

04.08.2022
Item No.21
Ct. No.7
CHC
(disposed of)

C.O.1559 of 2022

Hazi Seikh Ahammed Hossain
Vs.
Rojina Bibi & ors.

Mr. Nitai Ch. Saha,
Mr. Abhijit Ch. Majumder
...for the petitioner

Mr. Tapas Kumar Dinda,
Ms. Anjali Jaiswara
...for the opposite parties

The subject-matter of challenge in this case is against an order dated 20th May, 2022, passed by learned District Judge, South 24 Parganas, in Misc. Appeal No.150 of 2022, staying the order dated 11th May, 2022, passed by learned Civil Judge (Junior Division), 3rd Court, Alipore, in Title Suit No.1134 of 2020, granting injunction, and thereby finally disposing of application for injunction under Order 39 Rule 1 and 2 C.P.C.

Admittedly,, the petition for temporary injunction under Order 39 Rule 1 and 2 C.P.C. has been finally disposed of in a contested manner granting injunction thereby restraining defendant nos.1 and 2 from ousting the petitioner/plaintiff from the suit land, and also from changing the nature and character of suit land till the disposal of the instant suit. The order

granting injunction was carried in Misc. Appeal by Misc. Appeal No.150 of 2022.

Learned advocate appearing for the petitioner/plaintiff submits that on the strength of a Gift Deed, executed in the year 2011, the petitioner acquired right, title and interest over the suit property, and since the date of purchase, petitioner/plaintiff is in possession of the subject property now under reference.

It is contended by the learned advocate for the petitioner that the first lower appellate court has not appropriately gone into the points involved in this case, and mechanically granted stay of the order passed by the trial court granting injunction.

It is also contended that no opportunity of hearing was given to the petitioner, while staying the order passed by the trial court granting injunction.

Per contra, Mr. Dinda, learned advocate for the opposite parties, adverting to paragraph-‘3’ of the written objection, filed by the opposite parties against the prayer for injunction, submits that the opposite parties/defendants already denied right, title and interest of the petitioner, thereby disputing with the title and possession of the plaintiff on the score that opposite parties/defendants had acquired right, title, interest and possession of the suit property together

with some properties on the strength of their purchase deed.

Learned advocate for the opposite parties further contends submitting that there cannot be any injunction granted against the rightful owner in a case when the title conferring document of the plaintiff/petitioner is a doubtful one.

Having considered the submission of both sides, it appears that petitioner claims to have acquired right, title and interest on suit property on the strength of Gift Deed executed in the year 2011, while opposite parties upon denying the title and possession of petitioner/plaintiff in respect of the suit land, asserted their right, title, interest and possession over the suit land together with other properties, on the strength of their purchase deed. It is thus clear that both parties have put forward their respective claim upon asserting their respective title and possession over subject property under reference.

That being the position, preservation of the suit property is of highest significance, pending decision of the appeal. The impugned order staying operation of order dated 11th May, 2022, passed by learned Civil Judge (Junior Division), 3rd Court, Alipore in Title Suit No.1134 of 2020, is modified directing both the parties to maintain *status quo* in respect of nature, character and possession of the suit land till decision of

Miscellaneous Appeal No.150 of 2022. The impugned order is thus modified to the extent mentioned hereinabove.

Both the parties are at liberty to raise all points within the peripheries of Miscellaneous Appeal at the time of final hearing of pending Miscellaneous Appeal, which may be disposed of expeditiously as possible, preferably within a period of 10 (Ten) weeks from the date of communication of this order to the court below.

Parties are directed to make communication of this order to court below.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)