

Smt Sati Rani Sen

Vs

Indian Standard Casting Co. and Another

Civil Appeal No. 2545 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

17.03.1997

ORDER

1. Leave granted. We have heard learned counsel for the parties.
2. This appeal by special leave arises from the order of the learned Single Judge of the High Court of Calcutta, made on 14-10-1996 in CO No. 2514 of 1995. The present position appears to be that the Premises No. 31, Raja Santosh Road, Alipore, Calcutta is the subject-matter of the suit M/s. Indian Standard Casting Company filed Suit No. 86 of 1990 on the file of the IVth Additional District Judge, Alipore. Therein, they had claimed that they were duly inducted by the 2nd respondent, M/s. Metal Box India Ltd. as a tenant and, therefore, they have leasehold right in the premises. Similarly, the appellant filed Suit No. 435 of 1990 on the file of the learned IInd Munsif, Alipore. Therein, the appellant claimed that M/s. Metal Box India Ltd. is the tenant and the first respondent has no manner of interest or tenancy right therein as against the appellant. Admittedly both the suits are pending. In Suit No. 86 of 1990, the trial court passed an order on 14-7-1990 directing that status quo be maintained and also given ad interim injunction restraining the appellant from disturbing the possession of the first respondent. Admittedly, the said order is still in operation. While the proceeding were pending, the appellant filed another suit bearing No. 66 of 1993 on the file of the learned IInd Munsif Judge wherein the appellant impleaded only M/s. Metal Box India Ltd. as the sole defendant and had an ex parte decree. In execution thereof, the possession was taken on 23-5-1995.
3. The first respondent, viz., Indian Standard Casting Co. filed an application under Order 21, Rule 90 read with Section 151 CPC in Suit No. 66 of 1993 stating that he is having lawful possession and cannot be unlawfully dispossessed in execution of the decree dated 4-1-1995. Though the first respondent filed an application under Order 39, Rules 1 and 2 CPC but in substance, it is one under Section 144 CPC for restitution of the possession by virtue of the order of the status quo granted on 14-7-1990. The said application was ordered which is the subject-matter in this appeal.
4. Though Shri Raju Ramchandran, learned Senior Counsel appearing for the appellant, contends that the appellant in execution of the decree dated 1-1-1995 in Suit No. 66 of 1993 came to have lawful possession of the property in his right as a decree-holder and owner of the property, the civil court was not right in directing restitution. Palpably, the argument is palatable and seemingly acceptable but in view of the fact-situation, the contention stands no merit. Obviously, so long as the status quo order and ad interim injunction maintaining the possession of M/s. Indian Standard Casting Company continue to subsist, the execution of the decree in Suit No. 66 of 1993 though became final without impleading the said respondent is to overreach the order of injunction and is an abuse of the process of the court. It would be obvious that the appellant being the defendant in

Suit No. 86 of 1990 and having suffered the order of status quo as also ad interim injunction which is still subsisting, without that order being vacated or suit being disposed of, the appellant could not have the decree in Suit No. 66 of 1993 executed without bringing it to the notice of the court or without taking steps to have Respondent 1, Indian Standard Casting Co., impleaded as a party-defendant to that suit. Since Indian Standard Casting Co., had already obtained the order which is operating, it could not be dispossessed by execution of an ex parte decree to which it was not a party. Obviously, the appellant wanted to overreach the order passed in Suit No. 86 of 1990. Normally, we would have directed the appellant to reconstitute possession to the respondent. The status of the respondent itself is to be decided in its suit. Unfortunately, the respondent stood dispossessed on 23-5-1995. Under these circumstances, the question is : What would be the proper course ? In view of the above factual situation, we think that the appellant should be appointed as Court Receiver under Order 40, Rule 1 CPC and would obviously be answerable to the Court. In the event of any decision against the appellant in the above suits, it would be obvious that the appellant shall surrender possession to M/s. Indian Standard Casting Co. Otherwise, the possession would remain with the appellant, the owner of the property.

5. In view of the fact that Suit No. 86 of 1990 and Suit No. 435 of 1990 are pending in different courts and also the proceedings under Order 21, Rule 90 in Suit No. 66 of 1993, we are of the view that all the three proceedings should be transferred to one court. Accordingly, we direct that Suit No. 435 of 1990 and the application filed under Order 21, Rule 90 CPC should be transferred to the IVth Additional Judge, Alipore to be tried along with Suit No. 86 of 1990. We are informed that the appellant has not filed written statement so far. Thirty days' time from today is granted to the appellant to file the written statement. If the written statement is not filed, the appellant would forfeit his right to file the written statement. The IVth Additional Judge is directed to dispose of both the suits as well as application under Order 21, Rule 90 CPC as expeditiously as possible within a period of six months from the date of the receipt of this Order.

6. The appeal is accordingly disposed of. No costs.