

27.01.2021
Court No. 19
Item No.28
CP

C.O. 98 of 2021

Sri Jagannath Mandal
vs.
Shri Manabendra Nath Mandal & ors.

Mr. T. K. Bhattacharya
Mr. A. K. Paul
Mr. K. K. Paul

.....for the petitioner.

Mr. Hiran Brahmachary
Mr. Sobhan Pathak

....for the respondent nos. 1 & 3.

Affidavit of service and the postal article filed in court today, are taken on record.

From the postal article sent to the opposite party no. 1, it appears that the same has come back with the endorsement 'Refused'. However, the learned advocates for the opposite parties 1 and 3 are present before this court. With regard to the service upon the opposite parties 2 and 4, it appears that service has been effected upon them and the postal receipt downloaded from the website of www.indiapost.gov.in confirms the delivery of the postal articles.

This revisional application has been filed challenging an order dated January 8, 2021, passed in Misc. Appeal No. 1 of 2021 by the learned Civil Judge (Senior Division), Katwa. Misc. Appeal 1 of

2021 was filed by the petitioner/plaintiff being aggrieved by the refusal of the learned Civil Judge (Junior Division), 2nd Court, Katwa, to pass an ad-interim order for injunction restraining the defendant No.1 from encroaching into the plaintiff's suit property belonging to the plaintiff. The petitioner submits that both the learned courts below erred in refusing to pass an ad-interim order, although, the petitioner was in possession of the suit property as recorded by the learned Trial Judge.

The record of rights also reveal that the petitioner and the defendants were both claiming through their predecessor-in-interest, namely, Tinkari Mandal.

Mr. Bhattacharya, learned advocate for the petitioner, submits that the record of rights would indicate that the plaintiff and the defendants were co-sharers and any encroachment into the portion of the property enjoyed by the petitioner should be restrained by way of an ad-interim injunction. Mr. Bhattacharya relied on the decision of this court in the matter of Satyajit Kowar v. Anima Kowar & ors., reported in 2018 (2) ICC 443 (Cal.), in support of his contention that not only the prima facie case but also balance of convenience and inconvenience as also irreparable loss and injury should be taken into consideration.

Mr. Brahmachary, learned advocate appearing on behalf of the defendants, submits that the parties are co-sharers. The record of rights indicate that both the co-sharers are claiming through a common ancestor; that the court was satisfied that the prima facie case did not warrant an order of ad-interim injunction and the defendants should be heard especially because the records before the court prima facie revealed that both the parties were co-sharers in respect of the plot.

The ad-interim injunction was refused by the learned Trial Judge on December 24, 2020. This led to filing of the Misc. Appeal. The lower appellate court accepting the observations made by the learned Trial Judge also refused the ad-interim injunction and directed that the Misc. Appeal be heard in the presence of the opposite parties. The opposite party no. 1 was directed to file a show cause in the appeal and fixed March 10, 2021 for hearing of the Misc. Appeal.

Having gone through the order impugned before this court and having heard the submissions of the learned advocates appearing on behalf of the respective parties, this court is of the opinion that as it has been settled by several judicial decisions that when a revision challenging a refusal on the part of the lower appellate court to pass an ad-interim injunction is filed, it would be proper for the High

Court to direct the lower appellate court to dispose of the appeal expeditiously.

In this case, it appears that the appeal was from a refusal of the learned trial court to pass an ad-interim order. The learned appeal court also refused the ad-interim order of injunction. Justice would be sub served if the learned Trial Judge is directed to hear out the application for temporary injunction. With the consent of the parties the Misc Appeal is disposed of.

Direction is given upon the learned Civil Judge (Junior Division) 2nd Court, Katwa to dispose of the application for temporary injunction within two months from the date of communication of this order.

As injunction has been prayed against the opposite party no. 1 primarily, and the opposite party no. 1 and 3 are represented, such directions are passed.

As the plaint and application for injunction are included in this revisional application which has been served upon the opposite parties, further direction for service is dispensed with.

The opposite parties will file their written objection to the application for injunction within a period of ten days from date.

The petitioner will be at liberty to approach the learned court below upon notice to the opposite

parties for fixing a date for compliance of this order and hearing out the application for temporary injunction.

If any construction is made in the meantime, the same shall abide by the result of the application for injunction.

The opposite parties shall not claim any equity in favour of any construction made till the disposal of the injunction application. The learned Court below will hear the application on merits and without being influenced by this order.

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.)