

Party Name : SUBHASH CHANDRA GHOSH AND ANR. Vs JAGADISH CHANDRA GHOSH AND ANR.

THE HONBLE MR. JUSTICE S.C.DAS

Heard learned senior counsel, Mr. D. Chakraborty for the appellant-petitioners and learned counsel, Mr. K.K. Roy for the respondent-opposite party.

By filing this petition under Order 39 Rule 1(C) of CPC, the petitioners prayed for granting temporary injunction restraining the respondent-O.P. from entering into the suit land and from interfering with the possession of the appellant-petitioners over the suit land pending final disposal of the connected second appeal.

The brief fact is that the appellant-petitioners instituted Title Suit No.02 of 2011 seeking declaration of right, title and interest, confirmation of possession and perpetual injunction of the suit land described in the schedule of the plaint, measuring 0.96 acres. The respondent-O.P., who were arrayed as defendant in the suit, appeared and contested the suit and the trial Court in due course by judgment dated 07.05.2013 decreed the suit as prayed by the plaintiffs.

Aggrieved, the defendant, i.e., respondent-O.P. herein, preferred Title Appeal No.14 of 2013 in the Court of District Judge, Udaipur and the learned District Judge by Judgment and decree dated 06.03.2014 partly allowed the appeal and thereby directed that the plaintiffs were entitled to get decree over the land measuring 0.70 acres and not over the land measuring 0.96 acres as described in the schedule of the plaint and decreed by the trial Court. The plaintiff-appellants challenged that judgment by filing this second appeal, which has already been admitted for hearing.

By filing the present application the appellant-petitioners, i.e. the plaintiffs, contended that the respondent-O.P., i.e., the defendant, made an attempt on 22nd March, 2015 to trespass into the suit land and to dispossess the plaintiffs from the suit land and that because of the resistance of the plaintiff-petitioners the defendant could not succeed in his attempt. It is the contention of the appellant-petitioners that they are in possession of the suit land measuring 0.96 acres and that their right, title, interest and possession have already been declared by trial Court, which has been slightly modified by the appellate Court.

Learned senior counsel, Mr. Chakraborty prayed for granting temporary injunction. Learned counsel, Mr. K.K. Roy appearing for the respondent-O. P submits that the decree passed by the trial Court has been modified by the appellate Court. The respondent-O.P, as defendant, asserted that he is in possession of the part of the suit land and the appellate Court considered the fact in respect of right, title and interest of the parties to the suit land and it has been already held by the appellate Court that the plaintiffs could not prove their right, title, interest and possession over the entire suit land and that the plaintiffs could prove their right, title, interest and possession only in respect of 0.70 acres of land and under such circumstances no order of temporary injunction can be granted.

I have gone through the judgments passed by the trial Court and the appellate Court. The appellant-petitioners instituted the case claiming their possession over the entire suit land measuring 0.96 acres. Their right, title, interest and possession was declared by trial Court but the appellate Court interfered in the judgment to a some extent and upheld the decree passed by the trial Court to the extent of 0.70 acres, and that Judgment has been challenged in the second appeal. So, considering the factual position of the suit, I think an order to maintain status quo shall serve the purpose. So, it is hereby ordered that the parties should maintain status quo in respect of their claim of possession of the suit land till final disposal of the connected second appeal.

C.M Application accordingly stands disposed of.