20.12.2022
SL No.182
Court No.8
(gc)

FMAT 542 of 2014
CAN 1 of 2014 (Old No: CAN 5330 of 2014)

Samsi Regulated Market Committee & Ors.
Vs.
Amar Chand Agarwala & Ors.

This matter appeared in the Warning List of 29th November, 2022 with a clear indication that this matter shall be transferred to the Regular Bench on 5th December, 2022. Since then the matter is appearing in the list. The appellants have due notice of the matter. The appellants are not represented.

The appeal is defective. The appeal was filed on 15th May, 2014. The Additional Stamp Reporter has reported various defects in its reported dated 3rd June, 2014 but no attempt has been made to remove the defects.

We could have dismissed the appeal for non-removal of the defects. However, we propose to decide the admission of the appeal on consideration of the materials on record. The instant appeal is arising out of an order passed by the Trial Court on 5th April, 2014 by which the parties were directed to maintain status quo as regards the possession, nature and character of the suit property till the disposal of the suit. The said order was passed after contested hearing. The plaintiffs filed a suit alleged that the defendant Nos.1 to 3 have started constructing their market complex by encroaching of their land. The plaintiffs claimed that while they are in possession of their land, a land acquisition case had started and 6 decimals of land had been acquired by the State Government vide LA Case No.6/56-57 and all the co-sharers started possessing rest 31 decimals of land in R.S. Khatian No.33. Thereafter, the plaintiff Nos.1 and 2 have purchased 18-1/3 decimal of land from Phanibhusan, Muralidhar, Bidhubhusan, Rakhal, Goyanath and Sarada vide registered deed No.5221 dated 3rd July, 1967 and started possessing the same in ejmali with other co-sharers. It was during such possession, the State Government acquired further 25 decimals of land for Samsi Regularted Market Committee out of that 10.459 decimals of land had been acquired from the purchased land of plaintiff Nos.1 and 2 for which they had been duly compensated. Subsequently, the plaintiff No.1 gifted 02 decimals of land in favour of plaintiff Nos.3 to 5 on 12.02.2014 by a registered deed. The plaintiff No.2 had also sold and transferred 02 decimals of land in favour of the defendant Nos.3 to 5 on 13.02.2014 by a registered deed of sale and delivered possession to the said defendants. Another co-sharer also had sold her share in favour of the predecessor of the defendant Nos.4 to 15. It appears that the defendant Nos.1 and 2 have only contested the suit proceeding in their possession. The defendants have contended that Rahu Mondal, another co-sharer of the suit property has sold and transferred 3 decimals of land in favour of the defendant No.1 on 06.04.2008 by a registered deed with specific demarcation. The State had acquired 25 decimals of land for Samsi Regulated Market Committee and construction has commenced in their specific portion of land, which they got by way of acquisition and by way of purchase covered by boundary. On consideration of the materials on record and the pleadings, the Trial Court arrived at a prima facie finding that the suit property is the ejmali property of the parties and the parties are the co-sharers. It is settled-law that every co-sharer has constructive possession over every inch of joint property and nobody has any right to disturb his peaceful possession. Though there is a dispute regarding allocation of land of the parties and their respective possession, but it would not be the proper stage to decide the said issue and for that purpose evidence would be required and such issue can only be conveniently decided at the trial of the suit. It is settled-law that at the stage of deciding the application for temporary injunction, the Court is not required to hold a mini trial. The Court is only require to consider prima facie case, balance of convenience and inconvenience and irreparable loss and injury in determining whether it should exercise a discretion in favour of the plaintiff.

In our view, the Court in the facts and circumstances of this case has correctly exercised its discretion in favour of the plaintiffs as the failure to exercise such discretion in favour of the plaintiffs, may cause irreparable loss and injury to the plaintiffs. The order of injunction was passed on 05.04.2014 and the suit must have been disposed of by this time. Various grounds raised challenging the said judgment, in our view, are to be considered only at the trial of the suit. On the basis of the pleadings and the documents on record, as would be reflected from the judgment of the Trial Court, we feel that the Trial Court was justified in directing the parties to maintain status quo as regards their possession, nature and character of the suit property till the disposal of the suit.

In the unlikely event of the suit being pending, we request the learned Civil Judge (Senior Division), Chanchal, Malda to dispose of the Partition Suit No.36 of 2014 as expeditiously as possible and preferably within a period of six months from the date of communication of this order by the Registrar Administration (L&OM) without granting any adjournment to either of the parties unless it is unavoidable.

The Registrar Administration (L&OM) shall communicate this order to the learned Trial Judge within two weeks from date.

Accordingly, the appeal and the application stand dismissed with the aforesaid direction.

However, there shall be no order as to costs.

(Uday Kumar, J.) **(Soumen Sen, J.)**