

05.09.2022
Item No.01
Court No.32
Avijit Mitra

MAT 862 of 2019
with
IA No. CAN 1 of 2019 (Old No. CAN 5903 of 2019)
with
IA No. CAN 2 of 2019 (Old No. CAN 5904 of 2019)
with
IA No. CAN 3 of 2021

Sk. Tofajjel Hossain alias Sk. Tofazzel Hossain
- Versus -
Jabiur Rahaman & ors.

Mr. Iftakar Munshi
....for the applicant
Mr. Sayan Sinha,
Mr. Rishabh Dutta Gupta
....for the private respondent nos.1 & 2

Records reveal that the writ petition being W.P. No.25584 (W) of 2017 was disposed of by an order dated 1st April, 2019. One Sk. Tofajjel Hossain alias Sk. Tofazzel Hossain has filed an application in IA No. CAN 3 of 2021 for leave to prefer an appeal against the said order dated 1st April, 2019. Along with the said application, an application for condonation of delay being IA No. CAN 2 of 2019 (Old No. CAN 5904 of 2019) and an application for stay being IA No. CAN 1 of 2019 (Old No. CAN 5903 of 2019) have been filed.

As we have invited Mr. Munshi, learned advocate appearing for the applicant in IA No. CAN 3 of 2021 to advance his arguments on merits, the delay in preferring the said application is condoned and the application being IA No. CAN 2 of 2019 (Old No. CAN 5904 of 2019) is disposed of.

Mr. Munshi submits that there is no dispute that the applicant is the owner of the LR plot no. 3572 and that the

said plot is adjacent to the writ petitioners' plot of land being LR plot no.3570 and as such the applicant ought to have been impleaded in the writ petition. The applicant has preferred two applications for pre-emption pertaining to portions of land in plot no.3570. After the writ petition was disposed of and as the writ petitioners were interfering with the applicant's possession over LR plot being no.3572, the applicant preferred a title suit being Title Suit no.106 of 2020 impleading the writ petitioners. In the said title suit, an *interim* order was passed on 13th March, 2020 restraining the defendants from disturbing the peaceful enjoyment of the applicant over the LR plot no.3572.

He argues that the dispute in the writ petition was civil in nature and as such the writ petition for police protection was not maintainable. Suppressing material facts, the writ petitioners approached the writ court without impleading the applicant and obtained the order behind his back. The said order has seriously prejudiced the applicant and his legal right has been infringed. In support of his argument, Mr. Munshi has placed reliance upon judgments delivered in the cases *Chandan Jaiswal Vs. Officer in Charge, Shakespeare Sarani Police Station and Others*, reported in 2020 SCC OnLine Cal 1691, *Dhirendra Nath Dey & Ors. Vs. Anath Chandra Guin & Ors.*, reported in 2009 SCC OnLine Cal 400, *Sri Naba Kumar Das Vs. The State of West Bengal & ors.*, reported in 2015 SCC OnLine Cal 10398 and *Radhey Shyam and Another Vs. Chhabi Nath and Others*, reported in (2015) 5 SCC 423.

Per contra, Mr. Sinha, learned advocate appearing for the writ petitioners submits that the applicant has no right whatsoever over the LR Plot no.3570, which belongs to the writ

petitioners. However, two pre-emption cases have been preferred by the applicant pertaining to portions of the said LR plot no. 3570. No *interim* order has been obtained by the applicant in the said pre-emption cases and in fact one pre-emption case has also been withdrawn by the said applicant. After the writ petition was disposed of, the applicant preferred a title suit being Title Suit No.106 of 2020 and a restraint order has been obtained by the applicant and as such his right is well protected.

Both Mr. Munshi and Mr. Sinha have drawn our attention to an inspection report filed by the learned Advocate Commissioner appointed in Title Suit No.106 of 2020. It is the contention of Mr. Munshi that from the said report it would be evident that the writ petitioners are encroaching upon the applicant's plot of land whereas Mr. Sinha contends that separate plot numbers being LR plot nos. 3572 and 3570 have been identified and it has also been stated therein that there is no construction of boundary wall over the 'A' schedule property belonging to the applicant.

Drawing our attention to the annexures to the affidavit-in-opposition filed in CAN 3 of 2021, Mr. Sinha submits that the applicant herein entered into an agreement for sale on 29th September, 2016 with one Khalisani Najrul Smriti Sangha and the members and/or portfolio holders of the said club were impleaded in the writ petition. It is in aid of the members of the said club, the applicant wants to prevent the writ petitioners from constructing the boundary wall on their own land.

There is no dispute as regards the proposition of law as laid down in the judgments upon which reliance has been

placed by Mr. Munshi. However, a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact may make a lot of difference in the decision making process. The judgments cited on behalf of the applicant are distinguishable on facts.

In the order impugned it has been observed by the learned Single Judge that erection of boundary wall done by the petitioners pursuant to the order of this Court, will not create any equity and right, title and interest in favour of the petitioners and that construction of the wall would be subject to the result of the pending proceedings.

Indisputably, the writ petitioners have been allowed by the order impugned to erect a boundary wall over their own property. The applicant has not earned any right in the pre-emption proceedings pertaining to the writ petitioners' plot being LR plot no. 3570. It appears that the applicant's possession over his plot of land being plot no. 3572 has been protected by an order passed by the competent Civil Court.

In the said conspectus and as no legal right of the applicant pertaining to the plot no. 3572 has been infringed, we are not inclined to allow the application for leave to appeal.

In view thereof, the application being IA No. CAN 3 of 2021 is dismissed. Consequently, the appeal being MAT 862 of 2019 and the stay application being IA no. CAN 1 of 2019 (Old No. CAN 5903 of 2019) are also dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)