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25.08.2021
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C.O. No. 918 of 2020
with
IA No. C.A.N. 1 of 2021

Uday Sankar Prasad & Anr.

-Vs.-
Nikhil Pal & Ors.

Mr. Sandeep Sanyal,
Mr. Sukanta Das
...for the petitioners

Ms. Juin Dutta Chakraborty
...for the opposite party nos. 1 to 3

The grievance of the petitioners is that, despite having granted an injunction till disposal of the suit restraining the defendants/opposite parties from changing the nature and character of the suit property in any manner and having made several observations with regard to the fact that the defendants could not establish that they have not encroached any portion of the other co-sharers, and having subsequently refused an earlier prayer of the opposite parties to make construction, the trial court reversed such position while passing the impugned order, granting leave to the opposite parties to make construction in the teeth of the previous orders, merely upon stipulating certain conditions.

As such, it is contended, the trial court acted palpably without jurisdiction in passing the impugned order, thereby virtually recalling its own earlier orders, which had already attained finality.

Learned counsel appearing for the opposite parties controverts such submissions and categorically points out that, in the initial order of injunction passed by the trial court, the plaintiffs and defendants no. 1 to 3 were directed to preserve the suit plot so that the nature and character of the said property is not changed during the pendency of the *lis*, but subject to the rider that they were further directed not to make any construction in the suit plot in any manner "without permission of Court".

As such, it is argued that the court was not barred by its previous order from permitting the opposite parties to make construction subsequently, with permission of court.

The application, which has been disposed of by the impugned order, was for the purpose of seeking permission of court for making construction over the suit property in view of dearth of accommodation of the defendants/opposite parties and the construction

materials already lying in the suit property as well as the sanctioned plan obtained by the opposite parties being put to the peril of expiring in the meantime.

A perusal of the injunction order dated November 11, 2019 corroborates the submission of the learned counsel for the opposite parties. The trial court clearly left a rider, keeping a window open for the opposite parties to seek permission of the court before making construction. The premise of such order of injunction was, *inter alia*, that it was not known whether the construction was being made over an area which is proportionate to the legitimate share of the co-sharer, at whose initiative the said structure is being erected and, as such, there was chance of encroachment of land in excess of share in the process of construction of structure which may deprive any other co-sharer from his or her due share of land and pose hindrance to the proper allotment of land at the time of partition of the suit plot.

The next relevant order, being Order No. 12, dated December 10, 2019 also reflects that the primary consideration of the court was that construction was going on in the suit property,

which was at a nascent stage and it was “probably” the construction which had been referred to by the contesting defendants. It was further found that the property was unpartitioned, which indicated that each co-sharer had right, title and interest over every inch of such property. Any permission, if granted to the defendants, it was held, would obfuscate the process of final allotment of share.

However, such observation was also qualified with the specific rider that if a proper undertaking was given by the defendants no. 1 to 3 that they would not claim any equity over their possessed portion because of such construction, if the said portion is allotted to some other co-sharer at the time of final allocation of land, and if required, they would demolish the said structure at their own expenses and hand over the vacant possession to the co-sharer to whom the said portion is allotted, permission as sought for could be granted to the defendants.

The trial court, in the said order, proceeded to observe that it was required to be known as to what was the area of land over which the said construction was proposed to be raised and the plan in accordance with which the said

construction would be given shape to and that in absence of the said basic requirements, permission, if granted to the contesting defendants would have the consequence of encroachment of portions in excess of the portions they are in actual physical possession of. The permission sought by the opposite parties was, thus, rejected.

However, while dealing with the last application of the opposite parties in the order impugned herein dated February 05, 2020, the trial court categorically observed that a proper sanction plan has been produced by the defendant nos. 1 to 3/opposite parties in support of their right to construct upon the property. Although the proposition that every co-sharer has title over every inch of the property still retains validity, it was also found by the trial court in the impugned order that the defendants were agreeable to certain conditions being imposed.

In fact, the permission to construct was granted on condition of the opposite parties adhering to the sanction plan and not encroaching the share of the other co-sharers. That apart, the trial court specifically recorded the undertaking of the defendant nos. 1 to 3 that

the latter would not claim any equity, whatsoever, either on the land over which said construction would be made or in the construction itself because of the permission and, if the said land is allotted to any other co-sharer at the time of final allocation, defendants no. 1 to 3 have to hand over the land to the said co-sharer and, if required, they would have to demolish the construction and hand over vacant possession of the land to the said co-sharer.

In view of such specific undertaking being recorded by the trial court itself in the impugned order, there no scope of further apprehension that the opposite parties would be encroaching upon any further land other than a portion to which they are entitled as per their share, in the event the property is a joint property.

However, since the sanction plan was granted for construction over a specific area on 1163. 80 sq. ft. of land, it is also necessary to look into the reliefs claimed in the plaint to appreciate whether such area would exceed the share of the defendants, in the event the property is unpartitioned.

From the plaint, annexed to the present revisional application, it appears that the first

relief is for declaration of the exclusive title of the plaintiffs/opposite parties over five *satak* land out of the entire suit property. The plaintiffs also claim a decree restraining the defendants from disturbing the plaintiffs' enjoyment and possession in respect of such specific property.

The last phrase of the first relief claimed in the plaint, being the demarcation of the suit property, if paraphrased, can only mean a relief of a preliminary decree of partition. That apart, in the fourth relief claimed in the plaint, the plaintiffs have sought a final decree of partition in the event the defendants do not agree to amicable partition.

On the face of it, the plaint, as it stands, is contradictory and the reliefs claimed therein are mutually exclusive. In the same breath, the plaintiffs have claimed exclusive title in respect of a portion of the property-in-dispute measuring five *satak* of land on the one hand and, on the other, the plaintiffs allege that the suit property is a joint property and seek partition of the same. Such a plaint is *ex facie* vexatious and harassing and ought to be rejected at the outset, to curtail unnecessary protracted litigation.

It is well-settled that even a revisional court can reject a plaint *suo motu* within the contemplation of Order VII Rule 11 of the Code of Civil Procedure.

As such, there is no reason or justification for the parties to continue with the patently vexatious suit, which should be “nipped in the bud” (borrowing the language of the Hon’ble Justice Krishna Iyer).

As a consequence, the impugned order cannot stand, not because it was passed without jurisdiction, but because the plaint of the suit itself ought to be rejected.

Accordingly, C.O. No. 918 of 2020 is allowed, thereby setting aside the impugned order, not on merits but since its force is spent in view of the following order. The plaint of Title Suit No. 180 of 2019, pending before the Civil Judge (Senior Division), First Court at Rampurhat, District-Birbhum is hereby rejected on the grounds as enumerated above, with liberty to the plaintiffs to file an appropriate suit afresh on the self-same cause of action for proper reliefs, exercising their option as regards claiming either exclusive title or partition on the premise that the property is co-owned by the parties.

As a corollary of the above rejection of
plaint, the impugned order cannot stand,
although which it passed well within the
jurisdiction of the trial court and in accordance
with law, since the suit itself becomes *non est*.

It is made clear that the opposite parties
shall not be precluded from making construction
as per the sanction plan obtained by them,
however, in terms of the undertaking recorded in
the impugned order dated February 05, 2021,
subject to further orders, if any, passed in a
subsequent suit by the trial court.

If a subsequent suit is filed by the
plaintiffs/petitioners in the light of the above
observations, the trial court shall not be
influenced unduly by the above observations
while deciding such fresh suit independently on
its own merits, apart from the findings regarding
maintainability of the present suit.

There will be no order as to costs.

Urgent photostat certified copies of this
order, if applied for, be made available to the
parties upon compliance of all necessary
formalities.

(Sabyasachi Bhattacharyya, J.)