

07-04-2021

FMAT 83 of 2021

Ct. 17
Smt. Bhabani Jana
Versus
Digha Shankarpur Development Authority & Ors.
(Through Video Conference)

Mr. Haradhan Banerjee, Sr. Adv.
Mr. Amitava Pain, Adv.
...for the appellant

This appeal has come for admission. The appellant is aggrieved by an order dated 25th November, 2020 by which the learned Civil Judge (Senior Division), 2nd Court, Contai has rejected the application for temporary injunction ex-parte and fixed 18th December, 2020 for ex-parte hearing of the suit.

We have perused the order under appeal. We have also heard the learned Senior Counsel appearing on behalf of the appellant.

The learned Senior Counsel has strenuously argued that the learned Single Judge has completely misconstrued the scope of the suit and the injunction application. It is submitted that in the application for temporary injunction the petitioner in paragraph 4 has clearly averred that the respondent has no right to lay electric cable line through the land of the plaintiff described in Schedule 'A' but the defendant nos. 1 and 2 have encroached the 'A' Schedule property in the garb of development of road belonging to the plaintiff by demolition of shop room causing loss to the plaintiff and for which the plaintiff instituted the suit for recovery of possession by removing encroachment of the 'A' Schedule property against the defendant nos. 1 and 2. It was on such background, it is submitted that the plaintiff prayed for temporary injunction restraining the respondent nos. 1 to 3 from changing the nature, character and transfer of the 'A' Schedule

property by making any type of construction. The Trial Court has refused to pass any interim order on the ground that the plaintiff has already been dispossessed by the defendant nos. 1 and 2 and accordingly, the question of restraining the defendants from interfering with the possession of the plaintiff could not and does not arise. Primarily on the ground that the plaintiff is out of possession, the interim order was refused. It appears from the narration made in the plaint, petition read with the impugned order, a right has been claimed by the plaintiff in respect of 'A' Schedule property. There is also a prayer in the injunction petition restraining the respondents from changing the nature and extent of the property comprising in 'A' Schedule.

The plaintiff alleged to have been dispossessed on 12th October, 2018.

The learned Judge has rightly recorded that unless there is a demarcation of the property by appointment of a survey Commissioner, it is not possible to arrive at a conclusion that the allegation made by the plaintiff that the plaintiff was dispossessed from the 'A' Schedule property is prima facie proved. In fact, the plaintiff also before the learned trial judge has admitted that the dispute can be resolved by appointment of survey passed Commissioner. In absence of such satisfaction, we feel that the learned Trial Judge was justified in refusing to pass any interim order.

In view thereof, we do not find any reason to interfere with the order impugned. We request the learned Trial Judge to expedite the hearing of the suit and conclude the same as early as possible.

The appeal is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Kausik Chanda, J.)

(Soumen Sen, J.)