

21 11.05.2022

Ct-08

ar

FMA 384 of 2022
with
I.A No. CAN 1 of 2022

Jhareswar Karda Singh alias
Jhareswar Kara Singh alias
Jhareswar Singh & Ors.
Vs.
Smt. Sandhya Ray & Ors.

Mr. Rabindranath Mahata
Mr. Aritra Shankar Ray
.... For the Appellants

The appeal has arisen out of Order No. 12 dated 8th February, 2022 passed by the learned Civil Judge, Senior Division, Third Court at Midnapore, District-Midnapore(West) in Title Suit No. 175 of 2020.

The present appellants are the defendant nos. 1 to 7 in the Trial Court in the aforesaid suit.

The Trial Court passed an ad-interim ex parte order of injunction on 28th August, 2020, whereby both the plaintiffs and defendant nos. 1 to 7 are directed to maintain status quo in respect of respective possession and existing nature and character of the 'A' schedule property mentioned in the injunction application till 21.9.2020. This ad-interim order of injunction was made absolute on 8th February, 2022.

The plaintiffs filed the suit stating that 'A' schedule property belonging to the State of West Bengal and total 10.33 acres of the 'A' schedule property had been settled in favour of the some of the present plaintiffs, some of the present defendants, some of the predecessors of the present plaintiffs and some of the predecessors

of the defendants by patta being R.S. Case No. 161/1980-81 dated 5th January, 1981. Due to ignorance some of the plaintiffs and some of the predecessors of the plaintiffs did not apply for recording their names in the LR Record of Rights before the concerned B.L& L.R.O and subsequently the plaintiffs filed an application to record their names in the LR Record of Rights and the same is pending. The plaintiffs relied upon rent receipts issued by the State for their occupation in the said property.

The plaintiffs alleged that that the defendant nos. 1 to 7 somehow managed to record their names in respect of entire 'A' schedule property in the LR Record of Rights and the said recordings are false, fabricated and not binding upon the plaintiffs or their predecessors. The disputes started on 22nd July, 20202 when the defendants tried to broke the pump house, electric meter and swallow deep tubewell pump.

In the aforesaid context, the plaintiff nos. 1 to 7 prayed for partition of the suit, separate possession and other reliefs.

The defendants in the written statement have alleged that the documents produced by the plaintiffs are false and fabricated and after they became aware of the existence of such documents, they approached the W.B.L.R & T.T. The Tribunal, in presence of both the parties, passed an order by which the names of the defendants were recorded in the record of rights. The defendants contended that by reason of such recording, the plaintiffs have no right, title and interest in the suit property.

The Trial Court on consideration of the aforesaid materials has opined that the claim and counter-claim of the parties in relation to

existence of the patta or documents on which the defendants are relying upon to establish their right, title and interest could not be conclusively decided at the interlocutory stage and the Court is not required to hold a mini trial while deciding the application for injunction and on prima facie satisfaction of the documents, namely, patta, relied upon by the plaintiffs, which has a better evidentiary value than a mere recording of the record of rights to confirm the ad-interim order dated 28th August, 2020.

The learned Trial Judge, in our view, has rightly arrived at a conclusion that the copy of L.R records itself could not be established the property and it could be a prima facie evidence of possession and the defendants failed to show any document as regards W.B.L.R & T.T proceeding, wherefrom it is found that the names are recorded in the record of rights.

It is elementary to note that a suit for partition where claims are made with regard to their shares in the property or the jointness of the property, the same is required to be preserved unless there is an unclench evidence showing that the parties claim partition does not have any semblance of right in respect of any of the properties, unless an order of status quo is passed in a suit for partition and the plaintiffs suffered irreparable loss and prejudice if the suit is decreed in favour of the defendants.

Learned Counsel for the appellants submits that the plaintiffs have failed to prove their possession in respect of the suit property and taking advantage of the interim order they are disturbing the possession of the defendants.

In the interim order the learned Trial Judge has clearly stated that the plaintiffs and the

defendant nos. 1 to 7 are directed to maintain status quo in respect of respective possession and existing nature and character of the 'A' schedule property. We feel that the plaintiffs were able to establish that on 22nd July, 2020 the defendants tried to interfere with the possession of the plaintiffs.

The order adequately protects the interest of the appellants and none of the parties cannot interfere or disturb the possession of the others.

The appellants are not remediless in the event any annoyance and disturbance of their possession is made, as directed to be preserved by the Trial Court.

We request the learned Trial Court to expedite the trial of the suit by passing a peremptory direction and set a time frame within which the trial of the suit may be concluded.

It is needless to mention that the learned Trial Judge shall not be influenced by the observation in the impugned order or the order passed by us at the time of disposal of the suit on merit.

On such consideration the appeal being FMA 384 of 2022 is disposed of.

In view of disposal of the appeal, nothing remains to be decided in the application for injunction being CAN 1 of 2022 and the same is accordingly disposed of.

Let a copy of this order be communicated to the learned Civil Judge, Senior Division, 3rd Court at Paschim Midnapore, for information and doing the needful through the learned Registrar Administration (L & OM).

(Sugato Majumdar,J.)

(Soumen Sen, J.)

