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C.O. 1963 of 2022

**Sri Sudipta Kumar Maiti
Vs
Suvrajit Nandy**

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Ms. Dipannita Ghosh,
Mr. Kaustav Bhattacharyya
... For the petitioner.

Mr. Satyam Mukherjee,
... For the opposite party.

The subject matter of challenge in this revisional application is against the order dated 10th June, 2022 passed in Miscellaneous Appeal No. 56 of 2021 passed by the Additional District Judge, 2nd Court, Barrackpore, reversing the order of the Trial Court dated 16th November, 2021 in Title Suit No. 314 of 2021 granting ad interim order of injunction.

Admittedly, in a suit for declaration and injunction, petitioner for the protection of his alleged possession filed a suit, and in connection therewith ad interim order of injunction was granted. The opposite party being dissatisfied with the order of injunction carried the same in appeal. The appellate court by the order impugned vacated the order of ad interim injunction upon reversing the order of the Trial Court.

Mr. Debjit Mukherjee, learned advocate for the petitioner submits that the court below in appeal has

not appropriately gone into the question of possession, while deciding the Misc. Appeal. It is submitted by Mr. Mukherjee that even assuming for a moment that the possession with respect to the 'B' scheduled property of the plaint, as claimed allegedly by petitioner is doubtful or illegal, in that event too, the petitioner may not be evicted without adhering to the due process of law.

It is submitted by Mr. Mukherjee that petitioner has been favoured with a Will by one Bimalananda Maity causing deprivation of his daughter to the line of succession as his legal heir. A probate proceeding has already been invited to give effect to the Will.

It is thus submitted by Mr. Mukherjee, that there is fair chance of causing dispossession of petitioner's property in respect of the 'B' scheduled property, and unless some protection is given, the pending injunction application may be frustrated.

Per Contra, Mr. Satyam Mukherjee, learned advocate for the opposite party, submits that Mohana Rayan (nee Maity) is now residing at Australia, and the suit property has been directed to be taken care of by her constituted attorney, being only legal heir left by her father/testator of alleged Will.

It is contended by the opposite party that lawful possession of the opposite party, namely Mohana Rayan (nee Maity) has been disturbed by the petitioner, and virtually she has been ousted from the suit property.

There is an eviction suit pending against the tenants residing in the entire second floor, as well as some portion of the ground floor.

Supporting the order of the appellate court, learned advocate for the opposite party submits that there cannot be any injunction granted against the lawful title holder, and the proposed injunction, if there be any, may be had from pending probate proceeding.

Having considered the submission of both sides, it appears that the entire apprehension of petitioner is with respect to 'B' scheduled property by forceful means and that has arisen after the decision was returned by the First Lower Appellate Court in Misc. Appeal, referred above, upon vacating the order of ad interim injunction, granted by the Trial Court.

When injunction application under Order 39 Rules 1 and 2 is still pending before the Court below, and in connection therewith, a written objection has already been filed by the opposite party, this court should not go deep into the question for deciding the question of possession and the chance of dispossession, if any.

The revisional application is disposed of directing the court below to dispose of the application for temporary injunction under Order 39 Rules 1 and 2 of the C.P.C., providing sufficient opportunities of hearing to either of the parties to this case, but without granting

unnecessary adjournments, unless it is extremely unavoidable.

While endeavouring such exercise, the pending application may be disposed of, preferably within a period of six months from the date of communication of this order, excluding the period of puja vacation to be intervened in the Trial Court.

Pending decision the injunction application, as referred above, an order of status quo may be maintained by both the parties with respect to 'B' scheduled property.

The impugned order is thus modified to that extent mentioned hereinabove.

The Trial Court will decide the injunction application upon subscribing independent reasons, addressing the points raised by both the parties, together with the documents that would be placed by either of the parties to the case.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)

