

CASE NO.:
Appeal (civil) 4926 of 2007

PETITIONER:
Rabindra Kumar Shaw (dead) thr. Lrs

RESPONDENT:
Manick Lal Shaw

DATE OF JUDGMENT: 22/10/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4926 OF 2007
(Arising out of SLP (C) No.19179 of 2005)
(With Civil Appeal No. 4927 of 2007 (Arising out of S.L.P. (C) No.19180 of 2005))

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in these appeals is to the order passed by a Division Bench of the Calcutta High Court allowing the appeal filed by the respondent-Manick Lal Shaw. The appeal was filed by the respondent who was the defendant in the suit for declaration of title and permanent injunction. The same was directed against the order dated 4th December, 2004 passed by learned Judge, 10th BENCH, City Civil Court at Calcutta in Title Suit No.815 of 2000 thereby rejecting the application under Order 39 Rule 4 of the Code of Civil Procedure, 1908 (in short the 'CPC') filed by the defendant and allowing the application under Order 39 Rules 1 and 2 filed by the plaintiffs.

3. During the pendency of the suit, application in terms of Order 39 Rules 1 and 2 CPC was filed praying for an order of injunction and restraining the defendant from interfering with the possession of the plaintiff in the suit property and from taking forcible possession by breaking open the padlock in the suit property. On such application, learned trial Judge granted ad interim order of status quo. Against such order the defendant filed an appeal before the High Court which was heard by a Division Bench and the said Division Bench did not interfere with the order as the main application for injunction was yet to be decided on merits. Plaintiff filed an application under Section 151 of CPC for enforcing the said ad interim order of status quo with the help of police and the learned trial Judge allowed the application. The defendant filed a revision before the High Court but the High Court did not interfere with the said order on the ground that so long as the ad interim order was subsisting there was no reason for interference with the order for implementation of the order. Subsequently, an application under Order 39 Rule 4 CPC was filed by the defendant for vacating the earlier interim order. The High Court noted that it would have normally remitted the matter to learned trial Judge for consideration of the application under Order 39 Rule 4 CPC and the written objection filed to the

original application for injunction on merits. But it was pointed out that in the suit, plaintiff had not impleaded the three sons of the defendant who had admittedly become co-owners of the property along with the defendant and as such no effective order of injunction can be passed in the suit in the absence of all co-owners of the property. The High Court, therefore, held that in the circumstances it was a fit case where application for injunction filed by the plaintiff was to be dismissed in the absence of necessary parties to the suit and on that ground alone the application was dismissed. The High Court noted that it had not gone into the merits of the case and only on the technical ground as noted above, the application for temporary injunction was rejected. In view of the dismissal of the appeal the application No.CAN 1209/2005 had become infructuous.

4. During hearing of the appeal, learned counsel for the appellants who are the legal heirs of Rabindra Kumar Shaw, the original plaintiff submitted that the High Court had not decided the case on merits and had passed the impugned order only on the technical ground that the three sons of the defendant who are co-owners had not been impleaded. As a matter of fact subsequently an application in terms of Order 1 Rule 10(2) read with Section 151 CPC was filed by the plaintiff on 8.11.2005 for impleading the three sons of the defendant. The prayer was accepted by the trial Judge by order dated 19.4.2005.

5. As the basic objection as to the maintainability of the application no longer survives in view of the impleadment of the three sons of the defendant, the matters need to be heard afresh. As noted above, the High Court noted that it had not gone into the merits of the case and except on the technical ground of non impleadment of the three sons of the defendant, the application for temporary injunction was rejected. In view of the changed circumstances we remit the matter to the trial court to consider the matter afresh. The effect of the impleadment of the three sons of the defendant, needless to say, shall be considered by the trial court.

6. The appeals are accordingly disposed of. There will be no order as to costs.