

AD. 5.
July 8, 2021.
MNS.

C. O. No. 1159 of 2021
(Via Video Conference)

Sri Gour Chandra Nandy
Vs.
Sri Gobinda Chandra Nandy and others

Mr. Debanik Banerjee

... for the petitioner.

Mr. Tanmoy Mukherjee

...for the opposite parties.

The present challenge has been mounted against an order whereby the appellate court affirmed an order of refusal of *ad interim* injunction prayed for by the petitioner. The suit was filed by the petitioner for cancellation of a deed and ancillary reliefs. In such suit, an application for *ad interim* injunction was taken out, praying for injunction restraining the opposite parties from disturbing the peaceful possession and enjoyment of the revisionist-petitioner in respect of the 'A' schedule property as well as from mutating the property in the name of the opposite parties.

Upon hearing learned counsel, it is evident that opposite parties took a specific stand before the appellate court that mutation has already taken place. Be that as it may, mutation does not amount

to conferring a title to the property and whichever way the property has been mutated, shall always be subject to the adjudication regarding title by a competent civil court.

As regards possession, learned counsel for the petitioner is justified in arguing that the reason given by the trial court for refusing *ad interim* injunction, being the subsistence of a similar injunction order in a different suit, has since become redundant due to withdrawal of the said suit subsequently. However, the conclusion of the appellate court in affirming the order of the trial court is justified by sufficient reasons.

As it appears from the tenor of the prayer made by the petitioner in the injunction application before the trial court, the petitioner sought an unbridled restraint order on the opposite parties regarding possession and enjoyment of the entire 'A' schedule property, despite the settled principle of law that every co-owner has title over every inch of the suit property, unless the property is already partitioned by metes and bounds. Even without going into such vague propositions, at a more basic level, unless some proof is furnished by the petitioner in support of the contention of the petitioner regarding the petitioner's actual physical

possession in respect of the 'A' schedule property and/or any specific portion thereof, by local inspection or otherwise, it would not be reasonable to pass a blanket order of injunction restraining the opposite parties from disturbing the petitioner's possession, since such possession and enjoyment is admittedly not exclusive as far as the rights of the respective parties are concerned, who are co-owners of each other.

Thus, since the revisionist-petitioner has waited for so long before challenging the impugned order, which was passed long back, no harm would be caused to either side in the event the injunction application itself is directed to be disposed of within a limited period so that the trial court has an opportunity of hearing the injunction application on merits upon looking into the relevant materials produced by the parties in support of their respective contentions.

Accordingly, C. O. No. 1159 of 2021 is disposed of without interfering with the impugned order, but directing the opposite parties to file their written objection to the injunction application within a fortnight from date in the court below.

The trial court shall endeavour to dispose of the injunction application itself, upon hearing both

parties, as expeditiously as the business of the court permits in view of the present staggered functioning of courts due to the existing pandemic, but positively within two months from the date of communication of this order to the court below.

It is made clear that the merits of the injunction application and/or the suit have not been gone into at all and the observations made herein are made for the limited purpose of consideration of the present revisional application and shall not influence the trial court at any stage of the proceeding in the court below.

The parties as well as the trial court shall act on the communication of this order by the learned advocates for the parties without insisting upon prior production of a 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.)