

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP NO.27 OF 2012

1. Md. Abdul Wahid,
2. Md. Burkhan Uddin,
3. Md. Abdul Awal,
4. Md. Liyakat Ali,
5. Md. Abdul Matlib,
- all are sons of late Monojir Ali,
residents of Vill. & P.O. West Batarashi,
P.S. Dharmanagar, District : North Tripura

.....Defendant-petitioners

- Vs -

Md. Abdul Hoque,
son of late Hazi Mufacil Ali,
resident of Vill. & P.O. West Batarashi,
P.S. Dharmanagar, District : North Tripura

..... Plaintiff-respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the defendant-petitioners : Mr. K.N. Bhattacharji,
Sr. Advocate
Mr. S. Acharjee, Advocate

For the plaintiff-respondent : Mr. G.K. Nama, Advocate

Date of hearing & order : 10.04.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. K.N. Bhattacharji, learned senior counsel,
assisted by Mr. S. Acharjee, learned counsel appearing for the
petitioners. Also heard Mr. G.K. Nama, learned counsel appearing

for the respondent, who instituted the title suit, being Title Suit No.31/2011 alongwith the application under Order 39, Rules 1 and 2, read with Section 151 of the CPC for passing a temporary injunction against the petitioners, being Civil Misc.No.09/2011.

2. This is a petition under Article 227 of the Constitution of India, challenging the order dated 01.03.2012 delivered by the Addl. District Judge, North Tripura, Dharmanagar in Civil Misc. Appeal No.01/2012. The said Misc. Appeal has been preferred under Order 43, Rule 1(r) read with Section 104 of the CPC, challenging the legality of the order dated 07.01.2012, passed by the Civil Judge, Senior Division, Dharmanagar, North Tripura in case No. Civil Misc.09/2011, arising from T.S.No.31/2011, directing *status quo* to be maintained in respect of the suit land till disposal of the original suit. The said Misc. Appeal was filed by the respondent as he was unhappy with the order of maintaining *status quo*.

3. The respondent's case in brief was that he purchased the Schedule-A land by a duly executed sale deed from his father and on the Schedule-B land he had constructed some huts earlier, but those are required to be reconstructed. Accordingly, he prepared to start construction by demolishing those huts, when the petitioners, who are dangerous in nature, stopped that work by extending physical threat. As a law abiding citizen, the respondent filed the suit with a petition for temporary injunction.

4. By the order dated 07.01.2012, delivered in Civil Misc.No.09/2011, the Civil Judge, Sr. Division, Dharmanagar, North Tripura, on perusing the pleadings and the documents those were filed to establish a *prima facie* case for issuing temporary injunction, has observed that it cannot be clearly held that the father of the plaintiff-respondent had clear title over the suit land. Moreover, there is no pleading regarding the source of title of his father. On the face of the categorical objection raised by the defendants in their objection that the suit land is a joint property and the plaintiff-respondent's father had transferred the Schedule-A land to the plaintiff-respondent without having the joint property land partitioned in accordance with law and, as such, if the plaintiff is allowed an injunction that will cause serious detriment to the petitioners, who are the defendants in the suit. Accordingly, the trial court directed to maintain *status quo* in respect of the suit land till disposal of the suit.

5. Mr. Bhattacharji, learned senior counsel, has submitted that by manipulation, the respondent has also got the mutation in his favour, but the said order of mutation has been challenged by the defendant-petitioners by filing a revisional application under Section 95 of the TLR & LR Act, 1960, which is still pending. Apart that, he has submitted that from the old khatian, it would be apparent that the joint property was never partitioned, at least the plaintiff-respondent did not file any such document before the trial court. As such, the *prima facie*

conclusion of the trial court cannot be faulted with and, if the *status quo* is maintained, that would serve only the interest of justice.

6. However, Mr. G.K. Nama, learned counsel appearing for the plaintiff-respondent, has emphatically submitted that the plaintiff-respondent has been possessing the Schedule-A land by virtue of the said title deed and in his name, the khatian has been opened by mutation of the old khatian. Therefore, presumption has to be drawn that he is the rayat in possession. Having regard to that, the Civil Judge, Senior Division, Dharmanagar, has committed serious wrong in holding that the plaintiff-respondent has suppressed the material fact as regards the source of the title. He has further submitted that there is no illegality in the impugned order dated 01.03.2012, which might require interference under the supervisory jurisdiction as provided under Article 227 of the Constitution of India. He has repeatedly urged that this court is not an appellate court that will scrutinise all and sundry facts, but could broadly consider whether there has been such illegality which has caused failure of justice or not. Beyond that supervisory jurisdiction, Article 227 of the Constitution of India may not be exercised.

7. Mr. Nama, learned counsel appearing for the respondent, has further submitted that unless the plaintiff-respondent succeeds in obtaining a temporary injunction, restraining the petitioners from disturbing the construction work,

the plaintiff-respondent would suffer irreparable loss, which cannot be compensated by money. Therefore, by giving a temporary injunction against the defendant-petitioners, the first appellate court has only subserve the interest of justice.

8. Having regard to the contentious rival submissions made by the learned counsel for the parties, this court has also noticed the following observations passed by the appellate court :

“As regards the contention of Ld. Counsel of the defendants regarding the suit lands being joint property of the litigating parties and there is also a partition suit in this regard and also that there is a petition u/s 95 of TLR & LR Act filed by the defendants before the Revenue Authority for correction of record of rights, I am of the opinion that these are questions pertaining to a separate aspect of the matter and the same would be adjudicated by the competent court and revenue authority in due course.

So far as the present question of temporary injunction is concerned, I find that there is valid registered deeds and Khatians in favour of the plaintiff pertaining to the suit lands which, unless the contrary is proved, prima-facie show that the plaintiff is the owner and possessor of the suit lands. Though it is submitted by Ld. Counsel of the defendants that the plaintiff got the suit lands recorded in his name by fraud and misrepresentation but unless and until the mala fide on the side of the plaintiff is established, the plaintiff can be reasonably regarded as the owner and possessor of the suit land.”

9. According to this court, this observation has been made in complete relegation of the observations made by the trial court while passing the order dated 07.01.2012. The source of title and the attending circumstances related thereto, are

definitely material for constituting *prima facie* case for passing temporary injunction. But, the appellate court has not considered that aspect.

10. Therefore, this court is of the view that if the parties maintain the *status quo* till the suit is disposed, no prejudice whatever would visit the parties.

11. Mr. K.N. Bhattacharji, learned senior counsel, has informed that the trial of the suit is complete and the date has been fixed for delivery of judgment on 22.04.2015.

12. Having regard to all these aspects, this court is of the view that the impugned order dated 01.03.2012 cannot stand the scrutiny of law and, accordingly, it is interfered with and set aside. The order dated 07.01.2012 passed in Civil Misc.No.09/2011, however, is restored.

13. In the result, this petition stands allowed to the extent as indicated above.

JUDGE

ROY