

22.01.2021

Court No. 02
Item No. DL – 09
nandy

(Appeal Disposed of)

FMAT 391 of 2020

with

CAN 1 of 2020

Chinmoy Ghosh

Vs.

Jagabandhu Ghosh & Ors.

Mr. Debjit Mukherjee, Advocate

Ms. Susmita Chatterjee, Advocate

.....for the Appellant

Mr. Sounak Bhattacharya, Advocate

.....for the Respondent No. 1

Mr. Anujit Mookherjee, Advocate

.....for the Respondent No. 2

The scope of the instant appeal is limited in the sense that it arises from an order refusing to pass an ex parte ad interim order of injunction. The plaintiff no. 2/appellant files a suit for declaration of right, title and interest in respect of the properties described in schedule 'Kwa' to the plaint and that the purported deed of gift dated June 24, 2020 is illegal, void and inoperative having obtained by practicing fraud. It is the specific case of the plaintiff/appellant that the property described in schedule 'Kwa' thereto is a joint property and, therefore, they are occupying therein as co-sharer and the defendant no. 1/respondent no. 1 is attempting or threatening to disturb the possession of the plaintiff therefrom.

We have seen that the properties included in schedule 'Kwa' to the plaint is divided in two parts whereas the first part relates to a property inherited by the plaintiff no. 1 from his father and the second part pertains to a property initially belonged to the mother of the plaintiff no. 2 and upon her death devolved upon the heirs. It is alleged in the plaint that taking advantage of the mental condition of the plaintiff no. 1, a deed of gift was managed to be

executed and, therefore, it does not confer any title on the defendant no. 1. It transpires in course of hearing that the property included in the second part of schedule 'Kwa' to the plaint originally belonged to the mother who died intestate and in view of Section 15 of the Hindu Succession Act, it devolves upon her sons and husband. So far as the property included in the first part of schedule 'Kwa' to the plaint, the defendant no. 1 laid his claim on the basis of the purported deed of gift and from the averments made in the plaint, the plaintiff have categorically asserted that they are still possessing and occupying the property and there is a threat of interference and disturbance on such possession on the strength of such purported deed of gift.

Interestingly, while refusing to pass an ex parte ad interim order of injunction, the trial Court recorded its prima facie finding over the possession of the schedule 'Kwa' property to the plaint in favour of the plaintiff no. 2 but refuses to pass an ex parte ad interim order as it would not be proper to pass the same without affording an opportunity to the defendants. If the possession of the plaintiff no 2 who stood as a next friend and in his individual capacity to protect the property described in schedule 'Kwa' to the plaint, has been prima facie found by the trial Court and there is an allegation of threat of dispossession, it is improper that a protective order relating to possession could not be passed. Law respects possession even if there is no title in support thereof. A person in settled possession cannot be dispossessed without due process of law as nobody in the country shall be allowed to take the law in his own hand.

We thus find that it was a fit case where the trial Court ought to have passed an ex parte ad interim order of injunction protecting the possession.

Accordingly, the order impugned is modified to the extent that the defendant no. 1 is restrained from interfering and/or disturbing the possession of the plaintiff no. 2 in respect of the property described in schedule 'Kwa' to the plaint for a period of three months from date.

Since the defendants have entered appearance before us, they are permitted to file affidavit-in-opposition to the application for temporary injunction within two weeks from date. Reply thereto, if any, be filed within a week thereafter.

The trial Court is requested to dispose of the application for temporary injunction within two weeks from the date of expiration of exchange of affidavits as indicated above in accordance with law. The trial Court shall not grant unnecessary adjournments to either of the parties and shall adhere to the time limit indicated hereinabove. For any reason beyond the control of the learned Judge, the application for temporary injunction could not be disposed of within the time indicated above, all efforts shall be shown to dispose of the same showing alacrity and it would be open to the trial Court to extend the interim order without any further reference to this Court.

For abundant precaution, we make it clear that the consideration at the time of passing an ex parte ad interim order of injunction is different than at the time of disposal of an application for temporary injunction and, therefore, the

findings recorded hereinabove shall not have any persuasive effect in the minds of the learned Judge while deciding the application for temporary injunction finally.

The appeal being **FMAT 391 of 2020** and application being **CAN 1 of 2020** are accordingly **disposed of**.

(Harish Tandon, J.)

(Kausik Chanda, J.)