

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10689 OF 2014
(Arising out of SLP (Civil) No.29686 of 2013)

SUSHIL KUMAR DEY BISWAS & ANR. ..Appellants

Versus

ANIL KUMAR DEY BISWAS ..Respondent

ORDER

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of the Order dated 5.8.2013 passed by the Calcutta High Court in Civil Order No.718 of 2013, dismissing the civil revision filed by the appellants-defendants declining to order restoration of possession of the suit property and also the staircase.

3. Brief facts, which led to the filing of this appeal are as follows:- Respondent-plaintiff filed a suit for eviction being

Title Suit No.196/2004 against the appellants-defendants before the Court of Civil Judge (Junior Division) 4th Court, Sealdah, North 24-Parganas. The eviction was sought for in respect of one room, one bath and privy on the first floor and one room on the ground floor in the western side and one shop room measuring 20' x 12' in the western side of premises No. 59, Old Nimta Road, North 24-Parganas. The appellants-defendants filed their written statement *inter alia* contending that the suit property is the joint property of the plaintiff and the defendant Nos.1 and 2 and claiming a share in the suit property by virtue of a settlement dated 11.12.2000. The appellants contended that the respondent-plaintiff is entitled to only one third share in the suit property.

4. In the suit, trial commenced and respondent-plaintiff adduced evidence and the appellants-defendants also adduced their evidence in part. When the matter was posted for further evidence of the defendants, they filed an application under Section 151 C.P.C. on 4.1.2012, contending that the respondent took the law in his own hands in June 2011 and the appellants were forcefully

dispossessed from the shop room of the suit property. The appellants alleged that they were also forcibly dispossessed from the first floor room by chopping the wooden staircase that leads to the first floor room.

5. The appellants filed an application under Section 151 C.P.C. seeking restoration of possession of the suit property. By an order dated 9.10.2012, the trial court dismissed the petition on the grounds that:- (i) even though the alleged dispossession was in June 2011, the restoration application was filed on 4.1.2012 nearly seven months after the alleged dispossession; (ii) trial has already begun and the evidence of the defendants is nearly on the verge of completion. Being aggrieved by the dismissal of the application, the appellants filed revision before the High Court. The High Court appointed a Special Officer to inspect the suit property and file a report. Accordingly, the Special Officer visited the suit premises and submitted the report observing that there is no trace of any structure for a staircase excepting a vacant narrow space which according to the special officer is apparently indicative of the location of the staircase in question. The High Court dismissed the

revision petition observing that the application filed under Section 151 C.P.C. is vague and that the appellants have approached the court belatedly. However, the High Court gave liberty to the appellants to take appropriate steps in accordance with law.

6. We have heard learned counsel for the appearing parties at considerable length.

7. In the application filed under Section 151 C.P.C., the appellants have alleged as under:-

“...in June, 2011....they were forcefully dispossessed from the shop room of the schedule “B” property without due process of law..... the matter was informed for the first time to the local MP who requested the local police to look into the matter, but instead to make an enquiry the plaintiff again dispossessed the defendants from the possession of the first floor room by chopping of the steps of the wooden stair case that leads to the first floor room. The rooms on the first floor and the shop room in the ground floor are in absolute occupation of the defendant No.2 and the defendant No.1 was in possession of the other room in the ground floor from wherein he was forcefully dispossessed in the year 2005...”

8. Courts below dismissed the application filed under Section 151 C.P.C. mainly on the ground that for the alleged dispossession of the appellants from the suit property in June 2011, the application was filed only on 4.1.2012. According to the appellants-defendants, the respondent-plaintiff is a

very influential person and since the appellants were threatened by the men of the respondent, they could not immediately lodge the complaint. We are not inclined to go into the merits of the rival contentions.

9. Admittedly, the suit was filed for ejectment indicating thereby that at the time of filing the suit in the year 2004, the defendants were in possession of the entire suit "B" schedule property. Application for restoration of possession of the room on the first floor and the shop room on the ground floor was neatived by the courts below merely on the ground of delay. Without going into the merits of rival contentions of both the parties in order to meet the ends of justice, in our view, possession of the first floor alongwith staircase and the shop room on the ground floor should be restored to the appellants-defendants. Delay in filing the application for restoration of possession cannot be the reason for declining relief.

10. Insofar as another room in the ground floor on the western side, as seen from the averments in the application as extracted above, even according to the appellants they were evicted in the year 2005. For a long time, the

defendants have neither raised any objection nor filed any application in the court at the relevant time regarding the said room in the ground floor. The respondent-plaintiff contends that the defendants have voluntarily vacated the premises and the defendants have purchased a flat at Nadanagore, Belghoria and have left the suit property at their own will. Having regard to the rival contentions, in our view, so far as the restoration of room on the western side of the ground floor, the same can be decided alongwith the suit.

11. In the result, impugned order of the High Court is set aside and the appeal is allowed. The respondent-plaintiff is directed to restore the staircase and the possession of one room, one bath and privy on the first floor and shop room in the ground floor to the appellants-defendants within a period of six weeks from the date of receipt of copy of this order. On failure to restore the possession, the appellants-defendants are at liberty to approach the trial court which shall pass appropriate order for ensuring compliance with the direction of this Court. In so far as one room on the western side of ground floor, the same shall be decided

alongwith the suit. We have not expressed any opinion on the merits of the rival contentions of the parties. The trial court shall expedite the trial of the Title Suit No.196/2004 and dispose of the same at an early date. Stay of further proceedings of the suit granted vide this Court Order dated 30.9.2013 stands vacated.

12. In the facts and circumstances of the case, parties to bear their own costs.

.....J.
(T.S. Thakur)

.....J.
(Adarsh Kumar Goel)

.....J.
(R. Banumathi)

New Delhi;
December 3, 2014

JUDGMENT