

Title Suit 2126 of 2009
R-9586/2014
CNR. No. WBSP02-000243-2009

Date: 28-08-2023

Today is fixed for passing order.

Ld. Advocates for both the parties have taken their respective steps.

Record is taken up for passing order on application filed by the defendants U/Or. 39, R. 4 read with S. 151 of the Code of Civil Procedure.

It is the contention of the defendants that the Court vide order dated 06.07.2009 passed an order of injunction directing both the parties to maintain status quo of the suit property in respect to its nature, character and possession. Defendant No. 1 Mohini Debi Bajoria has died in the meantime on 22.08.2018 (her name has already been expunged vide order dated 20.11.2018). Several proceedings are/were going on between the parties. Hon'ble Supreme Court in one of such proceeding, in Criminal Appeal no. 157 of 2019, vide order dated 17.10.2019 allowed the appeal filed by the Hooghly Mills Co. ltd. and ordered the plaintiff Mr. Bal Binod Bajoria (respondent No. 2 of the appeal) to vacate the self same suit property being the flat situated at the third floor, of plot No. D, "Sreekunj", 13, Gurusaday Road, P.S. Karaya, Kolkata-700019 which he was occupying. By another order dated 26.07.2021 in the same

appeal, Hon'ble Apex court permitted time to Bal Binod Bajoria to vacate the suit property within 31st August, 2021. Mr. Bal Binod Bajoria in compliance to the direction, on 02.09.2021 has handed over the possession of the suit property to the company on 02.09.2021. In the said order it was further mentioned that the company shall maintain the possession without creating any third party right for two months after the possession is handed over to it by Mr. Bajoria. Two months have lapsed on 01.11.2021. At present it is clear that Mr. Bal Binod Bajoria as was in possession of the suit premises, hence on the basis of such possession, Ld. Court granted him an order of status quo with respect to the nature, character and possession of the suit property. At present Mr. Bajoria has handed over possession of the suit premises in favour of Hooghly Mills Co. Ltd. On the basis of subsequent events Mr. Bajoria is not in a possession of the suit premises. Hooghly Mills Company Ltd. to whom the interim tenancy was given and with whom an agreement to sale was executed in respect of the property as mentioned above, being in possession of the suit property now can do anything with regard to the said suit premises since two months from the date of the said order passed by the Hon'ble Apex Court have already lapsed. The circumstances under which the order of injunction dtd.26.07.2009 was passed has changed. Therefore, such order of injunction should be modified or be recalled.

Plaintiff by filing written objection challenging the submission of the defendant has contended that the only intention of the defendants to file this application is to encumber the suit property or portion thereof. The property will be transferred to a person or a company by the defendants if the Court lifts the injunction order. If the Court passes a decree in

favour of the plaintiff then it would be difficult for him to recover the suit property from the third person. Hon'ble Supreme Court has observed that if the Civil Court passes a decree in Title Suit No.2126 of 2009 such decree must be honoured and possession of the disputed property would be restored to the plaintiff accordingly. The plaintiff will suffer irreparable loss and injury if the order of injunction is recalled as per desire of the defendants. It is a fact that the defendants are in possession of the suit property after 2nd September, 2021. In the circumstances as stated above an order of prohibitory injunction or status quo rather be passed so that the defendants are restrained from transferring the property to third person and keep the same in their possession until final order is passed by the Court. There is no specific direction of the Hon'ble Court over the proceeding pending in this Court. Copy of letter dtd.14.12.2022 and 27.02.2023 are the letters between Smt. Lata Bajoria and Hooghly Mills Company Ltd. with regard to the suit property. Neither Smt. Bajoria nor the Hooghly Mills Company Ltd. ever felt it necessary that the copies of these two letters are served upon the plaintiff in view of the present litigation. Smt. Lata Bajoria and Hooghly Mills Company Ltd. have clubbed together to threaten the plaintiff so that the decree likely to be passed for the Specific Performance of the Contract with regard to the suit property is frustrated and encumbered. Smt. Lata Bajoria is the wife and one of the legal heiress of late Arun Kumar Bajoria. Other legal heirs and/or heiress are not parties to the suit. Mr. Arun Kumar Bajoria died leaving behind his mother. The key person who was aware of the dealings of the suit property is his brother. The Will left by Mr. Arun Kumar Bajoria and his mother Mohini Debi Bajoria have not been probated. Plaintiff's interest is covered with

regard to the suit property for which so called draft conveyance prepared by Hooghly Mills Company Ltd. is required to be forwarded to the plaintiff. As soon as he gets the copy of deed he will make further comments and will file additional objection in his behalf. The only intention of the Hooghly Mills Company Ltd. is to deceive and deprive the interest of the plaintiff. As no deed of conveyance has been prepared as alleged, hence no copy of the draft deed has been annexed with Annuxure-A. Considering the entire circumstances, the application filed by the defendants praying for modification/recalling of the order of ad-interim injunction should be rejected.

From the facts asserted by the parties, one thing is clear that the plaintiff is not in possession of the suit property. In compliance to the solemn direction of the Hon'ble Apex Court, plaintiff has handed over possession of the suit property in favour of Hooghly Mills Co. Ltd., who is not a party to the suit. Hooghly Mills Co. Ltd. at present is possession the suit property. Hooghly Mills Co. Ltd. in 26.04.2008 entered into an agreement to purchase the suit flat with the legal heirs of Mr. Arun Kumar Bajoria. As per terms of the said agreement, Hooghly Mills Co. Ltd. was put in interim possession of the suit flat subject to payment of a monthly rent. Plaintiff being respondent No. 2 of the Criminal Appeal did not dispute the agreement (as is apparent from order dated 17.10.2019 of the Hon'ble Apex court). Be that as it may, the question is whether the plaintiff who is not in possession of the suit property can still be favoured with the order of injunction as was granted vide order dated 25.05.2010 on contest directing the parties to maintain status quo in respect of nature, character and possession of the suit property till disposal of the suit. If we go through order

dtd.25.05.2010 passed by this Court minutely, then we will find that the Court observed that “.....it is undisputed that the plaintiff is in possession of the suit property since not less than 10 years. If the defendants dispossess the plaintiff without due process of law before adjudication of the questions raised in this suit certainly the plaintiff would suffer irreparable loss and injury which cannot be compensated by money. The plaintiff has been residing in the suit property with his family and in case of dispossession the plaintiff will be placed in grater hardship than that of the defendants. So, the balance of convenience undoubtedly lies in favour of the plaintiff.....”. Thus, from the very order it is clear that just to save possession of the suit property with the plaintiff, Court passed the order of injunction. Now the circumstances has changed. Plaintiff himself has delivered possession of the suit property in terms of the order of the Hon’ble Apex court in favour of Hooghly Mills Co. Ltd. Plaintiff was supposed to bring this fact before on record. However, at present the possession of the suit property lies with Hooghly Mills Co. Ltd. who is not a party to the suit. Plaintiff has no allegation against Hooghly Mills Co. Ltd on record. Even if the order of status quo remains on the suit property in terms of order dated 25.05.2010, plaintiff would not get any benefit from the order or however be protected from the threat of dispossession which he had before from the defendants (now the plaintiff is already out of possession of the suit property). Plaintiff by filing the injunction application on 06.07.2009 though prayed before the court to restrain the defendants by way of injunction from alienating and/or encumbering and/ or transferring the suit property till disposal of the suit , but the Court did not allow his prayer. Court just to protect the dispossession of the plaintiff which he had in the

suit property at that time, passed the order of injunction in the form of status quo. As the plaintiff is out of possession at present, hence the order of injunction as was granted on the circumstances as it existed on the date of passing the order, is required to be re-called. Injunction may be granted even against the true owner of the property, only when the person seeking the relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession. Not to disposes him, except in due process of law injunction could be given in favour of the plaintiff. In the present case, plaintiff is out of possession, hence no question arises of protecting his possession in the suit property. **Hence, the order of injunction passed vide order dated 25.05.2010 is hereby re-called.**

In the light of the order passed above, petition dated filed by the defendants stands allowed on contest without any order as to costs.

To **22.09.2023** for cross-examination of P.W.-2.

Dictated & Corrected by me.

Sd/- (J. Gupta)
Civil Judge (Sr. Divn.),
2nd Court, Alipore.

Sd/- (Jhilom Gupta)
J.O. Code: WB00963
Civil Judge (Sr. Divn.),
2nd Court, Alipore.