

S/L 44
08.02.2021
Court. No. 19
GB

C.O. 1580 of 2020

Sri Rabindra Nath Ghorui
Vs.
Radhakanta Ghorui & Anr.

(Through Video Conference)

*Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal.*

...for the Petitioner.

*Mr. S.M. Obaidullah,
Mr. Kalyan Kr. Bhattacharjee.*

...for Opposite Party No.1.

Mr. Dyutiman Banerjee.

...for Proforma Opposite Party No. 2.

Certified copy of the order of the learned trial court is taken on record.

This revisional application is directed against an order dated November 24, 2020, passed by the learned Additional District Judge, Kakdwip, District 24 Parganas (South) in Misc. Appeal No.11 of 2020 by which the order dated October 9, 2020, passed by the learned Civil Judge (Junior Division), Kakdwip, District 24 Parganas (South) in Title Suit No.141 of 2020 was reversed and a direction for maintaining *status quo* was passed.

The plaintiff filed Title Suit No.141 of 2020 and prayed for recovery of possession and permanent injunction. The plaintiff also prayed for an *ad interim* injunction. By the order dated October 9, 2020, the learned Civil Judge (Junior

Division), Kakdwip, District 24 Parganas (South) refused to pass an *ex parte ad interim* injunction. Misc. appeal was preferred. In the misc. appeal an application for injunction was filed and the learned lower appellate court by an interim order impugned directed the parties to maintain *status quo* in respect of the possession, nature and character of the 'Ka' and 'Kha' schedule properties till the next date. The learned court fixed the appeal for hearing.

Mr. Roy, learned advocate appearing on behalf of the petitioner the learned lower appellate court misdirected itself in passing the order impugned. That the suit was for recovery of possession of 'Ka' schedule property, which was allegedly enjoyed by the opposite party no.1 as a trespasser upon the licence being revoked and also for permanent injunction restraining the opposite party no.1 from interfering with the plaintiff's enjoyment of the 'Kha' schedule property. Thus, the order of *status quo* granted over 'Kha' schedule property was unfounded, baseless and amounted to causing irreparable loss and injury to the plaintiff as the said order would not enable the plaintiff to enjoy the 'Kha' schedule property as his own property, when admittedly the opposite party no.1 was in possession of the 'Ka' schedule property and not 'Kha' schedule property.

Mr. Obaidullah, learned advocate appearing for the opposite party no.1 and Mr. Dyutiman Banerjee, learned advocate appearing on behalf of the opposite party no.2 submit that when it was an admitted position that the

opposite party no.1 was in possession of the 'Ka' schedule property, in that case, *status quo* with regard to nature, character and possession of the 'Ka' schedule property was required to be passed till the adjudication of the application for temporary injunction.

I find substance in the submission of Mr. Roy. It is nobodies case that 'Kha' schedule property was being enjoyed by opposite party no.1. Moreover, it is the case of the plaintiff that the opposite party no.1 was trying to disturb the possession of the plaintiff in respect of the 'Kha' schedule property.

Under such circumstances, the revisional application is disposed of upon setting aside the order dated November 24, 2020 passed by the learned Additional District Judge, Kakdwip, District 24 Parganas (South) in Misc. Appeal No.11 of 2020, insofar as the *status quo* over the 'Kha' schedule property has been directed. It is directed that the plaintiff will not disturb the possession of the opposite party no.1/defendant in respect of the 'Ka' schedule property. The defendants will not change the nature and character of the 'Ka' schedule property nor create any third party interest. The defendant shall not interfere with the possession and enjoyment of the plaintiff in respect of the 'Kha' schedule property.

As nothing remains to be decided in the misc. appeal, Misc. Appeal No.11 of 2020 is disposed of accordingly with the consent of the parties. The learned trial Judge is directed

to expedite the hearing of the application for temporary injunction, which should be disposed of within two months from the next date fixed. If the defendants have not filed their written objection then they shall file the same within ten days from date. The interim order as passed by this Court in this application, shall be subject to the result of the application for temporary injunction. The learned trial Judge will decide the application for temporary injunction on its own merits and in accordance with law without being influenced by any observations made hereinabove.

LCR be sent down immediately to the learned lower appellate court within a week from the date of communication of this order, if the same has arrived before the learned lower appellate court.

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.)