

AD. 22.
June 23, 2021.
MNS.

C. O. No. 1103 of 2021
with
CAN 1 of 2021
(Via video conference)

Subhamoy Chatterjee
Vs.
Poly Biswas and another

Mr. Chayan Gupta,
Mr. Sayantan Chatterjee

... for the petitioner.

Mr. Rananeesh Guha Thakurta

...for the opposite party no. 1.

Mr. Mrinal Kanti Das,
Mrs. Subhabrata Das,
Mr. Kartick Kumar Goyal

...for the opposite party no. 2.

Affidavit-of-service filed in Court today be
taken on record.

The grievance of the petitioner is that both
the courts below affirmed an ad interim order of
injunction restraining the petitioner from
obstructing the construction by the opposite party
no. 1 on the schedule property as per sanctioned
plan.

Learned counsel appearing for the
petitioner contends that there is a patent dispute,
as recognised by the appellate court in its

judgement, as to whether the 'C' schedule property is the part of 'A' schedule property, which is admittedly owned by the opposite party no. 1, or a part of the 'B' schedule property, which belongs to the petitioner. The appellate court rightly observed that a local investigation is necessary to ascertain such aspect of the matter, which is crucial for the purpose of adjudication of the injunction application. In the event of encroachment being established, the outcome of the injunction application may be diametrically opposite to the situation if the commissioner's report comes otherwise.

Learned counsel appearing for the opposite party no. 1 contends that since the opposite party no. 1 is legally making the construction as per valid sanctioned plan and as per the existing municipal law, there is no bar to carrying out such construction.

Learned counsel appearing for the opposite party no. 2 submits that an interim order was passed in a writ petition filed before this Court, by a co-ordinate bench, which, *inter alia*, directed that the present opposite party no. 1 shall re-erect a boundary wall around the disputed property.

It is, at the outset, made clear that any observation made in this order or in the impugned orders will not have any direct bearing or effect on the same direction of the writ court.

However, in the circumstances, since the dispute is glaring as to whether the 'C' schedule property is a part of 'A' or 'B' schedule property, it would be unwise to permit the opposite party no. 1 to make any external construction, if started pursuant to the sanctioned plan, during pendency of the injunction application before the courts below.

Accordingly C. O. No. 1103 of 2021, along with CAN 1 of 2021 are disposed of by setting aside the impugned order and restraining the opposite party no. 1 from making any external construction, if construction has begun, as per her sanctioned plan during pendency of the injunction application pending in the trial court.

However, it is made clear that internal alternations, within the periphery of the already constructed area, if construction has already begun, can be carried out in the meantime by the opposite party no. 1.

The revisionist petitioner as well as the proforma opposite party no. 2 shall file their

respective written objections to the injunction application within a fortnight from date in the trial court. Reply, if any, shall be filed by the plaintiff-opposite party no. 1 within a week thereafter.

The learned trial judge, being the Civil Judge(Junior Division), Second Court at Barrackpore, is requested to dispose of the injunction application filed in connection with Title Suit No. 201 of 2020 pending in the said court at the earliest, positively within one month from the date of communication of this order to the trial court, without granting any unnecessary adjournment to either of the parties.

It is made clear that the merits of the respective contentions of the parties in the suit as well as the injunction application and/or miscellaneous appeal have not been gone into by this Court and the trial court will be free to decide the injunction application and the suit on their own merits without being influenced in any manner by any of the observations made herein.

It will be advisable, in the circumstances, if a commissioner is appointed by the trial court in the meantime for holding a local investigation to ascertain whether the Schedule 'C' property is a

part of Schedule 'A' or Schedule 'B', if the trial court deems such a course of action proper.

The courts below as well as the parties shall act on the written communication of the learned advocates for the parties and/or server copy of this order, without insisting upon prior production of certified copy thereof.

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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)