

In the Court of Additional District Judge, 14th Court, Alipore

Present: Shri Samiran Dutta
Additional District Judge,
14th Court, Alipore.

Case No. Misc. Appeal 379/2013
(Arising out of T.S. no.1842/2010)

Parties:

DTL Abasan Pvt. Ltd. & 30 others Appellants/plaintiffs

-Versus-

*The General Manager and the Divisional Railway Manager, Sealdah Division,
Eastern Railway Respondents/defendants*

Date of delivery of judgement : 27/11/2014.

J U D G E M E N T

This Misc appeal arises out of an order dated 09-07-2013 passed by the Ld. Civil Judge(Sr. Division), 7th Court, Alipore rejecting the prayer for temporary injunction of the plaintiffs/appellants on contest.

The plaintiffs/appellants filed the above suit for declaration and injunction against the respondents/defendants and also moved an ad-interim injunction which was allowed ex-parte but after contested hearing the prayer for temporary injunction under Order 39 Rule 1 & 2 C.P.C was rejected by the impugned order.

Being aggrieved and dissatisfied with the impugned order the plaintiffs have preferred the instant appeal challenging the same.

DECISION WITH REASONS

The plaintiffs being real Estate company incorporated under the Companies Act, 1956 claim on the basis of certain conveyances to be the owner of the suit property measuring 320 Sq. meter in plot No. 232 as described in the schedule 'B' to the injunction application out of total area of 16900 Sq. meter in the same plot as described in schedule - 'A' to the injunction application.

The defendants/respondents being Eastern Railway Company, Sealdah Division has contested the injunction application claiming that the suit property is part of their railway property appertaining to plot No. 218. But the appellants/plaintiffs have illegally occupied the suit property belonging to the Eastern Railway and they have already initiated proceedings against the appellants under Public premises (Eviction of unauthorized occupants Act) by issuing notice upon them. The dispute between the parties was also taken before the Hon'ble

High Court in different writ petitions along with their proposal for settlement of the dispute by grant of lease by the railway company in favour of the appellants. But all attempts and persuasion appear to have failed for various reasons.

Ld. Trial Court after hearing both sides and relying on the documents produced on both sides was pleased to reject the prayer for temporary injunction holding that the plaintiffs/appellants have no right, title, interest in respect of the suit property as it is a railway property appertaining to plot No. 218 and not plot No. 232 as claimed by the plaintiffs/appellants.

At the time of hearing Ld. Advocate appearing for the appellants drew my attention to the fact that as the plaintiffs are admittedly in possession of the suit property their possession must be protected from the invasion of railway company/respondents and in support of the contention several documents were placed before me for consideration.

On the other hand, Ld. Advocate appearing for the respondents/defendants has at the first flush challenged the maintainability of the suit on the ground of improper description of the defendants in terms of Section 79 C.P.C. His next contention is that the appellants could not show their title in the suit property and as such the question of granting injunction as prayed for does not arise even if they may be found in possession in the suit property.

I have gone through the contentions and submissions of both sides and perused all the materials on record. While hearing the injunction matter I am not inclined to go into the maintainability of the suit on such technical grounds as pointed out by the Ld. Advocate for the respondents and the defect in the framing of suit is amendable in nature and the appellants/plaintiffs are at liberty to pray for appropriate steps for amending cause title of the suit to give proper description of the defendant party. Such defect in the framing of suit is not a ground to refuse hearing of injunction matter when the defendant party is duly represented by the competent authority.

What I find from the materials on record is that the plaintiffs claim the suit property to be part of plot No. 232 but the defendants claim it to be part of plot No. 218. It is matter of local investigation to decide to which plot the suit property appertains. Documents of title are not sufficient to solve this controversy unless the physical position of the suit property is brought on record by local investigation. There cannot be any dispute with regard to the possession of the plaintiffs in the suit property but the basis of possession must be ascertained at the time of trial. It will not be safe at this stage to rely on any mouza map or any sketch map or other related documents to come to the conclusion that the suit property is part and parcel of plot No. 218 or plot No. 232. Local investigation is the most scientific and acceptable

method to decide whether the suit property is part and parcel of plot No. 232 or plot No. 218.

It is well settled principle of law that possession is the foundation of title and the court should take into consideration the possession of the plaintiffs in the suit property at the time of considering the injunction application even if sufficient title thereto is not readily available with the record in this ~~for record~~ ^{Case}. Until and unless title is established in the suit property the parties who are in possession thereof must be protected from interference by the authority concerned and there should be an injunction for such limited purpose to avoid future complication and irreversible injury and damage.

Considering the above facts and circumstances of the case I am inclined to pass an order of injunction against the respondents not to disturb possession of the appellants in the suit property till the ownership and title thereof is determined by the Ld. Trial Court. The impugned order is therefore, not sustainable in law and fact.

Misc Appeal therefore succeeds.

Hence,

ORDERED

that the Misc. Appeal be and the same is allowed on contest but without costs. The impugned order is set aside. The respondents/defendants are directed not to interfere and disturb the possession of the appellants in the suit property till the title and ownership thereof is determined by the Ld. Trial Court. Ld. Trial Court is directed to expedite the disposal of this suit.

Let the copy of this order along with LCR be sent down to the court below for taking necessary action.

Dictated & corrected by me

Additional District Judge,
14th Court, Alipore

ADJ, 14th Court, Alipore