

AD. 9 and 10.
July 19, 2021.
MNS.

RVW 80 of 2021
in
C. O. No. 758 of 2021
(Via video conference)

Sri Subrata Maity
Vs.
Smt. Sabita Barik and others

Mr. Susenjit Banik,
Mr. Saptarshi Basu

... for the review applicant.

Mr. Tanmoy Mukherjee,
Ms. Shila Sarkar

...for the revisionist petitioner.

Mr. Uday Sankar Bhattacharya

...for the proforma opposite parties.

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

Heard counsel for the respective parties.

The question raised in the review application is whether the order under review, passed by this Court, is tainted by an error apparent on the face of the record, since the relief granted by the said order, being a permission to the revisionist petitioner to take electric connection to her premises under the pathway

belonging to the opposite party/review applicant, was granted.

It is contended by learned counsel for the review applicant that the limited scope of hearing an application under Article 227 of the Constitution of India is confined to the scope of the relief sought in the courts below and cannot go beyond that.

Learned counsel submits that the prayer for taking electric connection has been made for the first time before this Court, which would be *de hors* the scope of the dispute raised in both the courts below.

It is further contended by the review applicant that the application under Article 227 of the Constitution of India, bearing C. O. No. 758 of 2021, was filed considerably late, there being no proper explanation for such delay being offered in the application itself. Injunction being an equitable remedy, the impugned orders ought not to have been granted in mandatory form by way of permitting the revisionist petitioner to take electric connection under the pathway of the review applicant, going beyond the scope of the dispute raised in the courts below.

Learned counsel appearing for the revisionist petitioner/opposite party in the review application counters such allegations and specifically contends that the order under review does not pertain to the rights contended by the parties respectively in the suit or in the injunction application but is merely by way of a temporary measure.

Upon hearing learned counsel appearing for both sides and looking into the materials on record, it appears that, although none appeared for the opposite no. 1 at the relevant juncture when the order under review was passed, a valid question has been raised for adjudication now by way of the review application.

The limited scope of determination is whether the order under review suffers from any error apparent on the face of such order and whether the same was passed beyond the jurisdiction of the revisional court.

It is seen from the impugned orders of both the appellate and the trial court, in the revisional application, that the specific question of not getting electric connection was raised by the revisionist petitioner in both the courts below and was opposed by the review applicant.

Upon considering such submissions, the courts below granted prohibitory injunction restraining the revisionist petitioner and her men and agents from grabbing and/or encroaching and/or construction and/or obstruction and/or changing the nature and character and/or entering into the suit property by any means. It is also rightly pointed out by counsel for the review applicant that the specific allegations as regards the revisionist petitioner trying to enter into the pathway in the garb of taking electric connection was also a part of the bundle of facts comprising the cause of action.

However, the cause of action, as is cliché by now, is a bundle of facts leading to the relief claimed. Considering the allegations in the plaint and injunction application, as dealt with by the courts below while passing the order impugned in the revisional application, it is evident that this is not a new issue or a third case being made out by the revisionist petitioner for the first time in the revisional application. Such argument was the plinth of the submission of the revisionist petitioner in the courts below and dealt with by both the courts below. As such, there is no question of the review applicant being taken by

surprise if the revisionist petitioner took such an objection as a ground in the revisional application as well.

That apart, although the alleged intention of the revisionist petitioner to encroach upon the pathway belonging to the review applicant in the garb of taking electric connection was merely a component of the cause of action, leading to the ultimate relief claimed in the suit, a perusal of such relief shows clearly that the decree sought was for permanent injunction restraining the defendant and her men and agents from grabbing and/or encroaching and/or construction and/or obstruction and/or changing the nature and character and/or entering into the suit property by any means or by any way. Although such relief was cleverly couched to prevent the revisionist petitioner from entering into the suit property by any means or in any way whatsoever, the crux of the relief sought is on the strength of the title claimed by the review applicant over the suit passage.

Such question was dealt with in the order under review inasmuch as this Court considered the fact that the supply of electric connection to the revisionist petitioner's property under the

pathway-in-question would be irrespective of the ownership of the pathway. Moreover, the allegation that the revisionist petitioner does not have even an easement right over the suit property, although justified on the face of the records, is not curtailed in any manner by the order under review.

The limited work of digging and filling up the pathway, thereby leaving a narrow passage all through the work, for the usage of the review applicant, as categorically clarified in the order under review, leaves no shade of doubt as regards the relief claimed by the review applicant in the suit as well as in the injunction application having not been adjudicated upon by this Court in its revisional jurisdiction.

The enquiry undertaken by this Court while deciding the revisional application was restricted only to the questions which were urged in both the courts below and cannot be said to be a third case made out for the first time in this Court by the revisionist petitioner.

That apart, as iterated earlier, the limited user of the property for taking electric connection merely for a fortnight cannot be seen from the perspective of an assertion of any easement

right, let alone ownership rights, by the revisionist petitioner. It is only restricted to the purpose of taking new electric connection. Since such position was clearly enumerated in the order under review, this Court is of the opinion that no error apparent on the face of the said order has been made out by the review applicant.

Accordingly, RVW 80 of 2021 is dismissed on contest without however any order as to costs.

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.)

