

DL. February
6. 3, 2022

F.M.A. 1148 of 2021

Sri Dhiren Gorain @ Nilkamal Gorai
Vs.
Sri Bhuban Gorai & ors.

Mr. Abhijeet Ray,
Mr. Sundar Gopal Bhattacharya,
...for the appellant.

The affidavit of service filed in court today is taken on record. In spite of service, the respondents remain unrepresented.

This appeal has arisen out of an order dated July 7, 2021 by which the learned Civil Judge (Senior Division), First Court at Asansol, Paschim Bardhaman, refused to pass an ex parte ad interim order of injunction in favour of the plaintiff/appellant. The ground for refusal was that the plaintiff/appellant failed to submit any document showing that he ever had challenged the revisional settlement record of rights.

It appears from the record that the appellant has challenged the recording of the names of other co-sharers in the revisional settlement record of rights depriving the plaintiff/appellant, which proceeding, we have been informed, is still pending. Such fact appears to have been ignored by the learned trial judge.

The learned trial judge would be required to consider the merits of such challenge only for the purpose of appreciating whether the plaintiff/appellant had a prima facie case to argue on merits and not necessarily that at the trial the plaintiff would succeed. However, it appears that as on date the names of the

defendants no. 1, 5, 12, 16, 17 and 18 are appearing in the relevant land revenue records and that there has been some transfers in the meantime.

On the basis of the conspectus of facts, for the purpose of ex parte ad interim order of injunction, we feel that the learned trial judge did not commit any wrong. We have been informed that the matter is fixed on March 25, 2022 for hearing the application for temporary injunction.

In the event, it is revealed from record that the plaintiff has a prima facie case and the balance of convenience is in favour of the plaintiff, it is needless to mention that the plaintiff would be entitled to an order of injunction.

It is submitted on behalf of the appellant that requisites have already been put in and service might have been effected upon the defendants in the meantime.

However, having regard to the fact that service of notice of this appeal has been effected on the respondents, we assume that the respondents are aware of the challenge being thrown to the impugned order.

The defendants shall file their reply to the show cause, as directed by the learned trial judge on July 7, 2021, on or before March 10, 2022; rejoinder thereto, if any, is to be filed by the plaintiff on or before March 21, 2022 upon prior service to the learned lawyer representing the said defendants.

We request the learned Civil Judge (Senior Division), First Court at Asansol, Paschim Bardhaman, to decide the application for temporary injunction as expeditiously as possible

without granting any unnecessary adjournment to either of the parties and without being influenced by any of the observations made by us in this order or by the observations made by him in the impugned order dated July 7, 2021. .

In the event, the defendants fail to give reply to the show cause within the time specified, as above, and/or fail to appear on the adjourned date, the learned trial judge shall proceed to hear the application for temporary injunction and may pass appropriate order on the next date fixed.

This order shall be communicated to the defendants/respondents by the learned advocate on record for the appellant through registered speed post with acknowledgment due and necessary proof of such service upon the said respondents shall be filed before the trial court on the next date fixed.

With the aforesaid directions, the appeal is disposed of even at the admission stage.

In view of disposal of the appeal, nothing remains in the application for injunction filed under CAN 1 of 2021 and the same is also disposed of.

There will be no order as to costs.]

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

(Soumen Sen, J.)

dns

(Ajoy Kumar Mukherjee, J.)

