

05.03.2021.
Item No. 98

F.M.A.T. 100 of 2021
With
C.A.N. 1 of 2021

Nirmal Kumar Singha
Vs.
Anil Kumar Singha and others.

Mr. Soumyajit Mukherjee.
... for the appellant.

The affidavit of service filed in Court today is kept with the record. Despite service, there is no appearance on behalf of the respondents.

The instant appeal arises from order no. 2 dated 28th January 2021 passed by the learned Civil Judge (Senior Division), Bankura in Title Suit No. 16 of 2021 whereby and whereunder the prayer for *ex parte* ad interim order of injunction was refused.

Admittedly, the plaintiff/appellant filed a suit for partition and separation of shares of the joint property and claimed that he has undivided 1/7th share. It is further stated that the parties are residing at their respective houses constructed on the joint property and the defendants/respondents taking advantage of the inability of the plaintiff/appellant being the octogenarian are contemplating to make a construction on the vacant land abutting the respective houses.

It is submitted by the learned Advocate appearing on behalf of the plaintiff/appellant that the property is situated on the main road and all the co-sharers are enjoying the access to their respective possession therefrom and if the best portion of the property is constructed, it would have the undue

hardship on the plaintiff/appellant at the time of final decree. However, it is submitted before us that the defendants/respondents are forcibly contemplating to make construction without obtaining any permission from the authorities.

Naturally, the aforesaid submission is advanced for the simple reason that the plaintiff/appellant having one of the co-sharers has never approached for making application before the authority for any construction on the vacant portion of the suit property. Nobody should be allowed to take the law in his own hand. If the law permits it to be done in particular way/manner, it has to be done in such manner. If the permission has not been granted, as alleged by the plaintiff/appellant, the defendants/respondents cannot be permitted to raise construction, which contravenes the provisions of law.

We, thus, find that it was a fit case for passing an *ex parte* ad interim order of injunction by the trial court. Accordingly, the defendants/respondents are restrained from making construction at the suit property without any valid permission from the authority for a period of eight weeks from date or until further order/orders of this Court, whichever is earlier.

The plaintiff/appellant is directed to file requisites for effecting service of an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure filed before the trial court by 8th March 2021. The trial court is directed to effect service immediately upon the defendants/respondents.

It is, however, made clear that the trial court shall dispose of the injunction application after affording an opportunity of hearing to the defendants/respondents, if they appeared and filed

the written objection, without being swayed by the fact that we have passed the *ex parte* ad interim order of injunction, as the consideration for passing the *ex parte* ad interim order of injunction is different than the consideration at the time of disposing of the application for temporary injunction.

With these observations, the appeal is disposed of.

In view of the disposal of the appeal itself, the connected application being CAN 1 of 2021 has become infructuous and the same is also disposed of.

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

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(Harish Tandon, J.)

(Kausik Chanda, J.)