

Item-5 23-02-2022

FMAT 6 of 2022
CAN 1 of 2022

sg Ct. 8

Yajur Fibres Limited & Anr.
Versus
Dharmendra Tiwari & Ors.

(Through Video Conference)

Mr. Aniruddha Chatterjee, Adv.
Mr. Chayan Gupta, Adv.
Mr. Souryadeep Banerjee, Adv.
Mr. Swip Raj Basu, Adv.
...for the appellants

Mr. Sounak Bhattaharyay, Adv.
Mr. Sumitava Chakraborty, Adv.
Mr. Bijoy Bag, Adv.
...for the respondent nos.1,2,4,6&8

By consent of the parties, the appeal and the connected application is taken up for hearing and disposed of by this common order.

We have heard the learned Counsel for the parties. While admitting the appeal formally, a coordinate Bench has dealt with the matter extensively before granting an order of injunction in favour of the appellants. The relevant observations of the co-ordinate Bench are reproduced below:

“The Trial Court refused to pass any ex parte ad interim order of injunction solely on the ground that in a suit for permanent injunction if an ad interim order is passed ex parte, it would virtually allow the main reliefs claimed in the plaint.

It is somewhat settled that there is no fetter on the part of the Court to pass an temporary injunction in a suit for permanent injunction provided the three golden tests required therefor are satisfied and explicitly pleaded. We do not find any justification in the findings

of the Trial Court that it is not a case for ex parte ad interim order of injunction where the Trial Court itself held that schedule 'B' property is a part of the schedule 'A' property which is owned and possessed by the plaintiff no.1 on the strength of the title deeds.

Law respects possession. The Court shall not allow a person to take the law in its own hand and dispossess the rightful owner from his settled possession. Since the schedule 'B' property is a part of the schedule 'A' property, which prima facie appears to have been comprised in the title deeds, executed in favour of the plaintiff no.1/appellant no.1, we do not find any justification in not extending the ad interim order in favour of the plaintiff no.1/appellant no.1.

Accordingly, the defendants are restrained from creating any obstruction in making the boundary wall on the peripheral of the schedule 'B' property subject however, on condition that if any permission is required under the law, the aforesaid plaintiff shall strictly adhere thereto. The interim order shall be operative for a period of six weeks from date or until further order, whichever is earlier."

Mr. Sounak Bhattacharyay, leaned Counsel appearing on behalf of the respondent nos. 1, 2, 4, 6 and 8 submits that the appearing respondents are in possession of title deeds which would establish that a portion of the land alleged to have been sold in favour of the appellants in a court sale, actually belong to the said respondents by virtue of an earlier transfer.

However, we feel this matter needs to be decided by the Trial Court after permitting the parties to come with their whole case. Although, we agree that an ex-parte ad-interim order of injunction in a suit of this kind could not be passed casually or

lightly but if there are considerations, which are overwhelming in favour of the plaintiffs to pass such an order, in order to preserve the property, an order of injunction with a limited duration could be passed. Moreover, taking into consideration that the interim order is in operation since 14th January, 2022 and after hearing the learned Counsel for the respondents, we do not find any reason in taking a different view that what was taken by the earlier coordinate Bench.

The said interim order shall continue for a further period of seven months from date or till the learned Trial Court decides the matter on merits, whichever is earlier.

The appearing respondents shall file their affidavit-in-opposition within a period of two weeks from date, reply thereto, if any, be filed two weeks thereafter.

The parties shall be at liberty to mention this matter before the learned Trial Court for preponing the date of hearing and the learned Trial Court may, on such request being made subject to convenience of the Court, prepone the date and will dispose of the matter as early as possible, preferably within a period of six months from the date of completion of the affidavits.

Directions with regard to the filing of pleadings are peremptory.

In the event the hearing of the application could not be concluded within the aforesaid time, it would be open for the learned Trial Court to pass appropriate orders after taking into consideration the merits of the matter.

However all endeavour shall be made by the learned Trial Court to dispose of the matter on merits as early as possible.

The observations made in this matter shall not influence the learned Trial Court in deciding the matter on merits.

The appeal and the connected application are, accordingly, disposed of.

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

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)