District: North 24-Parganas

In the Court of the Learned District Judge at Barasat

Title Appeal No. 36 of 2012

Tarun Kumar Das, son of Late Santi Ranjan Das, proprietor of M/s. Artland, residing at EE/13/8, Salt Lake City, Sector-II, Kolkata-700091, under police station-Bidhannagar (East), in the district of North 24-Parganas having its office earlier at CD-295, Salt Lake City, Sector-I, Kolkata-700064 and presently at CJ-30, Salt Lake City, Sector-II, Kolkata-700091, in the district of North 24-Pargnas.

...Appellant/Plaintiff

Versus

1. Smt. Arati Das, wife of Late Bishnupada Das, earlier

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residing at E-130, Salt Lake City, Sector-I, Kolkata-700064, in the district of North 24-Parganas and now residing at 23-D, Bade Raipur Road, under Police Station-Jadavpur, Kolkata-700032.

2. Smt. Anjan Chanda, wife of Dr. Bikash Chanda and daughter of Late Bishnupada Das, residing at 23-D, Bade Raipur Road, under Police Station-Jadavpur, Kolkata-700032.

3. Amit Kumar Das, son of Late Bishnupada Das, earlier residing at E-130, Salt Lake City, Sector-I, Kolkata-700064, in the district of North 24-Parganas and also of 49 Suri Lane, under Police Station-Muchipara, Kolkata-700014.

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✓ Ravindra Kumar Chopra

4. Birendra Kumar Chopra.
5. Ravindra Kumar Chopra.

Both residing at 88, College Road, Rabindranagar Complex, Block-G, 4th floor, Flat No. 401, Howrah-711 103.

Respondents/Defendants

An application under Order XXXIX rule 4 read with Section 151 of the Code of Civil Procedure, 1908.

The humble petition of the respondent/defendant nos. 4 and 5/applicants abovenamed –

Most Respectfully Sheweth :

1. The plaintiff filed a suit being Title Suit No. 205 of 2010 before the Learned 2nd Court of Civil Judge (Senior Division) at Barasat, inter alia, praying for the following reliefs :-

   a) Leave under Order 2 Rule 2 of the Civil Procedure Code.

   b) Declaration that the plaintiff has the right to do the construction work as per agreement dated 11.04.2002 and the power of attorney dated 11.04.2002.

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c) Injunction restraining the defendant nos.2 and 3 from transferring their respective shares in the said suit property to the defendant no.1.

d) Injunction restraining the defendant no.1 from transferring the suit property or any part or portion thereof to any third person.

e) Injunction restraining the defendants from causing any obstruction or hindrance in the construction work by the plaintiff according to the agreements and power of attorney executed by the defendants in favour of the plaintiff in terms of the sanctioned building plan.

f) Injunction restraining the defendant nos. 1, 2 and 3 from engaging or appointing any other person or person to make construction work in the suit property excepting the plaintiff.

g) Temporary/ad-interim injunction in terms of prayers (b), (c), (d), (e) and (f) above.

h) Receiver.

i) Cost of the suit and incidentals thereto.

j) Any other relief or reliefs to which the plaintiff is entitled to in law and in equity.

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A copy of the plaint is annexed hereto and marked with letter **"A"**.

2. The suit has been dismissed. Contentions made in the plaint are all untrue and incorrect.

3. Being aggrieved by and dissatisfied with the said dismissal, the plaintiff filed an appeal being Title Appeal No. 36 of 2012 and in the said appeal an order of injunction was also passed, which is still continuing. The appeal has not been disposed of as yet.

4. The applicants herein by a registered deed of transfer dated 5th day of April, 2013 purchased the said property from the original defendant no.1, namely Smt. Arati Das, since deceased and now represented by her legal heirs being the defendant nos. 2 and 4. A copy of the registered deed of transfer in favour of the applicants is annexed hereto and marked with letter **"B"**.

5. The applicants herein filed an application before this Hon'ble Court under Order XXII Rule 10 read with Section 151 of the Code of Civil Procedure and the said application was allowed vide order dated _____ and the applicants have been as defendant nos. 4 and 5 herein.

6. The applicants have come to know that by an order dated 5th June, 2012 this Learned Court was pleased to pass an ad-

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interim order of injunction restraining the respondents therein from transferring their respective shares in the suit property to any third party.

7. By an order dated 15th March, 2014 the said petition under Order XXXIX rule 1 and 2 read with Section 151 of the Code of Civil Procedure was allowed ex-parte and an interim order passed on 5th June, 2012 was extended till disposal of the present appeal. A copy of the said order dated 15th June, 2014 is annexed hereto and marked with letter **"C"**.

8. The applicants state that the said order of injunction was obtained not only ex-parte but by misleading this Learned Court on facts.

9. The applicants state that it will appear from the plaint that the plaintiff has no case on merits. The entire case was made out on the basis of a purported power of attorney. Neither the property was conveyed in the name of the plaintiff nor the plaintiff is in possession of the property.

10. In paragraph 6 of the plaint the plaintiff made an averment as follows :-

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"Accordingly, an agreement by and between the plaintiff and the defendants was arrived on 11th April, 2002, which was notarized on 12th April, 2002."

11. Firstly, the agreement should have been registered otherwise that has got no evidential value. Secondly, no agreement was entered into, only a power of attorney was issued and that too notarized. Thus, the plaintiff by misleading this Learned Court obtained the order of injunction against the true owner as well as the possession holder, which is barred by law.

12. The applicants state that it is a settled law that no injunction should be issued against a true owner and a possession-holder whereas in the instant case neither the plaintiff is the owner nor he is in possession of the property. Under such circumstances, the order of injunction should be vacated only on those grounds itself.

13. The applicants state that in the injunction application the applicants have never candidly said that they are in possession of the suit premises. However, even if the plaintiff would have been in possession, that possession would have been an illegal and unauthorised possession and on the basis of that the plaintiff cannot get an order of injunction.

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14. On the contrary, these applicants by registered deed of conveyance have purchased the property on 05.04.2013, copies whereof are annexed herewith and marked with letter **"D"**.

15. The applicants are in possession of the suit property, which could be investigated by this Learned Court, if required.

16. Thus, a person, who is not owner in accordance with law and also not in possession, is enjoying an order of injunction, which is contrary to the settled law of the Hon'ble Apex Court.

17. Even the suit is barred by law of limitation according to the plaintiff's own submission made in paragraph 23 of the plaint.

18. The suit is also barred by Section 34 of the Specific Relief Act in so much so that the plaintiff has not asked for possession in the suit filed by him.

19. Under the facts and circumstances of the case, the order of injunction should be vacated and it is humbly submitted that for the ends of justice this Learned Court should vacate the interim order.

20. The applicants state that the plaintiff has failed to prove prima facie case and balance of convenience is not in favour of the plaintiff but the same is in favour of the applicant.

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21. There is no irreparable loss and injury that may be suffered by the plaintiffs, at best the plaintiff can claim damages, if at all, against the defendant nos. 1, 2 and 3.

22. Unless orders are passed as prayed for herein, the applicants shall suffer irreparable loss and injury.

23. This application is made bonafide and for the ends of justice.

Under the facts and circumstances, the applicants humbly pray before this Learned Court as follows :-

a) Oder dated 15th March, 2014 passed in T. A. No. 36 of 2012 (Tarun Kumar Das –versus- Smt. Arati Das & Ors.) be vacated;

b) Ad-interim order in terms prayer (a) above;

c) Costs;

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d) Such further order or orders as this Learned Court may deem fit and proper.

And your applicants, as in duty bound, shall ever pray.

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Ravindra Kumar Chopra

AFFIDAVIT

I, Birendra kumar Chopra, son of late Jaychand Lal Chopra, aged about 59 years, by faith Hindu, by occupation Business, residing at 88, collage road , rabindranagar complex block G -4th floor Flat no 401, Howrah 711103, do hereby solemnly affirm and state as follows:

1. That I am the defendant no 4 and I am well conversant with the facts and circumstances of this case.

   This is true to my knowledge.

2. That I am duly authorised by the defendant no 5 to swear an affidavit.

3. That the statements made in the foregoing paragraphs of this application are true to the best of my knowledge and belief and the rests are my submissions before this Learned Court.

Birendra Kumar Chopra

DEPONENT

Prepared in my office

Advocate

Identified by me,

Advocate