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13.08.2021
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

(Via Video Conference)

CO No. 1389 of 2021

Sabita Deb & ors.
-versus-
Kajal Deb & anr.

Mr. Kaushik De,
Mr. Sutirtha Das,

... for the petitioner.

Mr. Somnath Roy Chowdhury,
... for the opposite party.

Affidavit of service filed on behalf of the petitioners in Court today be kept with the record.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for declaration of title and injunction and is directed against the order dated July 28, 2021 passed by the learned District Judge, Howrah in Misc. Appeal No. 61 of 2021 arising out of order dated June 28, 2021 passed by the 6th Court of learned Civil Judge (Junior Division), at Howrah in Title Suit No. 620 of 2021.

The plaintiff/opposite party no 1 in the connected suit filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure praying for an order of injunction restraining the defendant no. 1 to 3 from disturbing and/or obstructing at time of rendering electric connection and/or water connection through the property mentioned and described in schedule 'C' appended to plaint.

The learned Trial Judge by the order dated June 28, 2021 refused the prayer of the plaintiff for an ad interim order of injunction on the said application.

The plaintiff being aggrieved by the said order preferred the connected appeal being Misc. Appeal being No. 61 of 2021 and renewed his prayer for ad interim order of injunction.

The learned District Judge, Howrah, by the order impugned has allowed the said prayer of the plaintiff thereby restraining the petitioners and their men and agents from disturbing and/or obstructing plaintiff in any manner whatsoever for taking electrical and/or water connection over the said 'C' schedule property till 27.08.2021.

Mr. Kaushik De, learned counsel appearing on behalf of the petitioners, submits that the grant of the said ad interim order of injunction is wholly based on the report of the Advocate Commissioner who was appointed ex-parte and conducted the commission work ex-parte, as such, the petitioners could not get any opportunity to controvert the veracity of the said report.

He further submits that the petitioners, in spite of their best efforts could not even get the certified copy of the report of the said commissioner.

Mr. De prays that opportunity may be given to the petitioners to file exception to the said report and to contest the prayer of the plaintiff for an ad interim order of injunction in the said appeal.

Mr. Somnath Roy Chowdhury, learned counsel appearing on behalf of the plaintiff/opposite party no. 1 fairly submits at the threshold that if that be the position, he will supply a copy of the said report to Mr. De.

Mr. Roy Chowdhury, however, submits that schedule 'C' property is the only passage for the ingress and egress of the plaintiff to his property described under schedule 'A' of the plaint. The said passage, unless, is allowed to be used for the purpose of taking supply line of the essential services like water and electricity to the said schedule 'A' property, the plaintiff shall suffer irreparable

loss and injury. He, therefore, submits that the learned District Judge has rightly passed the said ad interim order of injunction.

Heard learned counsel for the parties, perused the materials-on-record.

Admittedly, the Advocate Commissioner was appointed ex-parte for holding local inspection of the suit properties. The order impugned clearly indicates that the report of the said Commissioner was the basis of the order impugned.

The Appeal Court below in the order impugned has held that **the point no. 3 of Local Inspection Report clearly shows that ‘C’ Schedule Common Passage is the only passage to ingress and egress of the appellant/plaintiff to enter the ‘A’ schedule property.**

The Appeal Court below should have given an opportunity to the defendants to challenge the veracity of the said report before falling for the said commissioner’s report hook, line and sinker in coming to the said finding.

The prima facie case is to be gathered from the case made out in the plaint for the purpose of grant of injunction, particularly while granting or refusing an ad interim order of injunction.

The report of the Advocate Commissioner appointed in the suit may be in aid of such prima facie case but cannot substitute it.

The order impugned, for the aforesaid reason, is not sustainable and is, accordingly, set aside.

However, this order will not prevent the plaintiff to renew his prayer for an ad interim order of injunction on the next date fixed. The defendants, if choose to dispute the correctness of the said Commissioner’s Report, they are free to file exception to it upon supply of a copy thereof to the plaintiff.

The learned District Judge is requested to dispose of the prayer of the plaintiff for an ad interim order of injunction on the next date fixed and in the event it cannot be disposed of on the said date

due to some unavoidable circumstances, same must be disposed of within a week thereafter.

It is made clear that the parties are not entitled to seek unnecessary adjournment in the said appeal.

CO 1389 of 2021 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)