SUPREME COURT OF INDIA

Meera Chauhan

Harsh Bishnoi

C.A.No.5783 of 2006

(Dr. A.R. Lakshmanan and Tarun Chatterjee JJ.)

13.12.2006

JUDGMENT:

TARUN CHATTERJEE,J.

Leave granted.

Bungalow No.12 at Thimayya Road, Cantonment Lucknow (hereinafter referred to as the "Suit property") originally belonged to Smt. Vimla Bishnoi since deceased who was the mother of the Respondent Nos.1 and 2. By a registered Will executed by her, the suit property was bequeathed in favour of Anil Bishnoi, who is the respondent No.2 in this appeal. On 15th of May 1996 Smt. Vimla Bishnoi expired. On 11th of June 1996 Harsh Bishnoi, who is the respondent No.1 in this appeal, applied for mutation before the Army Authorities, which was rejected by them by an order dated 5th January 1998.

A suit has been filed, being Suit No. 199/2002, in the Court of Civil Judge (Sr. Div.) Lucknow by the respondent No.1 for declaration of title over the suit property against the respondent No.2 on the basis of an oral family settlement of the year 1988. In the plaint, the Respondent No.1 herein, has prayed for permanent injunction restraining the Respondent No.2 from interfering with his possession over the suit property. In the suit, an application for injunction restraining the respondent No.2 from transferring, alienating or encumbering the same has been filed. On 6th May 2002 on the application for injunction, an ex-parte interim order of injunction restraining the respondent No.2 from transferring, alienating or encumbering the suit property was passed. It is therefore clear that no interim order of injunction was granted by the Court against the respondent No.2 from interfering with possession of the respondent No.1 in respect of the suit property. According to the respondent No.2 neither the application for injunction nor the ex-parte interim order of injunction was served upon him. When the interim order of injunction was in force, more precisely on 17th of July 2002, the appellant purchased the suit property from the respondent No.2 at a consideration of Rs.19 lacs and she was put into possession of the same on the same date. Thereafter, a Writ Petition being W.P. No. 4994/2002 was filed by the respondent No.1 in the High Court of Allahabad, (Bench at Lucknow) on 18th August 2002 against the State and the Army Authorities as well as the appellant claiming thereby forcible dispossession during his absence and praying for restoration of possession.

Subsequent to the filing of the writ petition the respondent No.1 on 20th August 2002 filed a suit being Suit No.402/2002 under Section 6 of the Specific Relief Act (in short "the Act") before the Civil Judge, Lucknow for restoration of possession. An application for restoration of possession was filed by him against the respondent No.2 under Section 151 of the Code of Civil Procedure, inter alia, on the allegations that he was dispossessed from the suit property during the pendency of the suit and interim order of injunction was in force. However, the application under Section 151 filed in the suit was rejected on the ground that the suit under the Act had already been filed and was pending. More than a year thereafter, more precisely on 22nd September 2004, an application was made at the instance of the respondent No.1 for withdrawing the suit on the ground that the Writ Petition for possession was pending in the High Court. The Civil Judge, Lucknow by an order dated 22nd September 2004 allowed the Respondent No.1 to withdraw the Suit. After the application for withdrawal of the Suit was allowed, the appellant made an application for impleadment in the Suit No.199/2002, which was allowed after hearing the parties. While considering the application for impleadment, the trial court made the following observation on the question of service of notice of injunction order as well as the application for injunction which is reproduced below: "On the record there is no document to prove before 17.7.2002 when the sale deed was executed prior to that the opposite party had acknowledged about the interim order passed in this case. There is no proof about this knowledge nor there is evidence to the effect that even third party Smt. Meera had any knowledge about any interim order. Opposite party No.3 through here affidavit had stated that she has purchased her valuable consideration with bona fide and she has no knowledge that any other person has any claim on disputed property at the time of disputed property purchased."

(Underlining is ours)

As noted herein earlier, the application under Section 151 was rejected by the trial court. Feeling aggrieved by the said order the respondent No.1 moved a revisional application being C.R. No. 212/2002 before the High Court which was allowed and the order rejecting the same was set aside. The High Court directed the trial court to decide the matter on merits after hearing the parties. In the application under Section 151 of the Code of Civil Procedure the respondent No.1 alleged his dispossession from the suit property although he was claiming to be in possession on the basis of the oral family settlement of the year 1988 at the time of filing the suit and, therefore, prayed for restoration of possession. After the remand, the application under Section 151 was heard in presence of the appellant and the respondent Nos. 1 and 2 and the trial court by an order dated 28th July 2005 allowed the said application directing the respondent No.2 and the appellant to restore possession of the suit property, inter-alia, on the ground that dispossession of the respondent No.1 from the suit property during the pendency of the suit and the operation of the order of injunction was not in due course of law.

Feeling aggrieved by the order of the Civil Judge (Sr. Div.) Lucknow, the appellant filed a revisional application, which was rejected by the impugned order by making the following observations:

"I find no illegality, irregularity or jurisdictional in the impugned order. During the injunction order the plaintiff was dispossessed and restoration of possession to the plaintiff was ordered. The trial court only wanted that the injunction order which has been violated the same position which existed at the time when the injunction was granted, should be restored."

Feeling aggrieved thereby, the present Special Leave has been filed for which leave is granted.

We have heard the learned counsel for the parties and have examined the impugned order after considering the fact of pendency of the writ petition, suit filed under Section 6 of the Act and the nature of relief claimed in suit no 199/2002 as noted herein earlier. We are of the view that the High Court in the facts and circumstances of this case ought not to have rejected the revisional application at the admission stage. Let us, therefore, first consider whether the High Court was justified in rejecting the revisional application filed against the order of the trial court allowing the application for restoration of possession, at the admission stage. As quoted herein above, the High Court proceeded to affirm the order of the trial court on the basis that the respondent No.1 was dispossessed during the operation of the injunction order and also held that the trial court only wanted the order of injunction, which was violated, should be implemented and that the possession which existed at the time when the order of injunction was granted should be restored. Therefore, from the above it is clear that the High Court proceeded to affirm the order of the trial court only on the ground that as an order of injunction passed by that court restraining the appellant and the respondent no. 2 from interfering with the possession of the respondent no. 1 was violated and therefore possession should be restored. This approach of the High Court, in our view, was totally unsustainable as it had failed to notice that no order of injunction restraining the respondent no. 2 from interfering with the possession of the respondent No.1 in respect of the suit property was passed. On the other hand, it was a matter of fact that only an order restraining the respondent no. 2 from transferring, alienating or encumbering the suit property was passed till the disposal of the application for injunction. That apart, in our view, the High Court was also not justified in rejecting the civil revisional application without going into the propriety of the order of the trial court. Such being the position, we are of the opinion that it was improper on the part of the High Court to reject the revisional application in the manner it was done. Let us now deal with the order of the trial court allowing the application of the respondent No.1 under Section 151 of Code of Civil Procedure for restoration of possession. A perusal of the order passed by the trial court on the application under Section 151 of the Code of Civil Procedure reveals that the case of the respondent No.1 that he had exclusively got the suit property by an oral family settlement dated 24th December, 1988 was not prima facie believed by it. While considering the case of the respondent No.1, the trial court also took into consideration that the prayer for recording his name before the Chief Executive Officer, Cantonment Board on the basis of such oral family settlement was refused. The trial court on the other hand considered the case of the respondent No.2 made against the application for restoration in which he claimed the title of the suit property on the basis of the registered Will executed by the mother of the Respondent Nos.1 and 2.

While dealing with this aspect of the matter, the trial court had drawn an adverse inference against the respondent No.1 for not filing any evidence of ownership and also accepted prima facie the case of the respondent No.2 that he has acquired title to the suit property on the basis of the Will executed by his mother. On the basis of this finding, the trial court held that the ownership of the respondent No.1 in respect of the suit property appeared to be doubtful in view of the fact that the mother of the respondent Nos.1 and 2 was admittedly the owner of the suit property who had executed a Will bequeathing the suit property in favour of the respondent No.2, as noted herein earlier.

Although the trial court in its impugned judgment could not prima facie find title of the respondent No.1 in respect of the suit property as noted herein above, restoration of possession in favour of the respondent No.1 was, however, directed basing its finding on the fact of possession at the time of filing of the suit and the application for injunction.

Before we deal with this question of possession as to who was in actual possession at the relevant point of time it would be appropriate to note that the order for restoration was passed by the trial court on an application under Section 151 of the Code of Civil Procedure. A question may arise whether such an application can be entertained by the Court when specific provision under Order 39 of the Code of Civil Procedure has been made for grant of injunction in the form of mandatory order in the exercise of power under the said Order. Therefore to decide this aspect of the matter, let us consider the scope of Section 151 of the Code of Civil Procedure. Section 151 reads as under:-

"151.Saving of inherent powers of Court.- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

A bare perusal of Section 151 of the Code of Civil Procedure, it cannot be said to be in dispute that Section 151 confers wide powers on the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. The power of Section 151 to pass order of injunction in the form of restoration of possession of the code is not res integra now. In Manohar vs. Hira Lal [AIR 1962 SC 527] while dealing with the power of the Court to pass orders for the ends of justice or to prevent the abuse of the process of the Court, this Court held that the courts have inherent jurisdiction to issue temporary order of injunction in the circumstances which are not covered under the provisions of Order 39 of the Code of Civil Procedure. However, it was held by this Court in the aforesaid decision that the inherent power under Section 151 of the Code of Civil Procedure must be exercised only in exceptional circumstances for which the Code lays down no procedure.

At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order. It is also well settled that when in the event of utter violation of the injunction order, the party forcibly dispossesses the other, the Court can order restoration of possession to the party wronged. Keeping the aforesaid principles in mind for exercising of power under Section 151 of Code of Civil Procedure, we proceed to consider the facts and circumstances of the case and decide whether the High Court as well as the trial court was justified in the facts and circumstances of the case to direct restoration of possession.

While considering the question as to who was in possession at the appropriate time, the trial court came to a finding on consideration of certain electricity bills and other materials, that the respondent No.1 was in possession of the suit property till the respondent no.2 had forcibly dispossessed him and therefore he was entitled to get his possession restored as he was evicted without following any legal procedure. In the said order, the trial court considered that although the respondent no.1 had not sought protection of his possession either in the plaint or in the application for injunction nor any order of injunction protecting possession was in force, even then it directed restoration of possession in favour of the respondent No.1 only on a finding that the suit was pending and that the respondent No.1 who was in possession was dispossessed illegally. Accordingly the trial court directed restoration of possession in the interest of justice against such illegal action.

At the risk of repetition, looking to the prayers made in the plaint as well as in the application for

injunction, we do not find that the prayer for injunction restraining the respondent No.2 from interfering with the possession of the respondent No.1 over the suit property was granted. Respondent No.1 simply prayed for an order of injunction restraining the respondent No.2 from transferring, alienating or encumbering the suit property till the disposal of the application for injunction.

Coming back to the propriety of the order of the trial court, we may note that while allowing the application for restoration of possession, the High Court and the trial court failed to notice the pendency of the writ petition in which prayer for restoration for possession was the main issue and the fact of pendency of suit under Section 6 of the Act.

Now, the question before us relates to the issue to be decided as to who was in possession of the suit property at the time when Suit No. 199/2002 was filed. As per the findings of the trial court, it appears that the respondent no.1 was in possession of the suit property and that he was unlawfully dispossessed from the suit property by the respondent No.2 after relying on certain documents produced by him and the court directed restoration of possession to the respondent No. 1. In order to find who was in possession of the suit property the respondent no.1 relied on the report of change of electricity meter dated 9th April, 2002 and photocopy of bail bond dated 14th January, 2005. Certain other electricity bills of the year 2003 were also filed to show that the respondent no.1 was the consumer of the electricity in the suit property. Some other documents to show that address of the respondent no.1 was the suit property were also filed. In order to show that the respondent no.2 was in possession of the suit property at the time of filing of the suit and such possession was delivered to the appellant, reliance was placed on the rejection of the prayer of the respondent no. 1 to record his name being in possession of the same. It also appears that it was the case of the appellant that possession of the suit property was amicably handed over to the respondent no.2 by the respondent no. 1. In order to come to a proper finding of fact that who was in actual possession, the parties ought to have produced oral evidence along with documentary evidence. In our view, the documents on which reliance was placed by the respondent no.1 cannot conclusively prove that he was in actual possession of the suit property at the time of dispossession. For this purpose not only documentary evidence would be required to be produced but at the same time oral evidence should also be adduced by the parties particularly when the parties dispute the question of possession at the appropriate time and also one party made out a case that possession of the suit property was amicably handed over to the other party. In this view of the matter, although for deciding an application under Section 151 of the Code of Civil Procedure, it would not be proper to permit the parties to adduce oral evidence but in the peculiar facts and circumstances of this case we are of the view that the trial court ought to have directed the parties to adduce oral evidence along with documentary evidences and also considered the fact of pendency of the suits as noted herein earlier. The suit filed by the respondent no.1 is not a suit for decree for permanent injunction restraining the respondent no.2 from interfering with possession of the suit property. There is another aspect of this matter. We have already noted herein earlier that at the time of allowing the application for impleadment filed by the appellant before the trial court, the trial court had come to a finding that neither the pendency of the suit nor the ex-parte order of injunction was within the knowledge of the appellant. Therefore, we are of the view that the appellant was a bona fide purchaser for value without notice. Be that as it may, this question may not be very germane in the facts of this case.

That being the position, we set aside the order of the High Court and the trial court and direct the trial court to decide the application for restoration afresh after permitting the parties to adduce oral and further documentary evidence and thereafter come to a conclusion of fact as to who was in

actual possession of the suit property at the relevant point of time.

It is not now in dispute that in compliance with the order of the trial court, which was affirmed by the High Court, possession has now been delivered to the respondent no.1. In the event, trial court comes to a finding that the respondent no.1 was in possession of the suit property at the relevant time as indicated above, the question of delivery of possession by the respondent no.1 to the appellant shall not arise. However, if the trial court finds that the respondent no.1 was not in possession of the suit property at the relevant point of time and the respondent no.2 was in possession of the suit property, in that case the trial court shall direct restoration of possession in favour of the appellant.

The trial court is directed to dispose of the application under Section 151 of the Code of Civil Procedure afresh within a period of three months from the date of this judgment. If application for injunction is still pending for adjudication, the same may also be decided at an early date preferably within a period of three months from the date of passing of final order on the application under Section 151 of the Code of Civil Procedure.

Accordingly, the appeal is allowed to the extent indicated above. There will be no order as to costs.