

Mrityunjoy Das Vs. State

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Court : Kolkata

Decided On : Jul-03-1986

Reported in : 1987CriLJ909

Judge : Sudhanshu Sekhar Ganguly, J.

Appellant : Mrityunjoy Das

Respondent : State

Judgement :

ORDER

Sudhanshu Sekhar Ganguly, J.

1. It appears that T.S. No. 42 of 1975 of the Munsif's Court at Nabadwip, District Nadia was instituted by Narayan Gopal Dey and eight others against Radha Ballabh Ghosh for recovery of a shop-room situated at holding No. 87B/1 on the Bazar Road within Nabadwip Municipality and tenanted by the said Radha Ballabh. It appears that both the petitioners acquired 1/9th share of tile land and structure covered by plot No. 1282/9519 holding No. 88B/1 Bazar Road by purchase from the heirs of Kartick Chandra, one of landlord-plaintiffs and the tenant attorned in their favour. They both applied for being added as parties to the aforementioned T.S. No. 42 of 1975 and petitioner No. 1 Mrityunjoy was added as a pro forma defendant to the said suit whereas the petitioner of Dhananjoy went on pending.

2. T.S. No. 42 of 1975 was decreed on compromise in terms of a solemnname filed by the plaintiffs and the defendant Radha Ballav (Annexure C) against the said defendant and the suit was directed to continue against the added pro forma defendant Mrityunjoy. The decree-holders put the decree to execution which was numbered as T.Ex. Case No. 18 of 1977. The petitioner No. 1 filed an application Under Section 47 of the Civil P.C. Yet a writ for delivery of possession of the decretal premises was issued.

3. On 13-10-77 Nilmoni Khan, process server of the Court went to deliver possession of the decretal premises when he was resisted by the present petitioners. The process server went to the Police Station and lodged F.I.R. i (Annexure A) and asked for Police help. Police Station Case No. 24 of that date Under Sections 353 and 506 was started on this F.I.R. and with the police help provided the process server delivered possession to the decree-holder. The petitioners were arrested and sent up to the Judicial Magistrate, Nabadwip (Annexure B) and G. R. Case No. 341 of 1977 was started against them. Subsequently, so it is alleged, even the T.Ex. Case No. 18 of 1977 was struck out and the petitioners filed an application before the learned Munsif Under Section 144, C.P.C. for restoration of possession. The petitioners applied to the learned : Magistrate for discharging them from the case (Annexure E). The learned Magistrate, however, rejected their applications. Hence, this revisional application.

4. It is urged from the side of the petitioners that the facts alleged in the F.I.R.brought the case under the purview of Section 195, Cr.P.C. making a complaint to the learned Magistrate from the process server or the learned Munsif condition precedent of taking cognizance by the learned Magistrate. It is also pointed out that when obstructed, the process server should have reported the fact to the learned Munsif under Rule 209(1) of the Civil Rules and Orders leaving it to him if any complaint would be lodged or not. It is also pointed out that instead of moving according to Rule 208 of the Civil Rules and Orders which lays down that at the prayer of the decree-holder, the Executing Court may write to the police authorities for police help in execution of a decree, the process server directly approached the police for help which was readily provided showing the extent of collusion between the decree-holder, the process server and the police. It is also

urged that the process server attempted to and actually delivered possession of holding No. 88B/1 whereas the Court's writ authorised him to deliver possession of holding No. 87B/1.

5. Without relevant papers it is not possible to say if the writ desired delivery of possession of holding No. 87B/1 and if possession was actually delivered of holding No. 88B/1. Without any doubt, however, the execution case had some peculiar features. The petitioner 1 was found by the learned Munsif to have acquired an interest in the disputed property. It is because of this that no decree was passed against him and the execution case also must have been dismissed on this ground. Why then the writ for delivery of possession was issued at all It is also not understood why the process server went straight to the Police Station when resisted instead of reporting to the learned Munsif, and why again the police extended all help to him without any order from the superior authorities.

6. Be that as it may from the F.I.R. it becomes quite clear that an attempt was made in this case to evade the provision of Section 195, Cr.P.C. As per the F.I.R. the present petitioners obstructed the process server in his bid to deliver possession of the decretal shop room, threatened to assault and kill him and dared him to deliver possession and the petitioner 1, Mrityunjoy pushed him aside. These allegations are covered by Sections 186 and 189 if not Section 183 also of the Penal Code and Sections 353 and 506 of the I.P.C. were resorted to presumably for evading the provisions of Section 195, Cr.P.C. In the absence of a written complaint, therefore, cognizance should not have been taken in this case by learned Magistrate.

The case, therefore, should not be allowed to go on. The proceeding of the G.R. Case No. 341 of 1977 of the Court of the learned Judicial Magistrate, Nabadwip is hereby quashed and the rule is hereby made absolute.

Send the case records back to the learned Court immediately.