

DL. January 7,
7. 2022

F.M.A.1011 of 2021

Sahanawaz Sardar @ Kalo

@ Sahanaj Sardar & anr.

vs.

Atibar Rahaman Thandar & ors.

Mr. Rabindra Nath Mahata,

...for the appellants.

This appeal has arisen out of an order passed by the learned Civil Judge (Senior Division), Third Court at Alipore, South 24-Parganas, in connection with an application for temporary injunction filed by the plaintiffs against the defendants no. 2, 3, 28, 37, 44 and 52 in a suit for declaration and partition thereby directing the plaintiffs and the defendants no. 2, 3, 28, 37, 44 and 52 to maintain status quo as to the nature, character and possession of the suit property.

The plaintiffs contended before the learned trial judge that the parties are in joint possession of the suit property by way of inheritance from their predecessor in interest and are presently in possession of the same jointly by paying government rates and taxes. However, in order to disturb the joint possession, the said defendants are trying to make construction in the suit property forcibly in the vacant portion of the suit property, which is being jointly possessed by the parties and unless the properties are partitioned in terms of the prayers made by the plaintiffs in the suit, the said defendants are not entitled to treat the said vacant land or a portion thereof as their own and make construction.

The defendants no. 1, 2, 3 and 4 filed their written objection in which the said defendants denied most of the

contentions of the plaintiffs/petitioners in the application for temporary injunction.

The defendants no. 37 and 44 also filed their written objection vehemently opposing the contentions of the plaintiffs in the application for temporary injunction.

The plaintiffs also filed rejoinder to the written objection filed by the defendants no. 1, 2., 3 and 4 wherein the specific contention of the plaintiffs appears to be that the properties mentioned in annexures to the written objection filed by the defendants No. 37 and 44 are fake documents whereas the names of the plaintiffs appear in the L.R.R.O.R. and the said entry was not challenged by the defendants. It has been specifically contended on behalf of the plaintiffs that no document has been relied upon by the defendants no. 37 and 44 to show that they have an exclusive right to possess any part or portion of the land forming the subject matter of the partition suit and in the absence of challenge being thrown to the entries made in the L.R.R.O.R., the plaintiffs have been able to make out a strong prima facie case for sustaining the ex parte ad interim order of injunction passed earlier in the said proceeding.

The contention of the plaintiffs as is reflected from the order impugned is that in the event the defendants have right to make any construction in the land treating it to be their exclusive property would cause irreparable loss and injuries to the plaintiffs inasmuch as the defendants have failed to establish that the area over which the defendants are claiming right were in their actual physical possession.

We have carefully considered the order under

challenge in this appeal. the trial court in confirming the ex parte ad interim order of injunction has considered the documents filed by both the parties and observed that the plaintiffs were able to make out a prima facie case in their favour and that the balance of convenience and inconvenience also lean in favour of the plaintiffs.

Mr. Rabindra Nath Mahata, learned advocate appearing on behalf of the appellants, submits that the order impugned does not disclose any reason, as is expected from the trial court, in confirming the ex parte ad interim order of injunction and in the absence of such reason or a cryptic observation being made by making reference to the expression like "prima facie case or balance of convenience and inconvenience in favour of the plaintiffs" without elaborating as to how the said expression would be made applicable in the instant case, the order impugned is wholly unsustainable and is required to be set aside.

It is true that the learned trial judge has not elaborately discussed the issues as one could have expected in the facts and circumstances of the case, but it cannot be said that the order impugned suffers from total non-application of mind, particularly, having regard to the fact that the learned trial judge has relied upon some of the documents, although not elaborately mentioned in the ordering portion of the order impugned wherefrom it appears that the learned trial judge, in fact, took into consideration the averments made by one Nasiruddin Thander Molla, the constituted attorney of the plaintiffs, who filed rejoinder to the written objection filed by the defendants no. 37 and 44, wherein reference was made to the L.R.R.O.R. and other records prima facie

establishing the joint possession of the plaintiffs along with the defendants. The defendants, in our considered opinion, have not been able to make out their claim by any cogent evidence which would make the claim of the plaintiffs over the suit property absurd. It is the duty of the court in a partition suit to preserve the status of the parties vis-à-vis the property in suit which the learned trial judge has precisely done in the instant case. However, we fully appreciate the anxiety expressed by Mr. Mahata, learned advocate appearing on behalf of the appellants, that a partition suit may linger for an indefinite period of time and ultimately the fruits of the decree the defendants may not be able to enjoy.

In view of the anxiety expressed by Mr. Mahata, we feel that the learned trial judge should expedite the disposal of the suit by inviting the parties for a preliminary decree of partition on admission of shares and thereafter shall proceed to draw up final decree on the basis of such preliminary decree and its implementation thereof.

With the aforesaid observations, we dispose of the appeal even at the admission stage without interfering with the order passed by the learned trial judge.

There will be no order as to costs.

(Soumen Sen, J.)

(Biswajit Basu, J.)