorities below. Against such order the defendants filed a revisional application under Article 227 of the [Constitution of India](#) before High Court and the High Court set aside the order passed by the authorities below with a finding that general law applicable to lessor and lessee was not applicable to the case therein. The apex Court in such an appeal preferred by plaintiff's made observation that even a trespasser cannot be dispossessed except by due process of law.

14. There is no dispute with the aforesaid proposition of law; but in my view by taking aid of the said decision if a person who is in wrongful possession of a property files a suit for declaration that they are entitled to remain in possession so long they are not dispossessed by due process of law and if in such a suit the plaintiff files an application for injunction restraining the owner from dispossessing or creating any obstruction in his illegal occupation, a Court will not assist such wrong doer. See Premji Ratansey Shah and Others, v. Union of India and Ors; :

15. Mr. Banerjee also placed strong reliance upon the decision of the apex Court in the case of State of Haryana and Anr. v. Mohinder Pal and Ors. reported in : AIR 2000 SC890a . In the aforesaid decision of State of Haryana and Anr., during the pendency of application filed under sections 4. Sand 7 of the Haryana Public Premises Land (Eviction and Rent Recovery) Act, 1972, the appellants took step to eject the respondents from the land in question and demolished the structure constructed by them. The High Court in a writ application filed by respondents held that even Government cannot take law into its hands while dispossessing the petitioners but should have followed the due procedure prescribed by law and thus awarded damages to the extent of Rs. 15,000/- in favour of the respondents. On an appeal preferred by the Government, the apex Court affirmed the order of the High Court.

16. In my view, the said decision cannot be of any help to Mr. Banerjee's client because in that case after being dispossessed during the pendency of a proceeding for eviction, the respondent filed such proceeding before High Court. But the said decision cannot help a trespasser in obtaining an order of temporary injunction in a suit filed by such trespasser.

17. In the other case cited by Mr. Banerjee viz. Brace v. Silva Raj and Others reported in 1987 (Supp) SCC page 161, all that was held by apex Court was that in order to obtain an order of injunction it must be proved that the plaintiff is in possession of the property. In the said case it was held that if possession is found to be in favour of adversary, no order of injunction can be granted in favour of plaintiff. There is also no dispute with the aforesaid proposition of law; but that decision does not say that merely because a plaintiff is in possession he will be entitled to get an order of injunction even though he has no prima facie case to remain in possession or the balance of convenience and inconvenience is not in favour of granting any such injunction. Thus, the said decision is of no avail to the petitioner.

18. If accept the aforesaid contention of Mr. Banerjee, it amounts to approval of a wrong proposition of law that even if a trespasser approaches a Court after forcibly

dispossessing a true owner, a Court should assist such a wrong doer by granting injunction in his favour against the true owner and ask the true owner to file suit for eviction and thus assure the possession of the trespasser till the disposal of the proceeding initiated by the owner.

19. On consideration of the materials on record, I am thus of the view that the plaintiff in this case has failed to prove prima facie case to go for trial and is also guilty of suppression of material fact as regards institution of earlier suit and the fact that it failed to obtain any order of injunction in those proceedings.

Thus, I find no reason to interfere with the order passed by the learned appellate Court below. The revisional application is thus dismissed.

In the facts and circumstances there will be however no order as to costs.

20. Application dismissed

Later

After this order is passed, the learned Advocate appearing on behalf of the petitioner prays for grant of injunction in view of the fact that examination is going on in the school. In view of what have been stated above, I find no reason to grant any such injunction. Prayer is refused.

Let xerox certified copy of the order if applied for, be given to the parties within a week from the date of application.

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