

14.01.2021
Court No. 19
Item No.12
CP

C.O. 21 of 2021

Damodar Das Daga & anr.
vs.
Smt. Nilima Lahiri @ Nupur Lahiri & ors.

(via video conference)

Mr. Suddhasatva Banerjee
Mr. Sagnik Majumdar
Mr. Teesham Das
Ms. Dikshita Chomal

....for the petitioners.

Mr. Kallol Basu
Mr. Jayanta Narayan Chatterjee
Ms. Paromita Mukhopadhyay
Mr. Nilanjan Pal
Mr. S. Naskar

....for the opposite party no. 1

Mr. Srinjay Sengupta
Mr. Ankush Ghosh
Mr. Rajib Acharyya

...for the opposite party no. 2.

Mr. Debasish Roy
Mr. Saurav Roy

....for the opposite party nos. 4 and 5.

This revisional application has been filed by the defendant nos. 5 and 6 in Title Suit No. 293 of 2018, pending before the learned Civil Judge (Senior Division), 2nd Court at Barasat. The petitioners are aggrieved by an order dated June 19, 2019, passed by the learned Additional District Judge, 7th Court at Barasat in Misc. Appeal No. 31 of 2018. The opposite

party no. 1 as plaintiff instituted the Title Suit for the following reliefs:

“(a) That it be declared that the defendant Nos. 3 and 4 have acquired no interest in the suit building by virtue of grant of probate of the Will left by Hari Prasad Majumdar as well as by the strength of grant of mutation issued by the defendant no. 7.

(b) That it be declared that the Deed of Assignment of lease being No. 1840 dated 13.12.2017 registered in the Office of ADSR, Bidhannagar (Salt Lake City) executed by defendant Nos. 3 to 4 in favour of defendant Nos. 5 and 6 is invalid, void and not binding on the plaintiff.

(c) That the defendant Nos. 1 to 6 and their men and agents be restrained by a decree of perpetual injunction from dispossessing the plaintiff from the suit property and from interfering with peaceful enjoyment of the same by the plaintiff and from putting any blockade in any portion of common areas as well as car parking space to create disturbance to the plaintiff in using the same and from making any construction over the same and from changing the nature and character of the same.

(d) That all costs of the suit be decreed as against the defendants.

(e) That any other relief to which the plaintiff is entitled under law, equity and natural justice.”

The plaintiff/opposite party no. 1 filed an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, inter alia, praying for an order of injunction restraining the petitioners and the opposite party nos. 2 to 6 from interfering with the peaceful enjoyment of the portion of the suit property possessed by the opposite party no. 1 and also from creating any blockade in any common areas as well as the car parking space. By an order dated April 11, 2018, the learned Civil

Judge (Senior Division), 2nd Court at Barasat, refused the prayer for ad-interim injunction. Aggrieved, the opposite party no. 1 filed an appeal before the learned District Judge, North 24-Parganas at Barasat which was registered as Misc. Appeal No. 31 of 2018. The opposite party no. 1 made a further application under Order 39 Rules 1 and 2 read with Section 151 of the Code in the Misc. Appeal. The learned District Judge at Barasat, North 24-Parganas restrained the defendants from disturbing the peaceful possession of the opposite party no. 1 in respect of her undivided 1/3rd share of the scheduled property till the disposal of the injunction application. The petitioners being aggrieved by the aforementioned order, filed an application under Order 39 Rule 4 of the Code of Civil Procedure for variation, vacating and/or discharge of the order of ad-interim injunction dated April 17, 2018, passed in the Misc. Appeal. The learned lower appellate court rejected the said application and fixed the appeal for hearing. The learned lower appellate court held that considering the admitted position that the opposite party no. 1 was in possession of a portion of the suit property, there was no need for variation or discharge of the order of injunction passed in the Misc. Appeal. Aggrieved by the aforementioned order, the petitioners have preferred this revisional application.

Mr. Banerjee, learned advocate appearing on behalf of the petitioners, submits that the order of injunction passed by the learned lower appellate court suffered from an incorrect appreciation of the facts. He submits that the order amounts to holding that the opposite party No.1 has undivided 1/3rd share in the suit property. According to him, the suit is not one for declaration of title or recovery of possession. The suit is for a declaration that the petitioners did not have any right, title and interest on the basis of a deed of assignment and a permanent injunction was claimed, restraining the defendants from interfering with the possession and enjoyment of the opposite party no. 1 in respect of the 2nd floor of the suit premises and the common areas and car parking space.

Mr. Basu, learned advocate, appearing on behalf of the opposite party no. 1, submits that admittedly the opposite party no. 1 is in possession of the 2nd floor. It is also an admitted position that being in possession of the 2nd floor she is entitled to use all the common facilities including the car parking space. He further submits that it is also within the right of the opposite party no. 1 to pray for an injunction restraining the defendants from creating any construction over the common areas. Thus, according to Mr. Basu, the order does not suffer from any irregularity or illegality and the order

of injunction does not require any further modification.

Mr. Debasish Roy, learned advocate appearing on behalf of the opposite party nos. 4 and 5, submits that the question whether the opposite party no. 1/plaintiff has a share or not and whether the petitioners have a share on the basis of the deed of assignment granted by the legatees of the Will of the original owner, are matters to be decided in the proceedings before the different fora in which they are pending. According to Mr. Roy, the irregularity in the order is with the observation on the undivided $1/3^{\text{rd}}$ share of the opposite party no. 1.

Mr. Sengupta, learned advocate appearing for the opposite party no. 2, adopts the submissions of Mr. Banerjee and Mr. Roy.

I have heard the learned advocates for the respective parties.

Admittedly in the order impugned before this court, the possession of the opposite party no. 1 on the 2nd floor of the suit premises has been taken into consideration. The prayers in the injunction application as also in the plaint with regard to the injunction is restricted to restraining the defendants from disturbing the enjoyment and peaceful possession of the opposite party no. 1 of the 2nd floor of the suit premises and the common areas and car parking facilities. The opposite party no. 1 also

prayed that the defendants be restrained from creating any blockade by making any construction in the common areas.

In my opinion, the ad-interim injunction passed by the learned lower appellate court ought to have been restricted to the prayers made by the opposite party no. 1, that is, restraining the defendants from disturbing her possession with regard to the 2nd floor, common facilities and car parking area by not creating any blockade or construction in the common areas. Unfortunately, the learned lower appellate court travelled beyond the prayers in the plaint as also in the injunction application and restrained the defendants from creating any disturbance in the enjoyment and possession of the opposite party no. 1 with regard to her undivided 1/3rd portion of the suit property. This was an error in view of the fact that the title of the opposite party no. 1 has not yet been adjudicated by any forum. On the contrary, the petitioners have acquired title in respect of the said property by a deed of assignment from the legatees of the erstwhile owner and the Will in favour of the vendors of the petitioners have been probated. It is informed that the opposite party no. 1 has taken out an application before the appropriate forum for revocation of the said probate.

This court does not need to enter into these aspects and this order is restricted only to the limited modification made in the order of the learned lower appellate court by directing the defendants not to interfere with the peaceful enjoyment and possession of the opposite party no. 1 in respect of the 2nd floor of the suit premises and also with her enjoyment of common areas and facilities. The order impugned stands modified as indicated above.

Mr. Banerjee submits that the opposite party no. 1 does not have any car parking space, which Mr. Basu disputes. In any event, this court does not need to get into the details of the right of the opposite party no. 1 to park a car in the premises and all these issues will be decided in the application for temporary injunction by the learned trial judge.

As nothing remains to be decided in the Misc. Appeal, the Misc. Appeal is disposed of with the consent of the parties.

The learned Civil Judge, (Senior Division), 2nd Court, Barasat is directed to hear out the application for temporary injunction as expeditiously as possible, preferably within a period of two months from the date of communication of this order.

This court has not gone into the merits of the claims and counter-claims of the parties and the learned Civil Judge will proceed independently without being influenced by any observations made

hereinabove. The defendants shall file their written objection to the application for temporary injunction if not already filed.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)