

Civil Revision

Present :

The Hon'ble Justice Harish Tandon.

Judgment on : 20.08.2010

C.O. No. 2165 of 2007.**Nanda Gopal Pramanik & Ors.****-vs-****Kabir Kayal & Ors.**

Points:

Injunction, Jurisdiction: Suit for injunction filed on the basis of surrender of land by Bargadar and possession of the plaintiff-Defendants disputed the surrender and possession-Rejection of the application for injunction by the Courts below holding that the civil court has no jurisdiction to decide the dispute whether proper- West Bengal Land Reforms Act, 1955 –Ss.18, 20B, 21.

Facts:

The petitioners filed suit praying for a decree for permanent injunction restraining the opposite parties from dispossessing and interfering with the peaceful possession of the petitioners in respect of the suit premises. Petitioners have contended that the Bargadar during his life time relinquished his Barga right in respect of suit land and the petitioners are cultivating the said land after accepting such surrender. The opposite parties have specifically pleaded in the objection that the recorded Bargadar at no point of time executed the said Nadabipatra and the cultivation is still done by the opposite parties and they have already filed an application for recording their name as Bargadar before the concerned authority. Both the Courts below rejected the application for injunction filed by the petitioners.

Held:

Section 21 of the said Act further creates a fetter on the part of the civil court to entertain any suit or a proceeding in respect of a matter concerning, apart from other, section 20B of the said Act. In view of an expressed provision ousting the jurisdiction of the civil court the civil court is denuded of its power to determine or decide any matter touching and/or relating to the surrender and/or abandonment of right to cultivate by a Bargadar. Para 10 and 11

Since the claim of the petitioner rests on the strength of the surrender and/or abandonment of right to cultivate by a recorded Bargadar on executing a Nadabipatra and the possession is sought to be protected on the basis thereof, the moment an objection is put forth touching the surrender and/or abandonment of right to cultivate by a recorded Bargadar, the court loses its jurisdiction to decide whether such surrender was effected or not. The substantive section ousting the jurisdiction of the civil court comes into play. Para 13

Even the possession has been categorically disputed by the opposite parties who laid their claim to be recorded as a Bargadar much before the institution of the suit by the petitioner. The court while protecting the possession must ascertain in whose possession the property in question is. Any blanket order without ascertaining the possession, is capable of being circumvented by a scrupulous litigant. Para 14

The grant of injunction is a discretionary relief but should be passed with sound logic, applying the legal test and the principles and the law applicable thereto. The

revisional court should be slow in interfering with the discretionary order passed by both the court below unless the order is perverse, illegal and have been passed without applying the legal test and principle. Para 15

For the petitioner : Sardar Amjad Ali
Sardar Shahin Imdam
Ms. Ipsita Chowdhury

For the Opposite Party : None appears

HARISH TANDON, J.:

Affidavit of service filed be kept with the record. In spite of service none appears on behalf of opposite parties.

2. This revisional application is directed against an order dated 20.3.2007 passed by the learned Additional District Judge, Fast Track Court-I, Alipur in Misc. Appeal No. 291 of 2004.

3. The petitioners filed Title Suit being no. 44 of 2004 against the opposite parties praying for a decree for permanent injunction restraining the opposite parties from dispossessing and interfering with the peaceful possession of the petitioners in respect of the suit premises.

4. Petitioners have contended in the plaint that one Bistu Charan Kayal was permitted to cultivate 91 decimals of land as Bargadars. The said Bistu Charan Kayal during his life time relinquished his Barga right in respect of demarcated 82 decimals out of 91 decimals of land. It is further contended that the petitioners are cultivating the said land after accepting such surrender. It is alleged in the plaint that the opposite parties were creating obstructions to the petitioner in harvesting the paddy and the police authorities, even on several complaints, failed to take any steps in the matter. It is further contended that there is an eminent threat of dispossession of the petitioner at the hands of the opposite parties.

5. The petitioner thereafter filed an application for temporary injunction in aid of the relief as claimed in the said suit and prayed for an ad interim order of injunction. By an order dated March 25, 2004 the trial court refused to pass an ad interim order of injunction and issued a notice to show cause.

6. Ultimately the said application for injunction was heard out on affidavits filed by the respective parties and the said application for injunction was dismissed on the ground that a cloud has been casted over the title of the petitioner in respect of the property in question and in view of an embargo created under the West Bengal Land Reforms Act 1955 Civil Court has no jurisdiction and consequently dismissed the said application for injunction on contest.

7. The petitioner assailed the said order by preferring Misc. Appeal no. 291 of 2004 in the court of Additional District Judge, Alipur. The appellate court dismissed the said appeal on contest affirming the view of the trial court that the civil court has no jurisdiction to decide whether Bistu Charan Kayal has relinquished his Barga right in respect of the said 82 decimal of land.

8. Sardar Amjad Ali, learned Advocate appearing on behalf of the petitioners submits that both the court below erred in proceeding that the suit is barred under the provision of West Bengal Land Reforms Act 1955. He further contends that section 18(1) of the West Bengal Land Reforms Act 1955 is not applicable which has been made applicable by both the court below, as it relates to a dispute between the Bargadar and a person whose land he cultivates in respect of the matters relating to division or delivery of produce, recovery of produce and termination of cultivation by the Bargadar. Sardar Amjad Ali, learned Advocate strenuously contended that in the case in hand there is no question of termination of cultivation but is a surrender and/or abandonment of cultivation by the recorded Bargadar.

9. Having considered the submission made on behalf of the petitioner, it is true that this is not a case of termination of cultivation by the Bargadar but a case of a surrender or abandonment of cultivation by Bargadar upon execution of a

Nadabipatra. Even I consider the case from such angle then also the jurisdiction of the civil court is barred. Section 20B of the West Bengal Land Reforms Act 1955 postulates that in case Bargadar surrenders his right to cultivate or voluntarily abandons the cultivation, the owner or the Bargadar or any other person may give information in writing to a prescribed authority who upon receipt of such information shall issue a notice in prescribed form upon both the Bargadar and the person whose land he was cultivating and shall give an opportunity of hearing and thereafter make an enquiry whether the said Bargadar voluntarily surrenders or abandons his right of cultivation. Even upon determining and/or finding that the Bargadar has voluntarily surrenders and/or abandons his right of cultivation, the owner or raiyat does not get a right to personally cultivate the said land but with the permission of such officer or authority have the said land cultivated by any person as referred in section 49 of the said Act.

10. Section 21 of the said Act further creates a fetter on the part of the civil court to entertain any suit or a proceeding in respect of a matter concerning, apart from other, section 20B of the said Act.

11. In view of an expressed provision ousting the jurisdiction of the civil court the civil court is denuded of its power to determine or decide any matter touching

and/or relating to the surrender and/or abandonment of right to cultivate by a Bargadar.

12. In the case in hand although a suit simpliciter for injunction is filed to protect the possession by the owner against the opposite parties, but such protection or possession is based on the right of surrender and abandonment of the right to cultivate by a Bargadar upon executing a Nadabipatra. The opposite parties happens to be a class two heirs or successors of the said recorded Bargadar under section 8 of the Hindu Succession Act. The opposite parties have specifically pleaded in the objection that the recorded Bargadar at no point of time executed the said Nadabipatra and the cultivation is still done by the opposite parties. It is further contended that the opposite parties have already filed an application for recording their name as Bargadar before the concerned authority on October 20, 2002.

13. Since the claim of the petitioner rests on the strength of the surrender and/or abandonment of right to cultivate by a recorded Bargadar on executing a Nadabipatra and the possession is sought to be protected on the basis thereof, the moment an objection is put forth touching the surrender and/or abandonment of right to cultivate by a recorded Bargadar, the court loses its jurisdiction to decide whether

such surrender was effected or not. The substantive section ousting the jurisdiction of the civil court comes into play.

14. Even the possession has been categorically disputed by the opposite parties who laid their claim to be recorded as a Bargadar much before the institution of the suit by the petitioner. The court while protecting the possession must ascertain in whose possession the property in question is. Any blanket order without ascertaining the possession, is capable of being circumvented by a scrupulous litigant.

15. The grant of injunction is a discretionary relief but should be passed with sound logic, applying the legal test and the principles and the law applicable thereto. The revisional court should be slow in interfering with the discretionary order passed by both the court below unless the order is perverse, illegal and have been passed without applying the legal test and principle.

16. I do not find any such illegality or perversity in the impugned order and thus the revisional application is hereby dismissed.

17. However, there shall be no order as to costs.

(Harish Tandon, J.)