

22.11.2022
Item No.22
Ct. No.7
CHC
(disposed of)

C.O.1744 of 2022

**Sri Sri Shyam Sundar Jew Sri Sri Laxmi Narayan
Jew Shri Radhesyam Jew represented by
Managing Trustee, Shrimati Rajyashree Ghosh
Vs.
Ajit Kumar Satpati & ors.**

Mr. Rabindranath Mahato,
Mr. Aritro Shankar Ray
...for the petitioner

Mr. D. K. Adhikary,
Mr. Sourav Mitra,
Ms. Sreyasee Choudhury
...for the opposite parties

Rejection of a prayer for ad interim injunction in
Misc. Appeal No.76 of 2022 is under challenge in this
case.

Mr. Mahato, learned advocate appearing for the
petitioner submits that the court below in appeal has
not gone into the points disclosed in the documents,
while proposing for ad interim injunction, and thus
improperly rejected the prayer for ad interim
injunction.

It is further submitted by Mr. Mahato that
schedule of the deed giving right, title and interest to
the defendants would not match with the schedule of
the plaint disclosing particulars of the properties
mentioned therein.

Incidentally, it is submitted by Mr. Mahato that though there has been construction reached up to certain level, but when the title of such property is disputed one, an injunction is felt obligatory.

Per contra, denying the submission of Mr. Mahato, Mr. Adhikary, learned advocate appearing for the Caveators/opposite parties submits that instant suit itself is not maintainable, and when the suit itself is not maintainable, there may not be any injunction granted.

Supporting the order of the court below, regarding rejection of the prayer for ad interim injunction, learned advocate for the opposite parties submits that there lies nothing to be interfered with.

Having considered the submission of both sides, it appears that refusal of a prayer for ad interim injunction in Misc. Appeal against a decision passed by the learned trial court, declining to grant injunction finally under Order 39 Rule 1 and 2 C.P.C., is subject of fight between the parties

The moot point thus raised by the parties to this case is relatable to the title of the property, which is sought to be adjudicated by the court below. When construction has reached to an optimum level nearing completion, and upon consideration of which, the court below has declined to pass any interim order granting injunction, such findings at this stage would

remain unaltered with, being a product of discretion, lawfully exercised by the court below.

More so, there is no express perversity in the impugned order requiring intervention by this Court under Article 227 of the Constitution of India. The appeal is still pending, the same may be expedited. The maintainability of the suit, if raised, may also be decided by the court below in appeal. All points now raised, by Mr. Mahato may be raised during the final hearing of this Misc.Appeal, and if such points are raised that shall be resolved in accordance with law, providing sufficient opportunity of hearing to either of the parties to this case.

The logical conclusion of the pending Misc. Appeal as such may be reached expeditiously as possible preferably within ten (10) weeks from the date of communication of this order.

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

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

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.)