

07.02.2022
SL No.6
Court No.8
(gc)

FMA 1382 of 2018

Jayanta Prasad Chowdhury

Vs.

Debasis Dey & Ors.

(Via Video Conference)

The appellant is not represented nor any accommodation is prayed for even in the second call.

The appeal is arising out of an order passed by the learned Civil Judge (Senior Division), Diamond Harbour on 7th April, 2017 in connection an application for temporary injunction filed by the plaintiffs on 21st March, 2014. The defendant is the appellant. Before the learned Trial Judge, the plaintiffs contended that the plaintiff No.1 and plaintiff No.3 are the Director of B.I.E. Engineering Stores Pvt. Ltd. The plaintiffs have purchased the suit property from Jitendra Narayan Nandi, the owner of the suit property, along with the structures situated thereon by a registered deed of sale dated 28th December, 1981. The plaintiffs do not reside permanently in the suit plot. On 15th February, 2014 when they came to the suit property they found that the defendant Nos.4 and 5 are carrying on business of vehicle repairing in the ground floor. The first floor was also constructed illegally by the said defendants. On enquiry, it was further revealed that the defendant No.2 by misrepresenting himself as Managing Direction of the plaintiff company had transferred the suit property in

favour of the defendant No.1 and had executed deeds unauthorizedly and illegally in the name of the defendant No.1. The defendant No.1 in the said proceeding had contended that the appellant/defendant along with defendant No.6 are carrying on business and have purchased many properties from the joint income. The defendant Nos.1 and 6 purchased the half portion of the suit plot from Indra Narayan on strength of the registered deed of sale dated 28th December, 1981. In the year 1989, they dispossessed the predecessor in interest of the plaintiffs from the western portion of the suit plot and constructed therein an ice factory, office, staff quarter, etc. Subsequently, ice factory was closed and the shed for the same and the machineries were disposed of. The appellant/defendant had renovated the old office and are in occupation of the suit property as owners thereof. Essentially, the defendant had claimed right and possession of the suit property by virtue of adverse possession.

On consideration of the materials on record, the learned Trial Judge confirmed the ad-interim order passed on 21st March, 2014 whereby the defendant No.1, 4 and 5 are restrained from changing the nature and character of the suit property and from creating any third party interest in the suit property till disposal of the suit. In arriving at the said conclusion apart from the sale deed disclosed by the plaintiffs in favour of their title, photostat

copy of certified copy of the deed dated 28th December, 1981 was relied upon which would show that Jitendra Narayan Nandi had transferred the suit property along with non-suit properties in favour of the private limited company. This document, *prima facie*, establish his title in the suit property. The impugned deeds dated 5th December, 2009 would show that the defendant No.2 *prima facie* represented himself as Managing Director of the plaintiff company had transferred the suit property in favour of the defendant No.1. The defendant No.1 accepted the execution of the sale deed in respect of the suit property in his name but failed to show that he had the authority to execute the said deed on behalf of the company. If the defendant No.1 had no authority to represent the Private Limited Company and having regard to the fact that the property belongs to the Private Limited Company, the purchaser of the suit property cannot claim right, title and interest over the suit property.

However, we do not find any reason to interfere with the impugned order. Moreover, it appears from the impugned order dated 7th April, 2017 that the suit may have been disposed of in the meantime. In the event the suit is not disposed of in the meantime, we request the learned Civil Judge (Senior Division), Diamond Harbour to dispose of the suit as expeditiously as possible.

A copy of this order shall be communicated to the learned Civil Judge (Senior Division), Diamond Harbour in T.S. No.77 of 2014 for information and doing the needful.

The learned Registrar Administration (L&OM) is directed to ensure the communication of this order to the learned Civil Judge (Senior Division), Diamond Harbour for taking necessary steps.

With the aforesaid observation, the appeal being FMA 1382 of 2018 stands disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)