

16 08.12.2022
RP Ct.No. 652

CO 1914 OF 2021

SRI PINTU MODAK
vs.
HEMANTA PAUL & ORS.

Mr. Debasish Roy
Mrs. Sulekha Mitra
Mr. Manas Kumar Das

... for the petitioner

Mr. Soumik Ganguli
Mr. Tanmay Mukherjee

... for Opposite Party

Being aggrieved by and dissatisfied with the Order No.2 dated 9th September, 2021 passed by the learned District Judge, Bankura in Misc. Appeal No.11 of 2019, the present revisional application has been preferred.

The petitioner contended that the plaintiffs/opposite parties filed a suit being Title Suit No.152 of 2019 on 17.06.2019 against the petitioner and the opposite parties no.14 to 44 in the Court of the learned Civil Judge, Junior Division, 1st Court at Bankura, praying for declaration of title of the plaintiff in respect of his share in the suit property. In connection with the said suit, the plaintiff also filed an application for injunction and another application for local inspection commission. Petitioner alleged that learned Civil Judge, Junior Division, 1st Court at Bankura without considering the application was pleased to direct plaintiffs to issue notice upon the petitioner and the opposite parties no.14 to 44 to show cause. Against the said order dated 20th June, 2019 the plaintiffs preferred a

miscellaneous appeal being no.11 of 2019. Petitioner's further allegation is that the learned District Judge, Bankura passed the impugned order without going through the plaint of the Partition Suit No.16 of 2017 pending in the Court of the learned Civil Judge, Senior Division, Additional Court, Bankura wherein Court passed an order, being order no.56, dated 9th October, 2018 directing the plaintiffs and petitioner and other defendants to maintain status quo in respect of nature and character of the suit property till disposal of the said Partition Suit No.16 of 2017, which order was ultimately set aside by a Division Bench of this Court by order dated 24th April, 2019 passed in FMA 445 of 2019. The Court below in this case passed an ex parte ad interim order of injunction on 2nd July, 2019 whereby the petitioner and the opposite parties no.14 to 30 had been directed to maintain status quo in respect of the suit property, to its nature, character and possession as on date of passing such order till further order.

Being aggrieved by the order no.2 dated 2nd July, 2019 and order no.14 dated 27th September, 2019 and order no.17 dated 12th December, 2019 passed by the learned District Judge, Bankura the revisional application, being CO 1144 of 2020, was preferred before this Court and this Court after hearing both the parties was pleased to dispose of the said revisional application by granting liberty to the petitioner to make a prayer before the learned District Judge, Bankura for modification/alteration of the ad

interim order of injunction and to take a reasonable approach to decide the issue so that nobody is put to suffer unnecessary injunction. Thereafter, petitioner filed two applications; one under Order 41 Rule 27 of the Code and another under Order 13 Rule 10 of the Code and ultimately on 9th September, 2021 the learned District Judge, Bankura upon contested hearing disposed of the said Miscellaneous Appeal No.11 of 2019 by the impugned judgment and order directing both the parties to maintain status quo as regards its nature and character and possession in terms of the order dated 2nd July, 2019 till disposal of the injunction petition pending before the Trial Court and further direction was made upon the learned Trial Court to dispose of the said injunction application at the earliest in accordance with law after giving opportunity of hearing to both the parties.

Being aggrieved by the said order, the present revisional application has been preferred.

Learned Counsel appearing on behalf of the petitioner submits that the learned District Judge, Bankura by his judgment and order dated 9th September, 2021 allowed the said Miscellaneous Appeal without following the ultimate observations of the Hon'ble Division Bench made in FMA 445 of 2019 as the Hon'ble Division Bench after going through the report of the Commissioner observed that there is already existence of substantial construction at the suit premises and it would not be proper that an injunction

should be granted restraining from making such construction and was further pleased to set aside the interim order of injunction passed in the partition suit being no.2 of 2016/16 of 2017 by the Civil Judge, Senior Division, Bankura. He further submits that the learned Court below failed to consider the conduct of the opposite parties and could not follow the ultimate observation of the Hon'ble Division Bench. It is further submitted that the Judge Court is erroneous because in respect of self-same property once an order of status quo was set aside by the Division Bench of this Court. He further submits that subsequent suit being TS 152 of 2019 is barred under the law wherein suit property and parties as well as cause of action and relief are substantially the same in the former suit being TS 2/2016/16/2017. The learned Court below practically misinterpreted the observation of this Court and erroneously came to a conclusion that non-filing of the application under Order 39 Rule 4 of the Code means acceptance of order of status quo dated 27th September, 2019 when the petitioner filed an application under Order 41 Rule 27 of the Code and another application under Order 13 Rule 10 of the Code for speedy disposal but the application under Order 41 Rule 27 was dismissed. This Court while disposing of CO 1144 of 2020 was pleased to direct the learned Judge of the first Appellate Court to decide the issue so that nobody is put to suffer unnecessary injunction despite having good grounds in

their favour but the learned First Appellate Court failed to follow said observation. In view of the above, the interim status quo passed by the learned Court below caused huge monetary loss to the petitioner because the building materials already purchased by him has been stolen in the meantime and unless the order as prayed for by the petitioner be not granted he will suffer irreparable loss and injury.

Mr. Mukherjee, learned counsel appearing on behalf of the opposite parties submits that the petitioner herein has purchased the property from a person, who has already sold his interest in the property to some other persons and, as such, the present petitioner has no locus standi or any right, title or interest in the suit property. Accordingly, the present petitioner, who has got no interest in the suit property, cannot claim any equity on the basis of alleged unfinished construction. On the contrary, it is submitted that the respondent nos.1 to 18 on the basis of the fraudulent, ineffective and baseless documents are trying to claim their right, title and interest in the suit property and they are disturbing peaceful possession over the suit property. As they have no prima facie case, balance of convenience or inconvenience and/or the question of suffering of any irreparable loss and injury does not arise. So this Court does not require to interfere with the order impugned and the impugned order does not call for any interference by this Court.

Considered the submissions made by both the parties. On perusal of the order impugned dated 9th September, 2021 it appears that the Court below allowed the Miscellaneous Appeal with a direction upon both the parties to maintain status quo in respect of the suit property as regards its nature, character and possession in terms of the order dated 2nd July, 2019 till disposal of the injunction petition. The present application has been made against an ad interim order of injunction passed by the learned Court below. Interim injunction are considered usually on the basis of materials placed on record at the time of filing of application. The true picture emerges only after scrutinizing documents and affidavit submitted by the parties at the time of final hearing of the injunction petition. The injunction application has not yet been disposed of, which can only adjudicate the right of the parties over the issue as to whether any restraining order upon the suit property will continue or not. Unless the issue of granting injunction is heard and disposed of finally by the Trial Court below, at this stage I find nothing to interfere with the ultimate finding of the order impugned as reflected in the ordering portion passed by the Court below.

In view of the above CO 1914 of 2021 is dismissed. The learned trial Court is requested to dispose of the injunction application within a period of three months from the date of communication of the order without being influence by any

observations made by this Court or by the First Appellate Court.

Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(Ajoy Kumar Mukherjee, J.)