

03.03.2021
Court No. 19
Item No.69
CP

C.O. 2309 of 2019

Sri Asok Kumar Hatua & ors.
vs.
Sri Deglal Mandal & ors.

Mr. Kanailal Samanta
Mr. Suprabhat Bhattacharya

.....for the petitioners.

Mr. S. Ghosh
Mr. S. Pal
Mr. S. Mondal
Mr. G. Malik

....for the opposite parties.

This revisional application has been filed challenging a judgment and order dated June 13, 2019, passed by the learned District Judge, Purba Medinipur in Misc. Appeal No. 28 of 2018.

Misc. Appeal No. 28 of 2018 arises out of an order dated March 21, 2018, passed by the learned Civil Judge (Junior Division), 3rd Court, Tamluk in Title Suit No. 130 of 2017.

The petitioners are aggrieved by the order impugned which was a reversal of the order passed by the learned Trial Judge. The learned Trial Judge on the ground of suppression of material facts and existence of a deed of gift in favour of the

petitioners/defendants rejected the application for temporary injunction filed by the plaintiffs.

The learned lower appellate court upon consideration of the prima facie case, balance of convenience and inconvenience as also irreparable loss and injury restrained the defendants/petitioners from making any attempt to record their names in respect of the 'Ka', 'Kha' and 'Ga' schedule property till the disposal of the suit and also restrained the defendants/petitioners from changing the nature and character of the 'Ka', 'Kha' and 'Ga' schedule property as also from making any construction and creating any third party interest there on.

Mr. Samanta, learned advocate appearing for the petitioners, submits that the learned lower appellate court held a mini trial while deciding the Misc. Appeal. According to him, whether the 'Bango-Assam Arya Pratinidhi Sabha' had any title on the basis of the Arpannama, whether the deed of rectification of the Arpannama was legally permissible, whether the deed of gift on the basis of which the defendants acquired right, title and interest over the suit property, were all matters of trial on evidence and the learned lower appellate court ought not to have decided those issues at the stage of deciding the question of granting an injunction in favour of the plaintiffs.

I have gone through the order impugned and I find that the learned court below in order to satisfy itself as to the prima facie case of the plaintiff rightly considered the legal right of the plaintiffs in respect of the suit property by looking into the Arpannama, the prima facie defect in the title of the defendants vis-à-vis the plaintiffs with respect to the suit property and concluded that the property should be protected from damage and wastage on the facts of the case, thereby restraining the defendants from getting their names recorded in the records of rights in respect of 'Ka', 'Kha' and 'Ga' schedule property and also restrained them from making further construction and/or alienating and changing the nature and character of the suit property.

In the decision of **Seema Arshad Zaheer & Ors. vs. Municipal Corporation of Greater Mumbai & Ors.** reported in **(2006) 5 SCC 282**, the Hon'ble Apex Court laid down the parameters that courts should follow while granting an injunction. They are as follows:-

“(i) Existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction;

(ii) When the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's right or likely infringement of defendant's right, the balance of convenience tilting in favour of plaintiff; and

(iii) Clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be

exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."

Prima facie case does not mean that at the stage of the hearing of an application for injunction, the plaintiffs have to establish a clear title. As long as the plaintiffs are able to establish a legal right and a serious triable issue the court should grant an injunction in order to protect the property in question.

In this case, the existence of an Arpannama made by one Pramatho Nath Jana in favour of a society of which the plaintiffs are members is not disputed. The said society was gifted the property for with an object of spreading the ideology of Hinduism. Two members of the society by a deed of rectification and by execution of a power of attorney transferred the property to the defendants. Prima facie, the court was not convinced with the validity of such documents. However, the court thought that the balance of convenience and inconvenience would be in not disturbing the possession of the defendants from which a school is being run, but further wastage, alienation and damage of the suit property should be protected by restraining the defendants from changing the nature and character of the suit property by making any construction and/or alienating the same. Irreparable loss and injury has to be decided on the parameters whether the injury

caused if an injunction is not granted could be compensated in monetary terms.

In this case, prima facie, once the property is developed and alienated, the question of compensating the plaintiffs by money if the suit succeeds would not arise as third party rights may be created.

Under such circumstances, I do not find any reason to interfere with the order impugned.

It is made clear that the learned Trial Judge will proceed with the suit expeditiously and the observations made by the learned lower appellate court or by this court is restricted only to the point of grant of an injunction but the suit shall be decided on the merits on evidence and on the documents before the learned court below.

With the above observations the revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)