

19th July,
2021
(AK)
11

C.O. 821 of 2021

Tarani Das
Vs.
Lakshmi Prasad Saw and another

(Via Video Conference)

Ms. Ameena Kabir

...For the Petitioner.

Mr. Bhagbat Choudhuri

...For the Opposite Party.

Affidavit-of-service filed in court today be kept on record.

The defendant has preferred the instant revisional application against an order passed by the appellate court whereby the revisionist-petitioner's appeal was dismissed, affirming an order passed by the trial court whereby both the parties were directed to maintain status-quo in respect of their respective possession and the existing nature and character in the suit property till disposal of the suit.

A liberty was given by the trial court to the parties to make necessary repair and essential construction in the suit property without disturbing the present possession of the parties, with the leave of the court.

It is contended by learned counsel for the petitioner that if the map given in the sale-deed executed in favour

of the petitioner by the plaintiff/opposite party along with other co-owners is juxtaposed with the map given by the Commissioner in his Report, it will be evident that the area owned by the petitioner as per the sale-deed is larger than that on which construction is being made. As such, the allegation of encroachment of the plaintiff's property, in any event, cannot stand.

Learned counsel relies on an unreported judgment passed by a Division Bench of this court on July 5, 2019 in *FMAT 318 of 2018* with *CAN 2399 of 2018*, whereby apparently no injunction was granted regarding the construction being undertaken by one of the parties thereto.

Learned counsel contends that, since the partition Commissioner will, in any event, take cognizance of the respective possession of the parties while allocating shares, which is the well-settled norm, the title, if any, of the plaintiff/opposite party shall not be hampered in any manner by the present construction.

Learned counsel appearing for the plaintiff/opposite party, on the other hand, places reliance on the map annexed to the Commissioner's Report, which is a part of the revisional application, to harp on the issue that such construction, *ex-facie*, is in violation of the extant municipal laws.

That apart, learned counsel for the opposite party contends that, in the absence of any valid sanction plan

having been produced by the revisionist-petitioner in the court below, the injunction granted by the courts below was absolutely within jurisdiction of the courts and ought not to be interfered with under Article 227 of the Constitution of India.

It is evident from the impugned order of the appellate court that the said order is unhappy on reasoning, since the appellate court merely recorded the contentions of both the sides and, in one sentence, gave a pseudo-reasoning that, having regard to the facts and circumstances, on considering the documents-on-record along with the Report of the Commissioner, the court was of the view that the appellant has preferred the appeal with a prayer to vacate the order of injunction. Hence, there was no adjudication worth the name at all by the appellate court, which was the last court of facts.

Hence, on that score alone, the appellate court's order ought to be set aside.

However, an order of remand to the appellate court would not be beneficial to either side, since a re-adjudication would consume more judicial time unnecessarily, keeping in mind the limited objection raised by the plaintiff/opposite party.

The primary premise of the plaintiff's objection to construction by the defendant/petitioner is that the same is violative of the municipal laws as well as without a valid sanctioned plan.

As far as the other objection, regarding the defendant having encroached upon part of the plaintiff's property, is concerned, the same does not stand on *prima facie* valid footing in view of the Commissioner's Report, relied on by both sides, being clear on the point that the construction being raised by the petitioner falls squarely within the demarcated portion owned by the petitioner, if the sale-deed is to be relied on.

On a *prima facie* view of the matter, the sale-deed was apparently executed by the opposite party as well.

As such, the opposite party's objection as to encroachment does not stand on good ground.

The Commissioner's Report shows clearly that the construction is being made within the portion of the petitioner.

However, learned counsel for the opposite party may be justified in arguing that there is scope of violation of municipal laws while making such construction.

However, such question cannot be adjudicated on facts for the first time by this revisional court and was not dealt with by either of the courts below. That apart, the Civil Court is not the right forum for adjudicating such disputes as to alleged violation of municipal laws.

In the light of the aforesaid observations, C.O. 821 of 2021 is allowed, thereby setting aside the order dated December 23, 2019 passed by the Additional District and

Sessions Judge, Bolpur at Birbhum in Miscellaneous Appeal No.15 of 2018.

However, the order of the trial court is modified to the extent that the parties shall maintain status-quo in respect of their respective possessions only.

The petitioner shall be entitled to carry on with any construction on the petitioner's portion of the land-in-question, as disclosed by the map annexed to the Commissioner's Report filed in the court below, subject to the petitioner adhering to municipal laws and having a valid sanctioned plan to make such construction.

In the event the opposite party has any objection to the legality of the sanctioned plan or alleges violation of municipal laws by the defendant/petitioner, it will be open to the plaintiff/opposite party to approach the appropriate municipal forum with such grievance.

If so approached, the relevant authority under the municipal laws shall decide upon the said dispute, upon giving adequate hearing to both sides, in accordance with law and irrespective of the pendency of the suit in the trial court.

The parties as well as the court below and other authorities shall act on the written communication of the learned advocates for the parties, accompanied by server copies of this order, without insisting upon prior production of a certified copy.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)