

PETITIONER:
SMT. SATI RANI SEN

Vs.

RESPONDENT:
M/S. INDIAN STANDARD CASTING COMPANY & ANR.

DATE OF JUDGMENT: 17/03/1997

BENCH:
K. RAMASWAMY, G.T. NANAVALI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted. We have heard learned counsel for the parties.

This appeal by special leave arises from the order of the learned single judge of the High court of Calcutta made on October 14 1996 in C.O No. 2514/95. The present position appears to be that the premises No.31, Raja Santosh Road Alipore Calcutta is the subject matter of the suit No. 86/90 on the file of the IVth Additional District Judge Alipore. Therein they had claimed that they were duly inducted by 2nd respondent M/S. metal box India Ltd. as a tenant and therefore they have the leasehold right in the premises similarly the appellant filed suit No 435/90 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. 86/90 the trial court passed an order on July 14, 1990 directing that status quo be maintained and also given an interim injunction restraining the appellant from disturbing the possession of the first respondent. admittedly the said order is still in operation while the proceedings were pending the appellant filed another suit bearing No.66/93 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 May 23, 1995.

The first respondent viz., Indian standard casting co. filled an application under Order XXI Rule 90 read with section 151 CPC in suit No.66/93 stating that he is having lawful possession and cannot be unlawfully dispossessed in execution of the decree dated January 4, 1995. Though the first respondent filed an application under Order XXXIX Rules 1 and 2 CPC but in substance it is one under Order XLIV, CPC for restitution of the possession by virtue of the order of the status quo granted on July 14, 1990. The said application was ordered which is the subject matter in this appeal.

Though Shri Raju Ramchandra, learned senior counsel

appearing for the appellant contends that the appellant in execution of the decree dated January 1 1995 in suit No.66/93 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 possessing of M/s. Indian Standard Casting Company continue to subsists, the execution of the decree in Suit No.66/93 though became final without impleading the said respondent is to over reach the order of injunction and is an abuse of the court it would be obvious that the appellant being the defendant in suit no.66/90 and having suffered the order of status quo as also adinterim 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.66/93 executed without taking steps to have respondent No.1 Indian standard casting co. impleaded as a party-defendant to the 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 over reach the order passed in suit no. 86/90 normally we would have directed the appellant to restitute possession to the respondent. The status of the respondent itself is to be decided in its suit unfortunately the respondent stood dispossessed on May 23,1995. 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 XL 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 standards casting co. otherwise the possession would remain with the appellant the owner of the property .

In view of the fact that suit No.86/90 and suit No.435/90 and suit no.435/90 are pending in different courts and also the proceedings under order XXI Rule 90 in suit No.66/93 we are of the view that all the three proceedings should be transferred to one court. accordingly, we direct that suit No. 435/90 and the application filed under order order XXI Rule 90 CPC should be transferred to the IVth Additional judge alipore to be tried along with suit No.86/90. 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 . IVth Additional Judge is directed to dispose of both the suits as well as application under XXI Rule 90 CPS as expeditiously as possible within a period of six months from the date of the receipt of this order.

The appeals is accordingly disposed of. No costs.