

AD. 37.
July 30, 2021.
MNS.

C. O. No. 1313 of 2021
(**Via video conference**)

Greenwood Housing Co-operative Society
Limited

Vs.

Sri Sheo Sankar Singh and another

Mr. Probal Kumar Mukherjee,
Mr. Debjit Mukherjee,
Mr. Kaustave Bhattacharyya

... for the petitioner.

Learned senior counsel appearing for the petitioner contends that both the courts below acted without jurisdiction in refusing the injunction sought by the petitioner-Housing Society at an *ad interim* stage.

Learned senior counsel submits that it is evident from the plaint and the documents annexed thereto that the petitioner has an exclusive right of user of the suit passage.

It is fairly submitted by learned senior counsel that although the prayer for permanent injunction in the suit and temporary injunction in the court below were couched in a different language, in the first relief prayed for in the plaint, the plaintiff-petitioner clearly asserted an exclusive right to use and enjoy the 20 (twenty)

feet wide passage. Hence, learned senior counsel contends that the courts below ought to have moulded the relief in consonance with prayer (a) of the plaint and to grant *ad interim* injunction restraining the opposite parties from disturbing the petitioner's enjoyment of the suit passage.

However, it appears from the record that, as rightly pointed out by learned senior counsel, although the suit contained a decree for declaration of exclusive right of the plaintiff-petitioner, to use the passage-in-question, prayer (c) of the plaint categorically prayed for permanent injunction restraining the defendant, their men, agents and associates from causing disturbances, threats, interference or any attempt of demolition of the temple within the compound of the petitioner or in any part thereof. The temporary injunction was also sought in the same tune.

First, the deviation in the prayer for injunction made by the plaintiff-petitioner cannot be allowed at the stage of hearing the application under Article 227 of the Constitution of India, since the plaint and the injunction application still stand unamended as far as the prayer for

injunction is concerned. It would be changing, and not moulding, the relief sought if such an injunction was granted, in any event.

That apart, such injunction was rightly refused by the trial court at the *ad interim* stage, since restraining the opposite parties from entering into the suit passage altogether might affect valuable rights, if any, of the defendants which would be taken away without hearing them at the *ex parte ad interim* stage. Hence, both the courts below were justified in refusing injunction at the *ad interim* stage.

However, in view of long pendency of the injunction application, the trial Judge is requested to dispose of the temporary injunction application, pending at the behest of the plaintiff-petitioner in the trial court, at the earliest, positively within two months from the date of communication of this order to the court below.

C. O. No. 1313 of 2021 is disposed of with the above observation, by affirming the orders impugned herein.

However, it is made clear that this court has not gone into the merits of the prayer for injunction and it will be open to the trial court to dispose of the temporary injunction independently

on its own merits, in accordance with law, without being unduly influenced by any of the observations made herein.

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.)