

29.09.2021
Item No. 41
Ct. No.9
Saswata & SKB

FMAT 359 of 2021
Sadhana Chakraborty & Ors.
Vs.
Pintu Kumar Samanta & Ors.
with
CAN 1 of 2021

Mr. Tapas Kumar Dey
Mr. Nirupam Sarkar
.... for the Appellants

The instant appeal arises from an order dated 17th March 2021, passed by the Learned Civil Judge (Senior Division), Second Court Howrah in Title Suit No. 109 of 2021 by which an application for temporary injunction was rejected on the ground that in absence of the identification of the property described in 'B' schedule to the plaint, the injunction order in such form cannot be granted.

Indubitably, the plaintiffs/appellants filed a suit for declaration and permanent injunction concerning the construction over the 'B' schedule property without leaving a mandatory space required under the Howrah Municipal Corporation Act. In other words, it is indicated that the construction is being carried out on 'B' schedule property without leaving the side and the rear space, required under the aforesaid Act and also impinging upon the easementary rights pertaining to the light and air.

In the backdrop of the same, an application for temporary injunction was taken out and by the

impugned order, the Trial Court dismissed the same. It is no doubt true that the plaintiffs/appellants did not claim any right, title and interest in respect of 'B' schedule property.

The plaint would reveal that they had a right, title and interest in respect of 'A' schedule property and the suit has been filed raising objection over the construction allegedly made over the 'B' schedule property by the defendants/respondents.

Before the Trial Court, the defendants/respondents categorically submitted that there is no construction carried on in the 'B' schedule. It was further contended that in absence of any identification of the properties described in the schedule appended to the plaint, the injunction in such a blanket form should not be passed. It is no doubt true that the allegation pertains to a construction of a building without leaving the rear and the side space.

The moot question which arises in the instant appeal is whether the construction has been carried out on the schedule property or non-schedule property. It is beyond the cavil of doubt that the Court shall not pass any injunction, restraining the defendants/respondents to do or refrain from doing something in exercise of its rights over the non-schedule property. It was the candid stand on the part

of the defendants/respondents that they have not constructed any structure on the 'B' schedule property and such being the position unless there have been some materials refuting the contention of the defendants are surfaced and/or projected before the Court, there is no illegality on the part of the Trial court in rejecting an application for temporary injunction.

However, for abundant precaution, we make it clear that the observations made hereinabove, as well as the impugned order is restricted to the application for temporary injunction, filed by the plaintiffs/appellants on the basis of the facts available, as of now.

The appeal being FMAT no. 359 of 2021 along with CAN 1 of 2021 are, accordingly, dismissed.

(Harish Tandon, J.)

(Bibek Chaudhuri, J.)