

05 26.02.2021
as

F.M.A.T.211 of 2020
With
CAN 1 of 2020(Old CAN 2240 of 2020)

Ajit Kumar Halder
Vs.
Sujit Halder & Ors.

Ms. Priyanka Mandal.

...for the Appellant.

Mr. Dhananjay Banerjee.

...for the Respondent No.1.

This appeal arises from an order No.16 dated 30th November, 2019 passed by the learned Civil Judge (Senior Division), 1st Court, Barasat in Title Suit No.13898 of 2014 whereby and whereunder an application for injunction restraining the defendants from disturbing the peaceful possession of the plaintiff/appellant in respect of a bed room and the other portion of the property is dismissed.

Admittedly, the plaintiff/appellant filed a suit for partition and separation of shares. It is pleaded in the plaint that the plaintiff has undivided 1/6th share in respect of the properties described in the schedule appended to the plaint and despite having request to amicable partition

the property, the defendants flatly refused to such request which constrained the plaintiff/appellant to file the said suit.

An application for injunction has been taken out by the plaintiff/appellant alleging that the defendants are trying to snatch away the plaintiff's/appellant's bed room and the joint possession in respect of one storied pucca house in denying the ingress and egress therefrom. The plaintiff/appellant, therefore, prayed for an injunction against the defendants from disturbing the possession of the plaintiff/appellant from the said bed room and the other portion of the building and not to obstruct any free access.

The defendant no.4 filed a written objection to the said application for injunction and categorically averred that the plaintiff/appellant is not in possession of the suit property nor the defendant no.4 is in possession thereof and the said property is in possession of the defendant no.2.

The defendant no.1 has appeared before us and submits that the plaintiff/appellant is not in possession of the so called bed room which would

be evident from the fact which has been disclosed in the written objection.

The trial court dismissed the said application for injunction solely on the ground that the plaintiff/appellant could not prove that he is in possession of the bed room and the other portion of the joint property and, therefore, the injunction in such form cannot be passed.

Indubitably, the temporary injunction is restricted to the alleged possession of the plaintiff/appellant in respect of a bed room and the other portion of the joint property. There is no denial at least from the written objection filed by the defendant no.4 that the property being the subject matter of the suit is not a joint property of the parties thereto. The share of the parties is to be determined in preliminary form and the Court will thereafter proceed for separation of shares of the suit property. It is no gainsaying that the possession of the co-sharers in respect of the joint property is the possession not only on the basis of his share but on behalf of the other co-sharers as well. When such injunction and/or temporary injunction is sought for claiming his exclusive possession in respect of the possession of the joint

property, the Court must verify whether there is physical possession of such co-sharers in respect of the joint property or a portion thereof. The trial court has categorically held that the plaintiff/appellant has miserably failed to show his physical possession in respect of a bed room and, therefore, rejected the application for injunction.

However, at the time hearing of the instant appeal, it is ardently submitted by the learned Advocate of the appellant that the temporary injunction may be passed as the defendants are trying to change the nature and character of the suit premises.

Our endeavour has failed to find out any such prayer made in the application for temporary injunction filed before the trial court. The Court should not grant temporary injunction merely on the submission made at the Bar when admittedly such prayer is not incorporated in an application for temporary injunction. Since the physical possession of the plaintiff/appellant appears to be in dispute, the Court should not pass the order of temporary injunction as it would impinge upon the possession of the co-sharers unless there is convincing and cogent materials shown by such

litigant evincing the physical possession in the joint property.

Thus, we do not find any illegality and/or irregularity in the impugned order passed by the trial court. The appeal is accordingly dismissed.

In view of the dismissal of the appeal, the connected application is also dismissed.

(Harish Tandon, J.)

(Kausik Chanda, J.)

