

JITENDRA NATH PAUL VS. MENKA MONDAL  
& ORS.

Mr. Probal Mukherjee.Sr.Adv.  
Mr. S.N. Dutta  
    ..for the petitioner  
Mr. R.P. Motilal  
    ..for the respondents

This revisional application has been filed by the defendants in Title Suit No.95 of 2018 pending before the learned Civil Judge, Senior Division, 1<sup>st</sup> Court, Assansol.

By an order dated December 5, 2019, learned Civil Judge, Senior Division, 1<sup>st</sup> Court, Assansol granted an order of temporary injunction in favour of the opposite parties/plaintiffs restraining the defendant no.1 from running the brick field over the suit property which was allegedly an agricultural land. The plaintiff was also restrained from changing the nature and character of the suit property.

Aggrieved, the defendant no.1 preferred an appeal before the learned District Judge, Paschim Bardhaman being Misc. Appeal no.20 of 2019. The learned lower appellate Court by an order dated October 20, 2020 dismissed the appeal, thereby affirming an order dated December 5, 2019 passed by the learned Trial Court. Both the parties were directed to maintain

status-quo with regard to the suit property till the disposal of the suit and the defendant no.1 was restrained from running the brick field in the suit plot.

Mr. Probal Mukherjee, learned Senior Advocate appearing on behalf of the petitioner/appellant challenges the order of the lower appellate Court by way of this application. He submits that the learned Courts below ought to have taken into consideration the deed of conveyance entered into between the plaintiff/opposite party no.1 and the defendants no.1. He further submits that the brick field was being operated on several plots for a considerable period of time, documents showing payment of royalty with regard to digging of earth and price of earth are annexed. Reliance has been placed on the license, no objection certificate issued by the West Bengal Pollution Control Board. Reliance has also been placed on a deed of conveyance and the schedule thereof in order to establish that the suit plot was sold by the plaintiff/opposite party no.1 to the defendants.

The defendant no.1/petitioner demonstrates from records that he had relinquished his right to use the said property in favour of his son and the son was running the brick field.

Having considered the pleadings and the documents relied upon by the petitioner, I find that the learned Courts below ought to have taken into

consideration the documents and ought to have considered the facts that a blanket restrain order against running the brick field on the suit plot will be contrary to the balance of convenience and/or inconvenience caused to the respective parties.

Although, it is the contention of the learned Advocate for the opposite party no.1/plaintiff that the brick field is being operated on the suit land contrary to the provisions of West Bengal Land Reforms Act. It is contended by Mr. Mukherjee that the said plot which is recorded as “Danga” was not being used for excavation of earth or for baking bricks in the kiln. No manufacturing activity was going on the said land.

It is his contention that the said land is being used for stacking clay and not for any other purpose. The classification of the land has not been changed.

However, whether the transfer is illegal and the brick field is running illegally are to be decided by the learned Trial Judge as issues, or by the appropriate authority under the land laws. In my opinion, the balance of convenience and/or inconvenience is in allowing the petitioner to stack the clay on the 1.42 acre of land situated being plot no.334(suit property) and not disturb the plaintiff's possession with regard to the remaining .40 acres in plot no. 334. This order is being passed as prima facie documents reveal that the land

has been in use of the petitioner since a long time.

It is made clear that the stacking of the clay shall not include any digging of earth and other business operations. No vehicles or machines shall be used on the suit plot. The clay shall be placed and removed manually. The nature and character of the suit plot shall not be changed, no digging will be permitted. As the petitioner has other plots of land from which the business of running the brick field is going on, which are adjacent to the suit plot, in my opinion, no prejudice will be caused if the petitioner is injuncted from running any business activities on and from the suit plot by using machineries and vehicles in the suit plot. The petitioner will not claim an equity with regard to user of this land.

On the prayer of the respective parties, the hearing of the suit may be expedited.

This revisional application is disposed of.

There will be however 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.)**





