

S/L 46
12.03.2021
Court. No. 19
GB

CAN 1 of 2020
In
C.O. 3664 of 2019

Sri Sailen Sarkar
Vs.
Sri Rathindra Nath Gayen & Ors.

(Through Video Conference)

Mr. Dilip Kumar Sanyal,
Mr. Gourab Ghosh.

...for the Petitioner.

This revisional application has been filed against an order dated November 24, 2019 passed by the learned Civil Judge (Senior Division), Baruipur, District 24 Parganas (South) in Misc. Appeal No.25 of 2019.

Misc. Appeal No.25 of 2019 was filed by the petitioner being aggrieved by an order dated July 19, 2021, by which the learned Civil Judge (Senior Division), Baruipur, District 24 Parganas (South) refused the prayer for ad interim injunction in Title Suit No.330 of 2019. The learned lower appellate court initially passed an order of *status quo* on July 26, 2019 holding that the plaintiff had been able to prove prima facie title and possession. *Status quo* with regard to the nature, character and possession of the suit property was directed to be maintained. Thereafter, the said misc. appeal came up for final hearing and by the order impugned the misc. appeal was disposed of, the ad interim order of injunction was vacated. The learned lower appellate court did not assign any reasons. The order impugned is quoted below:

“24/09/2019

Today is fixed for hearing the misc. appeal.

Both the parties file hazira.

Heard both sides in full and the case record is taken up for passing order.

It's ordered that

The misc appeal being no 25/19 be and the same is dismissed on contest against the appellant/plaintiff.

The ad-interim order of injunction passed earlier by this court vide its order no 3, dated 26.07.19 stands vacated.

The misc. appeal is thus disposed of.

Let a copy of this judgment along with L.C.R. be sent to the ld. Court below at once.

BC II to comply.”

I have perused the orders passed by both the courts below. It appears that the petitioner has purchased the suit land by virtue of a registered deed of sale. The records of rights are in the name of the petitioner. There is a presumption of correctness of such record of rights. The said pre-sumption is rebuttable by evidence. The record of rights may not confer title but at least there is a presumption of possession. Moreover, the court does not have to enter into a mini trial while passing an order of injunction. On the contrary, the court should try to keep the property as it is. The order impugned before this Court contains no reason as to why interim order should be vacated and the same is set aside and quashed. The Misc. Appeal is against an order

refusing an-interim injunction and the main injunction application is pending before the learned trial court. The Misc. appeal is disposed of accordingly.

The learned trial judge is directed to hear out the application for temporary injunction within two months from the date of communication of this order. The written objection to the said application for temporary injunction shall be filed by the opposite parties within 10 days from date. In the meantime, being satisfied with the *prima facie* documents of title, possession, the balance of convenience and inconvenience and irreparable loss and injury that will be caused if the opposite parties start construction on the said land and alienate the same, this Court is of the opinion that the *status quo* be maintained by both the parties with regard to the nature, character and possession of the property in question till the disposal of the temporary injunction application.

The observations made in this order are for the purpose of disposal of the revisional application and on the point of passing an *ad interim* order. But the learned court below shall be free to decide the application for temporary injunction on the facts, pleadings and documents before the court, filed by the respective parties without being pursued in any manner by observations made hereinabove.

CAN 1 of 2020 is disposed of.

(Shampa Sarkar, J.)