

26.02.2021
Sl. No. 20
srm

C.O. No. 351 of 2020

Kudrat Ali Saha & Anr.

Vs.

Halema Bewa & Anr.

Mr. Debasish Roy,
Mr. Suhrid Sur

...for the Petitioners.

Mr. K.C. Das,
Mr. Sk. Sahjahan Ali

...for the Opposite Parties.

Affidavit of service is taken on record.

This revisional application has been filed challenging an order dated January 13, 2020 passed by the learned Civil Judge (Senior Division), 1st Court, Contai, District Purba Medinipur in Miscellaneous Appeal No.12 of 2019. The said miscellaneous appeal arose out of an order dated June 21, 2019 passed by the learned Civil Judge (Junior Division), 1st Court, Contai, Purba Medinipur in Tile Suit No.345 of 2018. Title Suit No.345 of 2018 is for declaration and permanent injunction. The plaintiffs, who are two brothers, claim right, title and interest over the 5-1/4 decimals of land in R.S. Plot No.122, LR Plot No.129 of Mouza Padmapukuria, JL No.263, Khatian Nos.139 and 185.

It is the contention of the petitioners that upon adjudication of the *prima facie* case, balance of convenience and inconvenience, irreparable loss and injury, the learned Trial

Judge directed the parties to maintain *status quo* with regard to the nature and character of the suit property till the disposal of suit on contest.

Aggrieved by the aforementioned order, the miscellaneous appeal was filed. By the order impugned, the learned lower appellate Court allowed the miscellaneous appeal thereby setting aside the order of temporary injunction passed by the learned Trial Judge.

Aggrieved by the aforementioned order, this revisional application has been filed.

It is the contention of the petitioners that when it is a dispute with regard to the rights over land, ordinarily order of injunction ought to be passed till the disposal of the suit in order to preserve the subject matter of the suit and also to protect the interest of the party who seeks the aid of the Court.

Mr. Roy, learned Advocate appearing on behalf of the plaintiffs/petitioners submits that when it is the admitted case of the defendants that they had a demarcated portion and constructed over the same and were also enjoying the same. In such a situation an order of injunction restraining the said defendants from doing any acts beyond their own demarcated area which would be detrimental to the user of the land owned by the petitioners should be passed. Mr. Roy further submits

that the defendants' were claiming title over the portion owned and possessed by the petitioners on the basis of a deed of gift. The petitioners have already amended their plaint assailing the deed of gift to be void and illegal but the learned lower appellate court failed to take such fact into consideration.

Mr. Das, learned Advocate appearing on behalf of the opposite parties, submits that the LR records of rights show that there are other co-sharers in the suit property, and the suit was bad for non-joinder. He further submits that the documents relied upon were erroneous. He urged that apart from the lands acquired by the Railway authorities, the defendants were enjoying the entire remaining land in the concerned Dag and the plaintiffs were not in possession.

Admittedly the record of rights is a document of possession and there is a presumption of correctness under the West Bengal Land Reforms Act. Whether the suit would fail for non-joinder of the parties or whether the records of rights were correct are matters to be decided in trial on evidence. The record of rights contain the names of the petitioners. Admittedly the defendants have been residing in their demarcated portion by constructing a house thereupon as per their own averments.

Under such circumstances, this revisional application is disposed of with an order restraining the defendants from creating any disturbance in the area allegedly possessed by the petitioners. However, the defendants are free to enjoy the house and deal with their demarcated area in the suit property. The petitioners are also restrained from creating any disturbance on the area used by the defendants for their occupation by constructing a dwelling house.

This revisional application is disposed of.

The order impugned is set aside and quashed.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)