

DL. March 11,
18. 2021

F.M.A. 1739 of 2019

Mr. Probal Kumar Mukherjee,
Mr. Kaushik Dey,
...for the appellants.

Mr. Aniruddha Chatterjee,
Mr. Rajib Mullick,
Mr. Shaunak Ghosh,
Ms. Gargi Manna,
...for the plaintiff/respondent no. 1.

This appeal has arisen out of an order dated September 5, 2019 passed by the learned Judge, Second Bench, City Civil Court at Calcutta, in Title Suit No. 1094 of 2018, by which the defendants/appellants were restrained from disturbing the peaceful possession of the plaintiff/respondent no. 1 in respect of the suit property as described in schedule 'B' to the plaint and were further restrained from making any construction at any portion in the ground floor of the property mentioned in schedule 'B' to the plaint till disposal of the suit.

The suit premises was originally owned by Smt. Duija Devi Shaw, since deceased, who was the paternal aunt of the husband, namely, Ram Kishan Jaiswal, of the present plaintiff/respondent no. 1. The present plaintiff became the owner of the suit property by way of a will executed by the said Duija Devi Shaw. Duija Devi Shaw, during her lifetime, sold out some of the flats in a five-storied building. The plaintiff/respondent no. 1 also sold out some flats in the said building.

The dispute relates to the ground floor area measuring 1,000 sq. ft., which the plaintiff kept in her exclusive possession.

There is also a shop room in the ground floor, wherefrom M/s. Siliguri Riders is presently running their business as a licensee.

It appears from the impugned order that there was some deviation in the sanctioned plan and such deviation was regularised. The sketch map after regularisation of sanctioned plan was produced in the trial court in support of the prayer for injunction. The fact that the sanctioned plan has been regularised is not in dispute. The existence of the shop room in the ground floor is also not in dispute.

The challenge has been thrown to the order impugned so that the portion occupied by M/s. Siliguri Riders, inducted on March 20, 2016, is unauthorised as no right has been preserved with the plaintiff/respondent no. 1 with regard to the ground floor area over which the plaintiff has made the present claim. The common passage is common to all and cannot be exclusively belonged to any particular occupant.

Mr. Probal Kumar Mukherjee, learned senior advocate appearing on behalf of the appellants, submits that issues raised by his clients are in relation to the unauthorised construction and not covered by the sanctioned plan, and there may not be any letter regularising any unauthorised construction.

The learned trial judge relied upon the regularised sanctioned plan and the occupation of M/s. Siliguri Riders since March 2016, as the ground for restraining the present appellants from disturbing the peaceful possession of the plaintiff/respondent no. 1 in respect of the property in the ground floor, as described in schedule 'B' to the plaint. The learned trial judge further found, after going through the sanctioned plan along with the letter for

regularisation of unauthorised construction reflected from the regularised sketch map, existence of a shop room measuring 40 ft. X 12 ft. which is owned and possessed by the plaintiff/respondent no. 1.

Possessory right of a person cannot be disturbed and such preservation of right shall be continued till an adjudication takes place with regard to the nature of such occupancy at the place where such person is presently residing and carrying on such business.

It is on such consideration, we feel that injunction order passed by the learned trial judge is justified and does not call for any interference. This order, however, shall not prevent the appellants to take appropriate steps in accordance with law in the event the proposed construction is unauthorised and not covered by the letter of regularisation.

We make it clear that the views expressed by us is prima facie and shall not influence the trial court in disposing of the suit in accordance with law.

With the above observations, the appeal and the application are, thus, disposed of even at the admission stage.

There will be no order as to costs.

(Soumen Sen, J.)

(Subhasis Dasgupta, J.)