

15.01.2021
Court No. 19
Item No.02
CP

C.O. 85 of 2020

Asit Kumar Roy @ Asit Roy
vs.
Prahlad Roy

(via video conference)

Mr. Saptangshu Basu, Sr. Adv.
Mr. Nilanjan Bhattacharjee
Mr. Arpan Guha

....for the petitioner.

Mr. Prabal Kumar Mukherjee, Sr. Adv.
Mr. Somnath Ray
Mr. Rameswar Sinha
Mr. Samiran Ghosh

....for the opposite party

This revisional application has been filed by the defendant in Title Suit No. 293 of 2018, pending before the learned Civil Judge (Senior Division), 3rd Court, Howrah. The petitioner is aggrieved by an order dated December 23, 2019, passed by the learned Additional District Judge, 1st Court, Howrah in Misc. Appeal No. 106 of 2019. The petitioner is aggrieved by the order of status quo granted in respect of the suit property by the learned lower appellate court in the facts and circumstances of the case. According to Mr. Basu, learned senior advocate for the petitioner, the background of the case and the suppression by the petitioner did not warrant interference by the learned lower appellate court.

The facts in a nutshell is that the opposite party preferred a suit for declaration and injunction with consequential reliefs being Title Suit No. 293 of 2018 before the learned Civil Judge (Senior Division), Howrah. In the said suit an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure was filed for an injunction restraining the defendant, his men and agents from creating any disturbances with the plaintiff's peaceful possession of the suit property. The plaintiff/opposite party's contention was that the suit property came into possession of one Maharani Naskar by virtue of a registered deed of partition entered into between all the heirs and legal representatives of Krishna Chandra Ray; that the said deed of partition dated September 13, 1976 was acted upon; that subsequently Maharani Naskar sold the suit property as described in the schedule of plaint to the opposite party by a registered deed of sale dated May 28, 2016. The defendant is the brother of the opposite party/plaintiff who allegedly had been trying to enter into the suit property purchased by the plaintiff by using force. Thus, the suit was filed for a declaration that the plaintiff/opposite party was the owner of the suit property and, accordingly, an injunction was prayed for. The learned Trial Judge by an order dated June 15, 2019, rejected the application for temporary injunction, inter alia, holding that the plaintiff had

failed to make out a prima facie case in support of his claim regarding the schedule property.

Aggrieved, the plaintiff/opposite party preferred a Misc. Appeal before the learned Additional District Judge, 1st Court, Howrah. The said appeal was registered as Misc. Appeal No. 106 of 2019. By an order dated December 23, 2019, the Misc. Appeal was disposed of by the learned lower appellate court with a direction upon the parties to maintain status quo over the suit property. Aggrieved by the aforementioned order, the defendant has preferred this revisional application.

The first contention of Mr. Basu is that the order impugned deserves to be set aside on the ground of suppression of facts by the plaintiff and also because the alleged transfer of the suit property in favour of the plaintiff was done in the teeth of an injunction order passed in another suit. According to Mr. Basu, when the said sale was void, the plaintiff did not deserve to be favoured with an order of injunction as the plaintiff had not come with clean hands and also because the plaintiff had not acquired any right, title and interest over the suit property which was purchased during the subsistence of an ad-interim order of injunction passed in another suit for declaration and permanent injunction being Title Suit No. 248 of 2011.

Mr. Basu has placed reliance on the following decisions in support of his contentions that any transfer in the teeth of an injunction order was void and it was the bounden duty of any court to protect such an order in its letter and spirit as the same was a matter of public policy:

1. AIR 2013 SC 2235, [Jehal Tanti v. Nageshwar Singh];
2. (2018) 11 SCC 430, [Virendrabhai Devjibhai Patel v. Keshavbhai Makanbhai]; and
3. (2017) 1 SCC 622, [Robust Hotels (P) Ltd. v. Elh Ltd.]

Mr. Basu vehemently urged that when the learned Trial Judge had come to a specific finding that the plaintiff did not have a prima facie case to go to trial, the learned lower appellate court could not have passed an order of status quo on an application filed by a person who has purchased a property not only in violation of an order of court but also in a clandestine manner during the pendency of a suit filed by him praying for an order of restraint upon other co-sharers from transferring any property included in the said partition deed. Mr. Basu submitted that the learned lower appellate court did not consider the prima facie case while passing the order impugned.

Mr. Mukherjee, learned senior advocate for the opposite party/plaintiff, submits that the question

whether the sale was void would be a matter to be decided in trial and the clause in the registered deed of partition on the basis of which the defendant has denied this transfer is a matter to be decided in the suit. Mr. Mukherjee further submits that the learned court below has considered the need for protection of the suit property and the entire facts of the case including the points raised by the defendant and passed the order of status quo. Mr. Mukherjee has relied on the decision of the Hon'ble Supreme Court in the matter of Thomson Press (India) Ltd. v. Nanak Builders and Investors P. Ltd, reported in AIR 2013 SC 2389, in support of his contention that there was little room for any doubt that a transfer of a suit property pendente lite was not void ab initio and the purchaser of such property takes the bargain subject to the rights of the original plaintiff.

I have gone through the order impugned before this court. I find that the contentions of the defendant has been elaborately discussed by the learned lower appellate court and the learned lower appellate court upon consideration of the fact that the sale was made in violation of the restriction contained in the partition deed and also in violation of the order of injunction, held that an order of status quo would be perfect for preservation and protection of the suit property.

It is also pertinent to mention that there is already an order of status quo with regard to the suit property and this order has once again imposed the same status quo on the suit property. Having taken into consideration the background of the cases of the two suits and the pleadings of the defendant the order impugned was passed. While the prayer of the plaintiff in the injunction application was for an order restraining the defendant from disturbing the possession of the plaintiff, the learned lower appellate court upon considering the facts of the case thought it fit to direct status quo over the suit property which, in effect, is also a restriction upon the plaintiff/opposite party to keep the property as it is, so that the same is not wasted, damaged or alienated.

Thus, I do not find any illegality and/or irregularity in the order impugned. The decisions cited by Mr. Basu will not be applicable at this stage for the reasons as aforesaid and these are the defences which are to be taken in the trial of the suit.

The revisional application is dismissed. 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.)