

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5779 OF 2021
(arising out of SLP(C)No.5730 of 2021)

HIMALAYA VINTRADE PVT. LTD.

APPELLANT(S)

VERSUS

MD. ZAHID & ANR.

RESPONDENT(S)

O R D E R

Leave granted.

The appellant-defendant has approached to this Court assailing the order passed by Ld.Trial Judge and confirmed by the High Court on the application filed at his instance under Order VII Rule 11, Civil Procedure Code, 1908.

The facts on record are not in dispute. The appellant-defendant initially entered into an agreement to sell of the subject property in question on 23.02.2018 and after a formal deed of conveyance finally a sale deed was executed on 30.09.2019 and his right of ownership over the subject property in question became absolute.

The respondent no.1-plaintiff filed a suit with the following prayer:

a) for a declaration that the plaintiff is a lawful occupier as caretaker/servant of the sole owner of the A schedule property and occupier and adverse possessor of the B Schedule property.

b) for the permanent injunction restraining defendant to disturb or evict the peaceful possession of the plaintiff otherwise than the due course of law.

Schedule A of property

All that an area of land admeasuring 16 kh. 3 ch. 4 sq.ft. be the same and a little more or less with three storied residential building have each floor are 5000 Sq.ft. more or less and some vacant possession lying and situated at premises no.217, Lower Circular Road and now known as 217 A.J.C.Bose Road, Kolkata-700017 P.S.Beniapukur, Dist-South 24 pargans

Schedule B property

All that three rooms and one godown along with some vacant land at premises no.217, Lower Circular Road and now known as 217 A.J.C.Bose Road, Kolkata-700017 P.S.Beniapukur.

It was a specific case of the respondent no.1-plaintiff that he was in possession of the subject property as a caretaker/servant. Para nos.2, 4 and 6 of the plaint are reproduced hereunder:

2. That the plaintiff is a servant/caretaker of the "A" schedule property appointed by the Mirza Habibullah Khaleeli and the said sole owners of the said property allow the plaintiff for used and residing all that three rooms and one godown along with some vacant land which is more fully and particularly described in the "B" schedule below lying and situated at premises no.217, Lower Circular Road and now known as 217

A.J.C.Bose Road, Kolkata-700017 P.S.Beniapukur is the subject matter of the suit within the jurisdiction of this Id.Court.

4. That on all a sudden the defendants and their men and agents with other antisocial elements trying to take or enter into the plaintiff's rooms i.e. B schedule Property with an ulterior motive they trying to dispossess the plaintiff from his lawful occupation as servant/caretaker with a view to grab the occupation/residence but the defendant is not success to fulfill their ill desired, for the intervention of the local people and their strong support the defendants could not succeed there to oust and dispossess the plaintiff.

6. That the right title interested possession of the plaintiff in the suit property as well as lawful right of servant and caretaker and claiming as adverse possessor of the B schedule property even thus been clouded for unlawful act of the defendants so the plaintiff is compelled instituted the instant suit against the defendant for declaration that the defendant be not ousted from the B schedule property i.e. suit property other than due process of law and for permanent injunction against the defendant not to disturb the peaceful possession of the suit property and also not disturb or the egress and ingress of the suit property.

After the notice was served. The application under Order VII Rule 11, CPC came to be filed at the behest of

the present appellant-defendant with an objection that the suit proceedings at the instance of the respondent no.1-plaintiff who had pleaded himself to be a caretaker/servant, acquires no interest in the subject property irrespective of his long possession, is not maintainable under the law and as regards the plea of adverse possession is concerned, it lacks material particulars.

The Trial Judge dismissed the application on the premise that these are the subject matter of disputes which can be examined only after the written statement being filed at the behest of the present appellant-defendant and is not within the scope of Order VII Rule 11, CPC and order of Trial Judge came to be confirmed by the High Court by the impugned order assailed in the present proceedings.

After we heard counsel for the parties and taking into consideration the material on record, in our considered view, the Trail Court has committed a manifest error in appreciating the pleadings on record from the plaint filed at the instance of respondent no.1-plaintiff who as a caretaker/servant can never acquire interest in the property irrespective of his long possession and the caretaker/servant has to give possession forthwith on demand and so far as the plea of adverse possession is concerned as it lacks material particulars and the plaint does not discloses the cause of action for institution of the suit.

In our considered view, the order of the Ld. Trial Judge which has been confirmed by the High Court impugned in the instant proceeding is not sustainable on the first principles of law.

Consequently, the appeal succeeds and is allowed. The order of the High Court is, hereby, quashed and set aside. The plaint no.T.S.150/2019, on the file of Ld.2nd Civil Judge(Jr.Div) at Sealdah is, accordingly, rejected.

Since we have rejected the plaint in reference to the proceeding initiated, we direct the respondent no.1-plaintiff to handover, vacant and peaceful possession of the subject property in question free from all encumbrances within three months.

If the respondent no.1-plaintiff fails to handover possession, the appellant-defendant will be at liberty to take the recourse as known to the law.

Pending application(s), if any, shall stand disposed of.

..... J.
(AJAY RASTOGI)

..... J.
(ABHAY S OKA)

NEW DELHI
SEPTEMBER 16, 2021