

Calcutta High Court

Debajoti Prosad vs State Of West Bengal And Ors. on 22 September, 2005

Equivalent citations: 2006 (4) CHN 456

Author: J K Biswas

Bench: J K Biswas

JUDGMENT Jayanta Kumar Biswas, J.

1. Order made by the Sub-divisional Magistrate (S) Berhampore, Murshidabad dated March 11, 2005 has been challenged by the petitioner.

2. The Magistrate made the order on the basis of an apparently undated application submitted by the fifth respondent asking for an order to direct police to give necessary help so that he could enter into a shop room by breaking open the lock allegedly put by the petitioner. It was alleged in the application that the petitioner and his father had broken open the lock put by the fifth respondent, and that thereafter they put their lock on the doors of the shop in question. By the order police was directed to help the fifth respondent to break the lock and open the shop. As a result, police and the fifth respondent broke open the lock put on the shop by the petitioner and entered into possession thereof.

3. It is to be noted that long before the incident took place, on March 29, 2003, the fifth respondent had instituted a suit (No. 66 of 2003) before the Civil Judge (Junior Division), Second Court at Berhampore, and that in it the petitioner and his father were sued as the first and second defendants. The third, fourth, fifth and sixth defendants therein were the officials of Allahabad Bank. The same property was the subject-matter of that suit. As plaintiff, the fifth respondent alleged that the sale deed executed by him in 1998 was not to mean an out and out sale of the property to the petitioner in this case. In the deed it was mentioned that possession of the property was given to the petitioner. The fifth respondent prayed for cancellation of that deed.

4. Immediately after the incident, that took place because of the order dated March 11, 2005, the petitioner moved the Sub-divisional Magistrate, and by another order dated May 17, 2005, the Magistrate ordered that while the case would be deemed to be dropped, his previous order dated March 11, 2005 would remain. Feeling aggrieved the petitioner took out a previous writ petition, but it was permitted to be withdrawn with liberty to file a fresh writ petition. This is how the present writ petition has come to be filed.

5. I fully agree with Advocate for the petitioner that the proceedings initiated by the Sub-divisional Magistrate and the orders made therein are grossly vitiated by jurisdictional errors. I am unable to accept the contention that, if aggrieved, the petitioner was entitled to move only a criminal revision application before the appropriate Criminal Court. The order challenged has not been made by any Criminal Court, and the Magistrate apparently exercised his powers in the capacity of an Executive Magistrate within the meaning of provisions of the Code of Criminal Procedure, 1973. There can be no doubt that the petitioner is entitled to invoke the writ jurisdiction for challenging validity of the proceedings and the orders made therein.

6. In my view, the fifth respondent wrongly initiated the proceedings before the Sub-divisional Magistrate, when the suit filed by him in the year 2003 was pending decision before the competent Civil Court, and when he was free to obtain necessary interim order in such suit. Although Advocate for the fifth respondent submits that certain order of injunction was made by the Civil Court, he is not in a position to produce any such order. He says that in violation of subsisting order of injunction the petitioner and his father had taken possession of the shop room in question and hence for execution of the order of injunction made by the Civil Court his client approached the Sub-divisional Magistrate. I have no doubt in my mind that for such purpose the fifth respondent was not entitled to initiate any proceedings before the Sub-divisional Magistrate. Such Magistrate is not the authority to execute orders made by the competent Civil Court.

7. The admitted position is that on the strength of the order dated March 11, 2005 the fifth respondent, with the help of police, broke open the lock of the shop room and entered into it. There can be no doubt that through such a process, which cannot be treated as a due process of law the fifth respondent was not entitled to enter into possession of the shop room. If it was his case that he was dispossessed by the petitioner, he was free to approach the appropriate Civil Court, either by instituting a suit or by making appropriate application in the pending suit, if there was any scope, but by simply filing an application before the Executive Magistrate, seeking police help, he was not entitled to force himself into the shop room.

8. The Sub-divisional Magistrate should not have entertained the application seeking police help for taking possession of immovable property. In any case, he should not have made the order without hearing the petitioner. In my view, he made the things worse by dropping the proceedings by a one sentence unreasoned order, the moment the petitioner approached him. As the position stands today his around one line cryptic and unreasoned one sentence order dated March 11, 2005, impugned in this writ petition, is in force. I hold that it is a nullity in the eye of law, and that the proceedings initiated by the fifth respondent, being totally misconceived, are liable to be quashed.

9. The facts necessary for deciding the question of law involved in the case being undisputed, in my view, no useful purpose would be served by keeping the writ petition pending. I think, it should be disposed of at this stage itself, since directions for affidavits will serve no real purpose of justice, and will only delay the disposal of the case, creating more complications for the parties. I think, the wrong, before it aggravates the situation, should be set right.

10. For these reasons I allow the writ petition and set aside the order dated March 11, 2005 and quash the proceedings initiated by the Sub-divisional Magistrate on the basis of the application submitted by the fifth respondent. I order that within 24 hours from the moment of receipt of this order the police authorities shall restore such condition of the property, including the shop room concerned, as was existing before implementation of the order of the Magistrate dated March 11, 2005, if the petitioner was in possession, then possession of the property shall be given to him, subject to orders that may be made by the competent Civil Court.

11. The fifth respondent will be at liberty to approach the competent Civil Court for ventilating his grievances regarding his right to possess the shop room concerned. If the competent Civil Court is

approached then such Court will be absolutely free to decide who is entitled to possess the shop room and while giving such decision it shall not feel influenced in any manner by this order or by the orders made by the Sub-divisional Magistrate in the abovementioned proceedings.

12. There shall be no order for costs in the writ petition.

13. Copy of this order duly authenticated by AR (C) or ACO shall be supplied to Advocates for the parties on the usual undertakings.

14. Urgent certified xerox copy of the order shall be given to the parties, if applied for.