

2nd August,
2021
(AK)
12

C.O. 1682 of 2019
IA No: CAN 1 of 2020

Srihari Charan Maity
Vs.
Sri Sudhangshu Bera and others

(Via video conference)

Mr. Amit Baran Dash
...For the Petitioner.

Mr. Partha Pratim Roy
...For the Opposite Party.

Learned counsel for the petitioner, who is the plaintiff in a suit for declaration of title regarding certain particular plots of land, contends that, while deciding an application for stay of operation of the ad interim injunction order granted by the trial court, the appellate court virtually decided the appeal by granting such stay of operation, granting further liberty to the defendants/opposite parties to make construction on adjacent plots, which are not even the subject-matter of the suit.

Learned counsel for the defendants/opposite parties argues that the present revisionist-petitioner cannot be affected in any adverse manner by the impugned order, which merely permitted the opposite parties to make construction on their own plots of land, which are adjacent to the suit property.

As such, it is argued that the opposite parties are very much entitled to make construction on the adjacent plots and have a valid sanction to do so.

The arguments advanced by the opposite parties have no legs to stand on. The appellate court had no business in considering the rights of the defendants in plots other than the suit property, let alone permit construction thereon, while adjudicating within the limited conspectus of the trial court's order.

The prayer for injunction as well as the ad interim order of injunction granted by the trial court pertain only to the suit properties. The opposite parties do not even claim a right to the said properties but stake a claim on adjacent properties.

Since such adjacent properties are not even the subject-matter of the suit, the alleged title of the defendants to those are totally irrelevant for the purpose of deciding the appeal. The appellate court ought to have confined itself to the title of the parties in respect of the suit property and the suit property alone.

Passing such orders with respect to properties which are beyond the subject-matter of the suit would not only constitute a patent jurisdictional error but can have dangerous consequences in so far as such orders may affect the right of third parties to the suit, who might have contesting claims in respect of the adjacent plots and are not impleaded in the present suit.

In any event, the appellate court acted palpably without jurisdiction in granting stay of operation on certain frivolous grounds, thereby traversing its jurisdiction, instead of confining itself only to the subject-matter of the suit.

That apart, the grant of stay at the ad interim stage would tantamount to allowing the appeal itself without hearing the parties on merits thereon.

Contrary to the contention of the opposite parties, the effect of the impugned order of the appellate court will not only be to permit the opposite parties to make constructions on properties which are *de hors* the scope of the suit itself but also allow the opposite parties to make construction on the suit properties which allegedly belong to the petitioners, since stay of operation of the injunction order tantamounts to relieving the opposite parties of the restraint from constructing over the suit property itself.

Thus, the impugned order cannot be sustained.

Accordingly, C.O. 1682 of 2019 is allowed on contest, thereby setting aside the impugned order bearing Order No.2 dated April 10, 2019 passed by the Civil Judge (Senior Division), First Court at Contai, District-Purba Medinipur and reviving the ad interim order of injunction granted by the trial court, till disposal of Miscellaneous Appeal No.9 of 2019.

Accordingly, CAN 1 of 2020 is disposed of.

It is, however, made clear that the appellate court as well as the trial court shall dispose of the appeal and the suit and connected applications, pending before them respectively, without being influenced on merits by the observations made herein and/or in the impugned order and shall decide those questions independently in accordance with law.

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.)