

DL. September
19. 6, 2022

F.M.A. 1397 of 2015
Sri Dipak Kumar Roy alias Bala
Vs.
Smt. Hemnalini Bala & ors.

The appellant is not represented, nor any accommodation is prayed on his behalf. However, we propose to decide the question of admission of the appeal on the basis of the materials available on record.

The present appeal has arisen out of an order dated March 18, 2014 passed by the learned Civil Judge (Senior Division), Second Court at Alipore, South 24-Parganas, in Title Suit No. 72 of 2013 in connection with an application filed by the plaintiff/appellant under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

The suit has been filed praying for declaration of title, cancellation of deeds and partition. The plaintiff/appellant alleged that the defendant no. 1 is the mother of the plaintiff and wife of Surendranath Bala. She was working as a teacher at Hoynagar Institution for Girls. On January 14, 1948, Surendranath Bala and his two brothers purchased one cottah of land out of the sale proceeds of the land that they owned in East Pakistan. Surendranath Bala constructed a one-storied house in a portion of the land that he had acquired. The plaintiff and his wife extended the construction with the permission of Surendranath. It has been alleged that Surendranath executed a deed of lease on December 19, 1947 in respect of the suit property in favour of the defendant no. 1. The defendant no. 1 was not the owner. It has been further alleged that

the defendant no. 1 purportedly executed a deed of gift in respect of a portion of the suit premises in favour of the defendant no. 2. The said deed of gift dated October 10, 2002, as alleged by the plaintiff, is illegal, void and not binding upon the parties. The plaintiff alleged that the defendant no. 1 having no right, title and interest in respect of the suit land could not have transferred her share in the suit property in favour of the defendant no. 2.

On the allegation that the defendants are trying to alienate and/or transfer the suit property, the application for temporary injunction was filed, which was contested by all the defendants.

During the pendency of the suit, an eviction suit was filed by the defendant no. 2 against the plaintiff/appellant. The plaintiff contended that the fact of filing an eviction suit by the defendant no. 2 against him is sufficient proof of possession of the suit property by the plaintiff. The plaintiff relied upon the records of right in order to show that the name of this mother never recorded contemporaneously in the records of right. It appears that the plaintiff relied upon a decision of the Supreme Court in the case of T. Lakshmipati & ors. vs. P. Nithyananda Reddy & ors. reported in A.I.R. 2003 S.C. 2427 as also in the case of Tanusree Basu & ors. vs. Ishani Prasad Basu & ors. reported in 2008 (2) Supreme Today 385 to argue that a co-owner in possession is entitled to injunction.

The learned trial judge, considering the comparative merits of the matter and upon arriving at a finding that the defendants are not trying to forcibly dispossess the plaintiff, refused to pass any order for temporary injunction. However, the learned

trial judge observed that in the event any construction is made by the defendants that shall abide by the result of the suit meaning thereby the principle of lis pendence should apply in relation to the construction. The defendants no. 2 to 4 have produced the original title deeds which prima facie shows that they are the owners of the suit property. They too were found to be in possession of a portion of the suit property. Their enjoyment in respect of the portion under their occupation could not be disturbed.

On such consideration, we do not find any reason to interfere with the order passed by the trial court refusing to grant any order for temporary injunction.

The appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

However, the learned trial judge is directed to dispose of both the suits being Title Suit No. 72 of 2013 and Title Suit No. 41 of 2013, which are tried analogously, if those remain still pending, as expeditiously as possible, preferably within a period of one year from the date of communication of this order without granting any unnecessary adjournment to either of the parties.

There will be no order as to costs.

The learned Registrar Administration (L & OM) of this court is requested to see that this order shall be communicated to the trial court within a period of two weeks from date.

(Soumen Sen, J.)

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(Uday Kumar, J.)

