

15.02.2022
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C.O. 175 of 2022
(Via Video Conference)

Vinayak Land Owners LLP
-Vs-
Ram Govind Rai & Sheo Govind Rai Transport
Agency & Ors.

Mr. Sankarsan Sarkar,
Mr. Abhrajit Mitra,

... for the petitioner

The present application under Article 227 of the Constitution India is at the instance of the plaintiff being aggrieved by the order of rejection of prayer for installation of a gate in schedule C property by learned Civil Judge (Junior Division), 4th Court, Howrah in Title Suit No. 1992 of 2015 on 06.12.2021.

Facts necessary for determination of the present case in gist is that the plaintiff and proforma defendant on becoming owners of the disputed property mentioned in the schedule "A" of the plaint by virtue of purchase in the year 2001 has filed Title Suit No. 1992 of 2015 for declaration that it and proforma defendant are the absolute owners/occupiers of the C schedule property which

is a part and parcel of A schedule. For declaration that the defendants have no right, title, interest and possession over the C schedule property and right to encroach the C schedule property. They have also prayed for injunction restraining the defendants from encroaching or parking any vehicle on C schedule property.

That in such suit the plaintiff has filed an application for injunction under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. The learned Trial Court was pleased to grant interim order restraining the strangers as well the defendants/opposite parties from parking their vehicles in C schedule property vide order dated 21.12.2015.

In order to implement such interim order of injunction plaintiff has filed an application under Section 151 of C.P.C. and which was allowed directing inspector in-charge of Golabari P.S. to implement the injunction order dated 21.12.2015.

However, it has been alleged the opposite parties continued to violate the ad interim order of injunction by illegally parking their vehicles in the C schedule property and filed an application under Order 39 Rule 2A read with Section 151 of C.P.C.

being Misc. Case No. 44 of 2021 before the learned Trial Court. Then plaintiff has come with the impugned application under Section 151 of C.P.C. seeking police help for implementation of the ad-interim order of injunction whereby the defendants and strangers have been restrained from parking vehicles on C schedule property. But learned Court below refused to grant any police help with the finding the only remedy which is available to the plaintiffs is under Order 39 Rule 2A CPC and it can not invoke its inherent power now and then at the pleasure of the plaintiffs when police has already submitted its report.

It is the case of the plaintiffs the defendant no.1 was inducted as a tenant in respect of B Schedule property by their vendors, but defendants no.2 to 9 who are proprietors of defendant no.1 claiming themselves as thicka tenants of the disputed property had initiated a proceeding and which at present is pending before the West Bengal Land Reforms and Tenancy Tribunal. They have also filed T.S.680 of 2016 before the same trial court challenging the titles of the plaintiffs over A schedule property.

In order to prevent the defendants from violating the injunction order, they have filed Writ Petition before this Hon'ble High Court being WPA 11195 of 2021 and where O.C Golabari P.S. was directed to submit a report and post a police picket of six constables at the cost of the plaintiffs on 26.06.2021.

It has been contended by the learned counsel for the petitioner that learned Trial Court cannot raise its hand of surrender to implement its own order. The learned Court below in exercise of its inherent power could have put back the party in the same position as they stood immediately prior to the passing interim relief. It is the duty of the Court to set the wrong right by exercising its inherent power. The learned Court below ought to have allowed the plaintiff to install a gate on the scheduled property to prevent further violation of its own interim order of injunction preventing the strangers and defendants from parking their vehicles on the C schedule property.

The learned counsel in support of his contention referred to Delhi Development Authority v. Skipper Construction Co. (P) LTD. & Anr. reported in (1996) 4 SCC 622 and Ghanshyam

Sarda v. Sashikant Jha, Director, M/S J. K. Jute Mills Com. Ltd. & Anr. reported in (2017) 1 SCC 599.

Let me see whether the impugned order suffers from any illegality or material irregularity?

By filling the impugned application under Section 151 of C.P.C. the plaintiffs wanted to put a gate on C schedule property to prevent further illegal parking on the C schedule property which learned Court below refused with observation that putting a gate on the C schedule property may infringe the easement right of ingress and egress of defendants who are the tenants of B schedule property situated by the side of C schedule property. It was also observed by the Court below that B and C schedule property are part and parcel of A schedule property. Nothing has come on record to show that C schedule property is butted and bounded by any specific boundary wall as schedule appended to the plaint reflects there lies "C" Schedule property on the southern side and on eastern side of the B schedule property. Installation of a gate from the entrance of M.A.K.A. Road will jeopardized the right to egress and ingress of the defendants.

Learned Advocate for the petitioner contended that it intend to install a gate on the main entrance of M.A.K.A. road and intend to post a security personnel for surveillance 24x7 of the gate. If such prayer is allowed then the outsider strangers will not be able to park their vehicles on the C schedule property.

Perused the impugned order and as well as hand sketch map produced by the petitioner. From where it is not possible to ascertain that C schedule property is bounded and butted by boundary wall on three sides and only passage leading to M.A.K.A. Road situated on the western side is open making easy for outsiders to park their vehicles or B schedule has direct access to Chamria Road situated on the Northern side and defendants need not pass through C schedule property to go to the property under their occupation.

Therefore, this court is of view there is need of local inspection of A, B & C Schedule property by an Advocate Commissioner in order to bring on record the actual status of the C schedule property and to ascertain whether indeed the same is a vacant land and being used for illegal parking and installation of a gate at M.A.K.A. Road will solve the

problem and whether there exist alternative way for ingress and egress of the defendants admittedly who are in possession of B Schedule property and installation of gate would take away their easement right to way or not.

In the aforesaid circumstances the impugned order is set aside and case is send back on remand with a direction to the learned Court below to pass necessary order in respect of the plaintiffs' application under Section 151 of C.P.C. after conducting local inspection of the suit property and dispose of the injunction petition, if pending within a month of receiving local inspection report.

Accordingly, **C.O. 175 of 2022 is disposed of.**

Connected application, if any, is disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)

