

Kamala Das and ors. Vs. Basudeb Das and ors.

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Court : Kolkata Appellate

Decided On : Nov-30-2010

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 2755 of 2010 & C.O. No.2756 of 2010

Appellant : Kamala Das and ors.

Respondent : Basudeb Das and ors.

Advocate for Def. : Mr. Bimal Chakraborty; Mr. R. N. Dutta, Advs

Advocate for Pet/Ap. : Mr. Hiranmoy Bhattacharya, Adv

Judgement :

1. These two applications are directed against the order no.67 dated July 9, 2010 passed by the learned Civil Judge (Junior Division), First Court, Sealdah in Misc. Case No.36 of 2010 arising out of the Title Execution Case No.65 of 1998 and the order no.52 dated July 9, 2010 passed by the learned Civil Judge (Junior Division), First Court, Sealdah in Misc. Case no.37 of 2010 arising out of the Title Execution Case No.20 of 2006 respectively.

2. Since a common question of law is involved in the two applications and both the cases are identical, these two applications are disposed of by this common judgment. For convenience, I am discussing the C.O. No.2755 of 2010. The opposite party nos. 1 & 2 instituted the Title Suit No.174 of 1991 for eviction against the opposite party no.3 in respect of one room, as described in the

schedule of the plaint. In that suit, the opposite party no.3 filed a written statement and he contested the said suit. Thereafter, the suit was decreed on contest. That suit went up to the Honble High Court and in all stages, the opposite party nos. 1 & 2 got the decrees.

3. Thereafter, the opposite party nos. 1 & 2 filed the Title Execution Case No.65 of 1998 for recovery of possession. In that execution case, the petitioner filed an application under Order 21 Rule 98 read with Section 101 of the C.P.C. and that application was registered as Misc. Case No.36 of 2010. In that misc. case, the petitioner filed an application for stay of the execution proceeding and that application was rejected by the executing court by the impugned order. Being aggrieved, this application has been preferred.

4. Now the point for consideration is whether the learned executing court is justified in rejecting the application for stay of the execution case.

5. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that the opposite party nos. 1 & 2 filed the said Title Suit No.174 of 1991 for eviction against the opposite party no.3 who is none but the son of the present petitioner. That suit went up to the Honble High Court and in all stages, the opposite party nos. 1 & 2 got the decree of eviction. Thereafter, the execution case was filed. In such a situation, in order to resist the execution of the decree of eviction, the application under Order 21 Rule 98 read with Section 101 of the C.P.C. has been filed contending, inter alia, that she is a thika tenant in respect of the suit property. Had it been the fact, the opposite party no.3 could have taken such plea as his defence stand. Moreover, there is no paper to show that the petitioner was ever recognised as a thika tenant by the concerned Thika Controller. Therefore, in such a situation, if the prayer for stay, as prayed for, is granted, it will be nothing but a miscarriage of justice against the opposite party nos. 1 & 2. Therefore, I am of the view that the executing court has rightly rejected the application for stay of the execution case till the disposal of the Misc. Case No.36 of 2010. Therefore, there is no ground for interference at all. This application is devoid of merits.

6. It is, therefore, dismissed.

7. This observation is made for the purpose of disposal of the application only. The learned executing Court is at liberty to decide the Misc. Case on merits as per materials to be furnished by the parties in support of their respective stance.

8. Considering the circumstances, there will be no order as to costs.

C.O. No. 2756 of 2010

9. In view of the order passed above in C.O. No.2755 of 2010, this application is also considered as meritless. There is no ground for interference with the impugned order. Accordingly, this application is also dismissed.

10. Considering the circumstances, there will be no order as to costs.

11. This observation is made for the purpose of disposal of the application only. The learned executing Court is at liberty to decide the Misc. Case on merits as per materials to be furnished by the parties in support of their respective stance.

12. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

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