

DEB NARAYAN BANERJEE VS. GOURI
SENGUPTA & ORS.

Mr. S.P. Mukherjee
Mr. Debanjan Mukherjee
Mr. Shuvajit Bose
 ..for the petitioner
Mr. Chadrachur Chatterjee
 ..for the opposite party no.1
Mr. Asit Kumar Bhattacharya
 ..for the opposite party no.2

By this application, the plaintiff challenges an order dated January 3, 2020 passed by a learned District Judge In-charge, 24 Parganas(South) in Misc. Appeal No.1 of 2020 arising out of an order dated November 4, 2019 passed by a learned Civil Judge, Junior Division, 3rd Court, Alipore.

The petitioner is the plaintiff in Title Suit No. 1649 of 2019. The petitioner made a prayer for ad-interim order of injunction before the learned Trial Judge for a direction restraining the opposite party no.1 from taking water from the premises of the plaintiff/petitioner.

The learned Trial Judge refused to pass an ad-interim order of injunction and aggrieved by the said order of refusal, the Misc. Appeal No. 1/2020 was filed. By the order impugned, the learned lower appellate Court refused to pass

an ad-interim order of injunction restraining the opposite party no.1 from taking water from the premises of the petitioner.

The facts of the case are that the father of the plaintiff and the opposite party no.2 left a Will bequeathing demarcated portion of the property situated at 71A&C, Shyama Prosad Mukherjee Road, Kolkata – 700 026 to his three sons.

The opposite party no.1 was a tenant under the father of the petitioner, who continued to reside in the portion which was allotted to the opposite party no.2. Although the “Will” contemplates that both the brothers, namely, the petitioner and the opposite party no.2 would construct reservoir and overhead tank out of their common fund to meet their daily requirement of water, such tanks were not constructed and the opposite party no.1 although was residing on the portion belonging to the opposite party no.2 was regularly taking water from a tap situated in the courtyard of the petitioner which was creating a lot of problems for the petitioner, specially the privacy of the petitioner was being hampered.

I have heard the learned Advocate for the respective parties and I have considered the Clause 8 of the Will which provided that the brothers would jointly construct

a tank in the courtyard of the premises of the petitions and another tank on the terrace of the premises of the opposite party no.2 and the water supply from the Corporation should be pumped from the reservoir to the tank of the three storeyed building for daily water supply to all. The brothers have not complied with the said clause with regard to their independent water supply and as such result of which the tenant/opposite party no.1 cannot get any water supply to her premises and she continued to take water from a tap situated in the premises of the petitioner.

This is a peculiar situation, inasmuch as, until the brothers construct a tank out of their common fund as per the provisions in the Will, the tenant does not have any source of water as it is the specific case of the opposite party no.1 that water supply to her premises had been disconnected six years ago but the reasons for such disconnection is not known.

The learned trial Judge considered the age of the lady and the peculiar situation as also hardship that may be caused to her, if the only source of water available to her was denied.

The learned lower appellate court was of the opinion that under the facts and circumstances of the case an ad-interim order of injunction could not be passed against the

opposite party no.1 without allowing the opposite party no.1 to appear before the court and make her submissions.

Taking note of the peculiar situation, this Court is of the opinion that the order of the learned Trial Judge may be modified to the extent that the opposite party no.1 may be allowed to take water from the tap situated in the premises of the petitioner for an hour between 8.00 a.m. to 9.00 a.m. everyday. If on any day the water supply during that time is disrupted, then the petitioner should allow her to take water for an hour during such time when the water will be available. This arrangement will continue till the disposal of the application for temporary injunction by the learned Civil Judge, Junior Division, 3rd Court at Alipore.

This Court has made this temporary arrangement thereby modifying the order of the learned trial court and the learned trial judge will proceed independently without being influenced by any observation made in this order.

It has also been submitted on behalf of the petitioner and opposite party no.2 that they are willing to construct a reservoir and the tank as per Clause 8 of the Will so that everybody gets their individual water connection. The petitioner and the opposite party no.2 have agreed that they will share the expenses so that the two brothers have their

independent and exclusive source of water and problems created in the absence of a permanent water arrangement will be resolved. It is expected that the problem should be resolved as water is an essential means of life and cannot be denied to anyone.

The learned Trial Judge is directed to dispose of the application for temporary injunction within two months from the next date fixed upon affording an opportunity of hearing to all the parties to contest the proceeding.

As nothing remains to be decided in the Misc. Appeal No.1/2020, the same is disposed of. As this Court has made an interim arrangement, the learned court below will dispose of the application for injunction on its own merits.

This revisional application is disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar, J.)

