

Party Name : SANKAR SAHA & ORS Vs THE STATE OF TRIPURA & ORS

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THE HONBLE MR. JUSTICE S.C.DAS

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Heard learned counsel, Mr. D.R. Choudhury for the petitioners and learned senior counsel, Mr. K.N. Bhattacharji for the respondents.

The petition is taken up for disposal at the motion stage itself. The petitioners as plaintiffs instituted Title Suit No. 65 of 2013 under Section 11(4) of TLR and LR Act 1960. The case of the petitioners/plaintiffs is that the subject matter of the suit i.e., the pathway described in the schedule of the plaint is a jote land of the petitioners which is being used by the plaintiffs and the defendants as a common pathway.

At the instance of the private respondents who were arrayed as the defendants in the Title Suit, the jote land of the petitioners and the respondents were recorded as public pathway and that was challenged before the Collector and the Collector has held that it was a public pathway.

Some improvement works and construction of drains etc. were taken up by the Municipality and that was objected by the plaintiffs. When the suit was instituted in the Trial Court ad-interim injunction was passed and subsequently interim injunction was vacated by both the parties. The Trial Court decided the suit against the plaintiffs and hence the plaintiffs filed Title Appeal No.30 of 2015 which is now pending before the Ld. Addl. District Judge, West Tripura, Agartala (Court No.3).

The appellant-petitioners along with the memorandum of the appeal filed a separate petition seeking temporary injunction and that has been disposed of by impugned order dated 22.09.2015.

It is candidly submitted by learned counsel, Mr. Choudhury that the appellant-petitioners that is the plaintiffs has no objection if some improvement works continues on the suit land but the Court should not be influenced by the order passed refusing injunction and should decide the suit on merit.

I do not like to enter into the merit of the suit/appeal while deciding the present petition under Article 227 of the Constitution wherein order dated 22.09.2015 has been challenged. This order relates to grant of injunction only. Whether in the facts and circumstance, the order passed by learned Addl. District Judge in Misc(Inj) 115 of 2015 is sustainable or not.

Admittedly there is no error of jurisdiction. I find no perversity in the order. The order was passed after hearing the both side, so, neither party was deprived of the right to be heard. There was no injunction order passed by the Trial Court during the pendency of the trial except an ad-interim order of injunction which was subsequently vacated after hearing both side. It is clearly reflected in the order of the appellate Court that the appellant-petitioners will not suffer any loss if improvement and/or development works continues on the suit pathway.

The appeal should be decided on its merit considering all aspects by the appellate Court. In the given facts and circumstances I find no merit to admit the petition against the impugned order passed by the learned Addl. District Judge, West Tripura, Agartala (Court No.3) dated 22.09.2015.

The petition therefore, stands dismissed. The Trial Court is directed to dispose the appeal on its own merit without being influenced by the order relating to grant of injunction.