

S/L 8
11.01.2021
Court. No. 19
GB

C.O. 1435 of 2020

Sri Tapash Roy & Anr.
Vs.
Sri Sanku Dey & Ors.

(Through Video Conference)

*Mr. Tapash Kumar Bhattacharya,
Mr. Aviroop Bhattacharya.
...for the Petitioners.*

*Mr. Sagnik Chatterjee,
Mr. Debasish Mukherjee,
Ms. Jeenia Rudra,
Ms. Madhushri Dutta.
...for the Opposite Parties.*

The petitioners are defendant nos. 1 and 2 (principal defendants) in Title Suit No.161 of 2020, pending before the learned Civil Judge (Junior Division) at Jalpaiguri.

The petitioners are aggrieved by an order dated September 3, 2020, passed by the learned District Judge, Jalpaiguri in Misc. Appeal No.31 of 2020. By the order impugned the learned lower appellate court passed an ad interim order of injunction restraining the petitioners and/or their men and agents from making any construction in respect of the 'B' schedule property. The said ad interim injunction has been extended from time to time.

Aggrieved, the petitioners have moved this Court on the ground that the ad interim injunction amounted to allowing the appeal in its final form and that the learned

lower appellate court could not have restrained the defendants/petitioners from constructing over the entire 'B' schedule property, on which admittedly, the defendants/petitioners are owners in possession.

Mr. Bhattacharya, learned advocate appearing on behalf of the petitioners submits that the prayers in the injunction application as also in the plaint are restricted to the petitioners not leaving 4ft. space around the 'B' schedule property. The learned lower appellate court travelled beyond the prayers and granted a stay of the construction on the entire 'B' schedule property. Mr. Bhattacharya submits that the lower appellate court did not have the jurisdiction to pass such an order in view of the specific provisions under the West Bengal Municipal Act, 1993.

Mr. Chatterjee, learned advocate appearing on behalf of the opposite parties submits that the construction was going on in such a manner that a 4ft. space between the property of the plaintiffs and the property of the defendant nos.1 and 2 had not been left as per the Municipal Building Rules. He submits that if the construction was not stayed, then the entire construction in the northern side of the B Schedule property would be on the premises of the plaintiffs and would create damage to the property of the plaintiffs. He submitted that, considering the prima facie case, irreparable loss and injury as also the plaint, balance of convenience and inconvenience, the learned lower appellate court had rightly passed the order impugned.

I have perused the pleadings and admittedly I find that the only allegation of the plaintiffs is that the construction was going on without leaving 4ft. space. The plaintiffs enjoy the common boundary, which is in the northern side of the plot of the defendant nos.1 and 2, other parts of the B schedule property are not contiguous to the plaintiffs premises. The order impugned is modified to that extent that the defendant nos. 1 and 2/petitioners will not raise any construction on the northern side of the B schedule property which is contiguous to the land of the plaintiffs, but will be at liberty to proceed with their construction in terms of the sanctioned plan, granted by the municipality on the other three sides, till the disposal of the injunction application before the learned Trial Judge.

As nothing remains to be heard out in the Misc. Appeal No.31 of 2020, the same is disposed of accordingly with the consent of the parties. As the service upon the opposite party nos.3 and 4 had already been dispensed with by my predecessor Judge, they are not required to be heard in this proceeding as they are proforma parties.

The petitioners/defendant nos. 1 and 2 will file their written objections to the application for temporary injunction within three weeks. The learned trial judge is directed to hear out the application for temporary injunction within a period of two months from date. Parties are at liberty to appear before the learned trial judge and pray for fixing of dates. If the lower court records of Title Suit No.161

of 2020 has been received by the learned lower appellate court in Misc. Appeal No.31 of 2020, then the same be sent down immediately. Postal service by speed post and personal service be effected by both the parties upon the proforma defendants in order to expedite the hearing as directed hereinabove.

The revisional application is disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)