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01.12.2021
S.D.

C.O. 1737 of 2019
(Smt. Rajkumari Yadav vs. Sri Binod Prasad)
With
C.O. 1738 of 2019
(Smt. Rajkumari Yadav vs. Sri Suresh Prasad)
With
C.O. 1739 of 2019
(Smt. Rajkumari yadav vs. Sri Ramlal Shaw)

Mr. Abhimanyu Banerjee
...For the Petitioner.

Mr. Sanjib Kumar Mukhopadhyay
...For the O.P.

The revisional applications being C.O. 1738 of 2019 and C.O. 1739 of 2019 are taken up analogously with this revisional application as the parties and the substantial issues between the parties to the revisional applications as mentioned above are the same and by a common judgment they can be disposed of.

The petitioner has assailed the order dated August 30, 2017 and order dated April 11, 2019 passed by learned Civil Judge, (Junior Division), Bidhannagar, North 24 Parganas in Misc. Case No. 29 of 2017 arising out of Title Suit No. 242 of 2015 (in C.O. 1737 of 2019), in Misc. Case

No. 28 of 2017 arising out of Title Suit No. 241 of 2015 (in C.O. 1738 of 2019) and the order dated August 29, 2017 and order dated April 11, 2019 in Misc. Case No. 27 of 2017 arising out of Title Suit No. 243 of 2015 (in C.O. 1739 of 2019).

The contention made on behalf of the petitioner is that after the *ex parte* decree was granted in favour of the petitioner/plaintiff, the decree was executed by delivery of possession to the petitioner with the help of the police. It is pointed out that the suit was for eviction of the present opposite party as a licensee in the suit and now the old structure has been removed and demolished and the petitioner/plaintiff has got sanctioned plan for raising construction over the suit properties. The opposite party in order to challenge the *ex parte* decree and to get it set aside in terms of the provision of Order 9 Rule 13 of the CPC filed a Misc. Case and also filed an application under Order 39, Rule 1 and 2 read with Section 151 CPC praying for temporary order of injunction restraining the present petitioner/plaintiff from changing the nature and character of the suit property.

It is submitted on behalf of the petitioner that as on the date of the order passed by the Trial Court, there was

no structure, rather it was absolutely demolished because it was in dilapidated condition and now the petitioner wants to raise construction in terms of the sanctioned plan by the municipal authority and since the interim order of injunction has been passed in connection with the application for the temporary injunction in the matter the petitioner is unable to construct building in terms of the sanctioned plan. Accordingly, the petitioner has sought for setting aside the order impugned and further to get the order varied. It is admitted that having entered appearance to the Misc. Case, the petitioner has not filed any application for modification or variation or setting aside the interim order of injunction which was available to the petitioner under the provision of Order 39 Rule 4 CPC. Instead, he raised objection in respect of the application under Section 151 CPC whereby the opposite party herein has sought for police help for obeying the interim order of injunction as passed by the Trial Court. It appears from the order of the Trial Court that the learned Trial Court though found prima facie case, but could not ascertain as to the nature and character of the premises as on the date as in terms of the decree passed by the Trial Court, the decree was executed in favour of

the present petitioner. In order to ascertain the situation at the locality, Learned Court ought to have asked for local inspection to ascertain the nature and character of the suit property.

At this juncture, learned advocate for the petitioner submits that if the petitioner is allowed to raise construction at the suit premises, the opposite party herein will not suffer because in the event of the right being established in his favour to occupy the premises which was in his occupation that could be given to him on terms of agreement as a licensee or on tenancy. These are the factual aspects, which are really required to be heard and noted by the Trial Court. But this Court finds that basically there has been error on the part of the learned Trial Court for not having ascertained as to who was in possession at the material point of time and what was there in the locality at the suit premises.

I am of the view that a Civil Court should not grant interim order of injunction against a lawful owner even if there appears a prima facie case without giving an opportunity to the opposite party. The Court has to understand basic principle of law governing grant of injunction i.e., prima facie case, balance of convenience

and inconvenience and further to ascertain whether on refusal to grant ad interim order of injunction, the party seeking injunction would suffer irreparable loss and injury which cannot be compensated by monetary value. Moreover, before granting ad interim order of injunction the Civil Court should always investigate as to who is in possession of the suit property. Therefore, as a rule, it is imperative in such cases to apply for local inspection under Order 39, Rule 7 of Code of Civil Procedure.

Learned Advocate for the opposite party submits that the suit ex parte was decreed in haste and the decree was also drawn up and the petitioner got it executed with the help of police and on the same day, the structure on the suit premises was demolished. It is pointed out that a revisioinal application was taken out being C.O. No. 1426 of 2019 for an appropriate order for expeditious disposal of the Misc. Case No. 29 of 2017 under Order 9 Rule 13 CPC and a Coordinate Bench of this Hon'ble Court while disposing the application in exercise of its power under Article 227 of the Constitution of India, directed the Trial Court to take up the Misc. Case as expeditiously as possible without granting any unnecessary adjournment to either side, preferably

within six months from the date of communication of the order to the Court below. This order was passed on April 17, 2019. The present petitioner was already in appearance before the Trial Court in the said Misc. Case on 05.04.2019. So, it is evident that the petitioner was well in the knowledge of the order passed by this Hon'ble Court, as such, it was solemn duty of the parties to the proceeding including their Advocate-on-record conducting the case before the Trial Court to have obeyed the said direction of the Co-ordinate Bench of this Hon'ble Court. It is no doubt a sorry state of affair that when the present opposite party is willing to go for the expeditious disposal of the Misc. Case under Order 9 Rule 13 CPC, there is no justification for the petitioner to have come before this Court for variation of the interim order or setting aside of the interim order passed by the Trial Court. Therefore, it is better advised that the parties do co-operate the Trial Court for disposal of the Misc. Case under Order 9 Rule 13 CPC on merit in accordance with the evidence to be adduced by them.

Accordingly, the revisional applications being C.O. 1737 of 2019, C.O 1738 of 2019 and C.O. 1739 of 2019 are disposed of with the direction to both the parties to

maintain status quo as on the date till the disposal of the
Misc. Case under Order 9 Rule 13 CPC.

All parties are to act on the server copy
downloaded from the official website of this Hon'ble
Court.

(Shivakant Prasad, J.)