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Ct. No. 04

Akd

F.M.A. 1252 of 2021

With

CAN 1 of 2021

**Prabhu Vinayak Enterprises
Vs.
Roseview Developers Private Limited & Ors.**

**Mr. Aniruddha Chatterjee,
Mr. Ishan Saha,
Ms. Surabhi Banerjee,
Mr. Himangshu Bhawsinghka.
... for the appellant.**

**Mr. Saptangshu Basu,
Mr. Farhan Gaffar,
Mr. Santanu Chatterjee.
... for the respondents.**

The instant appeal arises from an order dated 17th August, 2021 passed by the learned Civil Judge (Senior Division), 7th Court, Alipore in Title Suit No. 228 of 2021, by which the prayer for ex parte ad interim order of injunction was refused and direction was passed upon the plaintiff to issue notice upon the defendant no. 1 to show cause why the prayer for temporary injunction should not be granted against them.

The suit which was filed by the plaintiff/appellant pertains to declaration of title, cancellation of deed and permanent and mandatory injunction. According to the plaintiff/appellant, the suit property was purchased by them through two deeds executed and registered in the year 2010 and immediately thereupon they were put in possession by their vendors.

After obtaining the prior permission of the local Gram Panchayat for construction of a boundary wall to protect the suit property, there was an alleged resistance from the defendants and attempt was made by the defendant no. 1 to enter upon the said

property.

In the backdrop of the aforesaid, an application for temporary injunction was taken out and the findings returned by the Trial Court would reveal that the defendant no. 1 claimed right, title and interest in respect of the suit property on the strength of the deed executed in the year 2008, which led the learned Judge to refuse the ex parte ad interim order of injunction, as the earlier deed shall have the primacy over the later deed. The Trial Court was further swayed by the fact that the plaintiff/appellant has not attempted to mutate his name in the municipal record, though allegedly acquired the property for nearly a decade; that raises a doubt on the possession. Another reason which the learned Judge in the Trial Court has assigned in the impugned order that though the permission was obtained from the local Gram Panchayat, there is no document showing that the plaintiff/appellant acted thereupon and constructed the boundary wall.

At the time of moving the instant appeal, this Court finds that a reasonable ground has been made out for admission of the appeal and, in fact, admitted the appeal on 22nd September, 2021 and simultaneously passed an order directing the parties to maintain status quo as on that date regarding ownership and possession of the property in question. The said order is operative up till now and, in fact, the matter was mentioned for extension of the interim order, which either expired yesterday or going to expire today.

However both Mr. Basu, learned Senior Advocate appearing for the respondents and Mr. Chatterjee, learned Advocate appearing for the appellant, submit that the entire appeal can be conveniently disposed of and the Court should not invest further time in

extending the interim order.

In view of such consensus has been arrived amongst the Counsels, we take up the instant appeal.

Findings which have already been made hereinbefore narrating the sequel of events and the incidents of the property in question where serious dispute not only over the validity of the deed but also the rights claimed therein are required to be determined in the said suit. Pending such determination the property should not be allowed to be dissipated nor to be diminished but must be protected.

Since the ad interim order was passed as far back as on 22nd September, 2021 and the application for temporary injunction is at the nebulous stage, we feel that it would sub-serve the justice if the temporary injunction application is disposed of on an expeditious basis.

Since the defendants/respondents did not get an opportunity to file affidavit controverting the allegations made in the application for temporary injunction, we thus permit Mr. Basu's client to file such affidavit within ten days from date before the Trial Court; reply thereto, if any, shall be filed within four days thereafter.

The Trial Court shall dispose of the temporary injunction application within one month from the date of the communication of this order after affording an opportunity of hearing to the parties or their respective Counsels by recording proper reasons.

In order to adhere the time limit indicated above, the Trial Court may prepone the date, if already fixed, beyond the said period in presence of the parties.

Both the Counsels have assured this Court that they would assist and co-operate the learned Judge in the Trial Court in complying with the time limit strictly and shall not seek any unnecessary adjournment except under unavoidable and unforeseen circumstances.

The interim order passed on 22nd September, 2021 by this Court shall continue till the disposal of the application for temporary injunction or until further order, which may be passed depending upon the contingencies and exigencies that may arrive.

For abundant precaution it is hereby made clear that consideration at the time of passing an ex parte ad interim order of injunction is different than the consideration at the time of disposing of an application for temporary injunction after exchange of affidavits and, therefore, the Trial Court shall not be swayed by the fact that this Court has passed an ex parte ad interim order of injunction.

The Trial Court is expected to return the findings on the said application for temporary injunction independently and in accordance with law.

The time limit given hereinbefore is peremptory and mandatory.

The appeal and application are disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

