

23.06.2021
Item No.5
Crt.No.11
b.r.

MAT 606 of 2020
with
IA No. CAN 1 of 2020

Debprasad Ghosh
-vs-
Suprobhat Ghosh

(Via video conference)

Mr. Suddhasatva Banerjee
Mr. Apurba Kumar Ghosh
.... For the appellant.

Mr. Subir Sanyal
Mr. Saunak Bhattacharyya
..... for the respondent/writ petitioner.

This *intra* Court appeal has arisen out of an order dated 16th September, 2020 passed by the Hon'ble Single Bench in a connected writ petition whereby the Hon'ble Single Bench upon placing reliance on the order dated 16th January, 2020 passed in C.O. 4412 of 2019 by the revisional Court, observed that an order of the High Court was subsisting permitting the writ petitioner to make the construction as per the said order dated 16th January, 2020.

We have heard at length the learned Advocate, Mr. Suddhasatva Banerjee representing the appellant and Mr. Subir Sanyal, learned Advocate representing the writ petitioner/respondent.

Both the learned Advocates representing respective parties to this appeal have placed reliance on the order

dated 16th January, 2020 passed by the revisional Court in C.O. 4412 of 2019.

We find it apposite to quote the relevant part of the said order dated 16th January, 2020, which runs infra:-

The only question which arises is that whether the 75 sq.ft. of land, which is a "B" schedule property falls within the Plot No.463 or Plot No.464. The defendants have described the said area to be on the northern boundary wall of R.S. Dag No.464. Thus, the "B" schedule property as described in the plaint as also by the defendants in their written objection as also in the written statement is the bone of contention over which there is a boundary dispute. The dispute is not with regard to the entire "A" schedule property, but with regard to the 75 sq.ft. of land ("B" schedule property), thus an order of injunction over the entire "A" schedule property, that is, over the entire Plot No.463 owned and possessed by the plaintiff which the defendants also admit cannot be granted, considering the balance of convenience and inconvenience. However, this is a boundary dispute with regard to the 75 sq.ft. strip of land over the northern wall of the defendants. Thus, the defendant alone cannot be directed to maintain status quo with regard to the "B" schedule property as described in the plaint and in the written statement. The boundary dispute is admitted by the defendant. Both parties are restrained from making any construction or encroachment over "B" schedule property. If it is found that either party has encroached in Plot No.463 or 464 by making construction, then such construction will abide by the result of the suit and parties cannot claim any equity over the same."

The dispute centres around making construction on Dag no. 463 which was demarcated as Schedule 'A' property in the revisional application being possessed by the writ petitioner/respondent and the demarcated 'B' schedule property is possessed by the appellant therein. Now, there is a pending dispute with regard to 75 sq.ft

area lying in between 'A' schedule and 'B' schedule property. The petitioner wants to make construction on the portion of land under Dag no. 463 which is objected by the appellant herein since there is a dispute pending in a suit before the appropriate civil Court to the extent of 75 sq.ft. land in between 'A' schedule and 'B' schedule property.

On perusal of the order of the revisional Court, it appears that apart from the said 75 sq.ft land in between 'A' schedule and 'B' schedule property there is no anomaly found by the revisional Court with regard to the possession of the writ petitioner/respondent herein over the 'A' schedule property, which is reflected from the said order dated 16th January, 2020.

The learned Single Bench while deciding the writ petition has placed reliance on the said order dated 16th January, 2020 at the time of considering the issue in question and made an observation that an order of the High Court was subsisting at the material point of time thereby permitting the petitioner to make the construction as provided in the order dated 16th January, 2020 passed by the revisional Court. The appellant is aggrieved by the said observation as contained in the impugned order of the Hon'ble Single Bench. For better understanding relevant part of the impugned order of Hon'ble Single Bench is quoted below:-

“There subsists an order of the High Court permitting the petitioner to make the construction as provided in the order dated January 16, 2020 passed by the revisional Court.”

Considering the rival contention made on behalf of the parties to this appeal, this Court clarifies that the portion of the impugned order quoted above to be strictly read in consonance with the order passed by the revisional Court in its order dated 16th January, 2020 in C.O. 4412 of 2019.

With the above observations, the appeal and the connected application are disposed of and the order of the learned Single Judge dated 16th September, 2020 stands clarified.

With the consent of the parties, the appeal and the application are treated as on day’s list and are disposed of by this common order.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for be given to the parties upon compliance of all necessary formalities.

(Saugata Bhattacharyya, J.) (Subrata Talukdar, J.)