

DL. February
20. 14, 2022

F.M.A. 102 of 2022

M/S. Akshay Horticulture Private Limited

Vs.

Susanta Malik & ors.

Mr. Anirban Bose,
Mr. Satyajit Senapati,
...for the appellant.

This appeal has arisen out of an order dated August 31, 2021 passed by the learned Civil Judge (Senior Division), Second Court at Howrah in Title Suit No. 521 of 2021 in connection with an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

Before the trial court, it was contended that the plaintiff/appellant was in possession of the suit property and that on July 20, 2021 he was dispossessed by the defendants/respondents illegally and forcibly. It has been alleged that the defendants have trespassed into the suit property and tried to create third party interest thereon. The plaintiff/appellant, therefore, prayed for an ad interim order of injunction restraining the defendants/respondents from creating any third party interest.

The trial court refused to pass any ex parte ad interim order of injunction on the ground that the plaintiff/appellant is, admittedly, out of possession of the suit property and has challenged four deeds of conveyance on the ground that the person executed the said deeds was an imposter.

In view of the fact that the appellant has expressed an

apprehension that there is a possibility of creating third party interest in respect of the suit property, we direct the trial court to consider the prayer for temporary injunction on the next date fixed, that is, on February 22, 2022, which we have been informed, 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, as we have not heard the respondents.

The plaintiff/appellant shall serve a copy of the application for temporary injunction, if not already served, on the defendants/respondents within one week from date by registered speed post with acknowledgment due.

There shall be an order of injunction restraining the defendants/respondents from creating any third party interest in respect of the suit property till February 22, 2022.

We make it clear that this order is passed on the basis of the assertion made by the plaintiff/appellant that he was in possession of the suit property till July 20, 2021 and keeping in mind the principle that law must respect possession.

Needless to mention, the plaintiff/appellant has to prove its prima facie case, the balance of convenience in favour of itself and irreparable loss and prejudice before the trial court at the time of hearing of the injunction application in order to get an equitable relief.

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 stay filed under CAN 1 of 2022 and the same is

also disposed of.

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.)