

13.12.19

rpan/01
Ct. No.01

CALCUTTA HIGH COURT

In the Circuit Bench at Jalpaiguri

C.O. 77 of 2019

Sawarmal Agarwala
-Vs-
Sri Bijoy Roy & Others

Mr. Partha Pratim Roy,
Mr. Debasish Mukhopadhyay
... for the petitioner.
Mr. Nripen Das,
Mr. Debanjan Das
.. for the opposite party no.2.

The present application under Article 227 of the Constitution of India has been preferred challenging a judgment and order dated 12th September, 2019 passed by the learned District Judge-in-charge, Jalpaiguri in Misc. Appeal no.51 of 2019.

Shorn of unnecessary details the facts are that the plaintiff/ petitioner preferred a suit for declaration, injunction and other consequential reliefs being Title Suit no.186 of 2019. On an application under order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (in short, the said Code) filed in connection with the said title suit, an ad interim order was passed on 12th July, 2019 restraining the defendants from entering into the suit land. Aggrieved by the said order, a Misc. Appeal no.51 of 2019 was preferred by the defendant no.2/opposite party no.2 herein which, upon contested hearing, was disposed of by the judgment and order dated 12th September, 2019.

Mr. Roy, learned advocate appearing for the petitioner submits that the learned court erred in law in setting aside the order dated 12th July, 2019 on the basis of purported findings which do not stand supported with the evidence on record and as such the impugned order is perverse.

Drawing the attention of this Court to the averments made in paragraph 4 of the plaint, Mr. Roy submits that the petitioner purchased the entire plot of land of which the original owner was Chikneshwari Debi. During her lifetime she transferred the same to Paresh Chandra Bhowmick by a deed dated 9th July, 1965 and the petitioner purchased the same from the legal heirs of Paresh Chandra Bhowmick and as such the petitioner is the sole owner and not a co-owner. The learned court had erroneously proceeded on the basis that the petitioner was a co-owner of the plot of land in question. In support of such contention, he has placed reliance upon the judgment delivered in the case of *Rabi Kumar Dass Vs. Chittaranjan Das*, reported in (2006) 4 CHN 302.

He argues that the learned Court erred in law in observing that the ad interim order was passed without disclosing any reason. It would be explicit from the order dated 12th July, 2019 that considering the documents produced and being *prima facie* satisfied that the petitioner was the owner and that he was being disturbed by persons having no interest in the suit land, the said order was passed.

Mr. Roy argues that the learned court below had proceeded in a mechanical manner and had set aside the order dated 12th July, 2019 on the basis of mere surmises.

Per contra Mr. Das, learned advocate appearing for the opposite party no.2 submits that the order dated 12th July 2019 was a blanket order of injunction passed *ex parte* for an indefinite period and the same does not stand fortified with reasons.

He submits that an *ex parte* ad interim injunction was passed without arriving at any finding that any delay in granting such order would frustrate its object. The order was a cryptic one and the same was rightly set aside in the Misc. Appeal. Such *ex parte* orders have far-reaching effects and cannot be passed without being satisfied about the gravity of the situation. In support of his contention, Mr. Das has relied upon a judgment delivered in the case of *Bengal Club Ltd. Vs. Susanta Kumar Chowdhury* reported in *AIR 2003 Cal. 1996* and *Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and Others*, reported in *(1993) 3 SCC 161*.

He further submits that pertaining to the self-same land a title suit being Title Suit no.261 of 2003 was previously filed by the petitioner herein against the present opposite party no.2 and others and the same was dismissed. A further suit, being Title Suit no.295 of 2013, was filed by one Mahendra Kumar Agarwala pertaining to the self-same land for declaration and recovery of possession. Such facts have been suppressed by the petitioner in the suit and the present application needs to be dismissed since the petitioner has approached the Court with unclean hands.

In reply, Mr. Roy submits that the Title Suit no. 261 of 2003 and the Title Suit no.295 of 2013 were not pertaining to the property involved in the present suit and for alleged non-

disclosure of the said suits it cannot be contended that the petitioner had approached the Court with unclean hands.

An order on injunction being an equitable relief, the balance of convenience must be seen. An *ex parte* ad interim order of injunction was passed without disclosing the pressing need towards issuance of the same. A comparison of the land detailed in the respective schedules of the Title Suit no. 261 of 2003 and the Title Suit no.295 of 2013 with the schedule of the land in the present suit reveals similarity. The non-disclosure of such material fact was not proper on the part of the petitioner. The conduct of the party invoking the jurisdiction of the Court should be free from blame. The judgment delivered in the case of *Rabi Kumar Dass*, upon which reliance has been placed by the petitioner, is distinguishable on facts and has no manner of application in the instant case.

The discretion exercised by the learned Court is neither arbitrary nor perverse. The impugned order is neither manifestly incorrect nor palpably absurd and the same also does not suffer from any patent error warranting interference of this court in exercise of jurisdiction under Article 227 of the Constitution of India.

Accordingly, the application being C.O. No. 77 of 2019 is dismissed.

(Tapabrata Chakraborty, J.)