

14.09.2020

Sl. No.2

Ct-13

BM

**IA No.CAN 1/2020
(Old No.CAN 4446/2020)
WPA 6154 OF 2020**

Haran Mondal

Vs.

The State of West Bengal & Ors.

Mr. Debarshi Brahma ... for the petitioner

Mr. Sirsanya Bandopadhyay

Ms. Sudeshna Mazumder ... for the respondents

The petitioner and the private respondent are the brothers in relation and are residing at the premises situated and lying at the address mentioned in the cause title. Admittedly, the schedule property is the ancestral property. The allegation of the petitioner is that the private respondent was making a construction illegally encroaching upon the portion of the petitioner to which a protest was raised by the petitioner but of no effect.

The petitioner submits that in the year 2016 the private respondent along with his men and agent came to the plot and held out to the petitioner that the private respondent is the exclusive owner of the said plot and clouded the right of the petitioner. So the petitioner approached the civil court by filing a Title Suit No.68 of 2016 against the respondent no.4 and others and also filed a petition under Order 39 Rule 1 & 2. The suit is for

declaration and for injunction and the injunction application has been filed with a corollary prayer made in the plaint before the Civil Judge, Junior Division, 3rd Court, Baruipur. The civil court in an application under Order 39 Rule 1 & 2 of CPC by an order dated 30.3.2020 directed both the parties to maintain status quo maintaining its nature and character and possession of the schedule property being Schedule "A" mentioned in the plaint. It is submitted that encroachment has been made taking advantage of the pandemic situation caused by Covid-19 and the petitioner is unable to approach this Court and has reported the matter to the Police authority for seeking that order of status quo is maintained.

It is submitted on behalf of the State that Police has already made an enquiry on the basis of complaint received from the petitioner and on preliminary enquiry it has been observed that the dispute is of civil nature in respect of property inherited by both the brothers being the petitioner and the private respondent which property they have equally inherited from their father, as such it is not for the Police to see that the encroachment alleged is otherwise lifted but it can only see that no mischief is committed at the premises. Ergo, the petitioner is at liberty to approach the civil court for direction upon the Officer-in-Charge of the Police Station concerned to see

that the order of the civil court is not disregarded by any of the parties to the suit and to seek report.

Practically, before an order of status quo is obtained, it is desired on the part of the plaintiff/petitioner to seek an order of local inspection under Order 39 Rule 7 to ascertain the situation of the schedule property so as to make the Court understand whether at all, there is overt act alleged by the plaintiff on the part of the defendant. It is imperative for the plaintiff to approach the civil Court to get the suit expedited before the trial court. However, since parties are full brothers they are directed to maintain the order of status quo in respect of their respective possession of the property and should restrained themselves from encroaching either of the portion of the parties as ordered by the civil court.

With this direction the writ application is disposed of and the connected application being I.A. No. CAN 1/2020, (Old No.CAN 4446/2020) is also disposed of.

(Shivakant Prasad, J.)