

**FIROJA BEGAM VS. SMT. BASANTI
DUTTA & ORS.**

Mr. Tanmoy Mukherjee
..for the petitioner
Mr. Arunan Samanta
..for the opposite party nos.1-3

This revisional application has been filed by the petitioner against an order dated August 27, 2019 passed by the learned Additional District Judge, Fast Track Court-I, Purba Bardhaman in Misc. Appeal No. 26 of 2018., modifying the order dated April 11, 2018 passed by the learned Civil Judge, Junior Division, 3rd Court, District Purba Bardhaman in Title Suit No.40 of 2018.

The opposite party nos. 1 to 3 as plaintiffs filed Title Suit No.40 of 2018 for declaration and permanent injunction with regard to the suit property. They also moved an application for injunction with a prayer for restraining the defendant/petitioner from dispossessing the plaintiffs forcefully from the suit property and or disturbing their right, title and interest and further restraining the defendants from creating any third party interest by transferring the suit property.

The learned Civil Judge, Junior Division, by

an order dated April 11, 2018 passed an ad-interim order restraining the defendants from dispossessing the plaintiff and/or creating any disturbance with regard to the right, title and interest and peaceful possession of the plaintiffs in respect of the suit property and further restraining the defendants from creating any third party interest.

Aggrieved, the petitioner preferred Misc. Appeal No.26 of 2018. The order of the learned Trial Judge was initially stayed by the learned lower appellate Court. Ultimately by an order dated August 27, 2019, the Misc. appeal was allowed in part, restraining the defendants from creating any third party interest with regard to the suit property.

Mr. Tanmoy Mukherjee, learned Advocate appearing on behalf of the petitioner submits that a title suit filed by the petitioner against the opposite party nos. 1 to 3 was decreed and the right, title and interest of the petitioner was declared. A decree for permanent injunction restraining the opposite parties from interfering with the possession of the petitioner was also passed.

He submits that thereafter Title Suit No. 147 of 2012 was filed by the opposite party nos. 1 to 3 for a declaration and permanent injunction with regard to the self-same suit property. He further submitted that the

opposite party nos. 1 to 3 were unsuccessful in getting any ad-interim order of injunction in the said suit. He further submitted that thereafter another Title Suit was filed being Title Suit No.40 of 2018 and the order impugned was passed in the said suit. According to Mr. Mukherjee, the subsequent suits were barred by law and unless and until the decree passed in Title Suit No. 159 of 1999 was set aside, the opposite party nos. 1 to 3 did not acquire any right, title and interest with regard to the suit property. As such, the learned Courts below ought not to have passed any order restraining the defendant/petitioner, in view of suppression and also on the non-maintainability of the subsequent suits which were barred by law. He further submits that the opposite party nos. 1 to 3 did not approach the Court with clean hands hence, they were not entitled to any order of injunction.

Mr. Samanta, learned Advocate appearing on behalf of the opposite party nos. 1 to 3 submits that the Title Suit No. 159 of 1999 was decreed ex parte and steps have been taken for setting aside the ex parte decree. He further submits that the suit property is a land and atleast alienation of the land should be prevented till the disposal of the suit. He further submits that the issues with regard to the maintainability of the suit and suppression of material facts etc will be decided

at the trial.

Heard learned Advocates for the respective parties. The records reveal that the contention of Mr. Mukherjee with regard to the ex parte decree and subsequent filing of two suits by the opposite party nos. 1 to 3 are correct. However, as the learned lower appellate Court has left all points open to be decided by the learned Civil Judge, Junior Division while hearing the application for temporary injunction, this Court refrains from making any observations on the merits of the case and directs the learned Civil Judge, Junior Division to hear out the application for injunction and dispose of the same within 10 days from the next date fixed. Objection and counter affidavit to be filed immediately if not filed.

The leaned Court below will decide the application for temporary injunction by taking into consideration the prima facie case specially with regard to the contention of the defendant/petitioner on the maintainability of the suit in view of the decree in his favour as also on the ground of suppression. All points are left open to be decided in accordance with law.

With the above observations, this revisional application is disposed of. Service upon the proforma opposite parties Nos.4 and 5 is disposed with.

The order impugned does not call for any

interference at this stage as it is informed that the application for injunction has been kept for hearing in the last week of this month.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)

