

11.03.2022
Ct. 21
D/L 10

C.O. 2036 of 2021
WITH
CAN 1 of 2022
(Via Video Conference)

Md. Rashid & Anr.
-Vs-
Ashfaque Ahmed Khan.

Mr. Probal Mukherjee,
Mr. Iqbal Hussain,

... for the petitioner

Mr. Sanjoy Mukherjee

Mr. Ghalib Rizwan

.... for the opposite Parties

The present application under Article 227 of the Constitution of India is at the instance of defendant no. 1 and 2 being aggrieved by the ex-parte interim order of status quo passed by the learned Civil Judge (Junior Division), 6th Court, Alipore in Title Suit No. 1238 of 2021 on 07.10.2021 and against extension of such ad interim order of injunction on 10.11.2021.

It has come on record that the present petitioner no. 2 and opposite parties are four siblings and children of one late Md. Loqueman Khan. Opposite party no. 1 has filed Title Suit No. 1238 of 2021 against the present petitioner no. 1 and 2 and against the present opposite party no. 2 and 3 arraying them as pro forma defendants for declaration and mandatory injunction in respect of piece and parcel of land along with structure

situated at Municipal Premises No. 42/H/5, P.S. Ekbalpore.

It has also come on record that the present opposite party no. 1, opposite party no. 2 and opposite party no. 3 have also filed Title Suit No. 180 of 2015 against the present petitioner no. 2 in the Court of Civil Judge (Senior Division) 5th Court at Alipore, for partition of the same property which is a subject matter of Title Suit No. 1238 of 2021 where he has prayed for declaration and injunction.

The case of the present opposite parties in both the suits is that that their father Md. Loqueman Khan and their uncle Md. Fahim Khan had purchased the disputed property which is a Thika Tenancy property from the then Thicka Tenants Mahadayi Debi and Rajan Shaw. That by virtue of purchase their father and uncle became joint owners of the disputed property. Their uncle made oral gift of his share in the disputed Thika Tenant property in favour of their father.

That on the demise of Md. Loqueman Khan his three sons inherited 2/7th shares and his daughter inherited 1/7th share in the disputed property. It has been alleged that all of a sudden the defendant no. 1 a stranger has threatened to dispossess him, his brothers and sister from the disputed premises on 05.09.2021.

On the contrary from the documents that have been filed by the petitioners it is seen that Sri Sri

Rakata Kamleswar Shib Thakur other Gods and Godssess at Bhukailash is the recorded Thicka Tenant in respect of the disputed property. The Shebait of the said Debattor Estate appears to have executed a registered lease deed for 99 years in respect of the disputed Thika Tenancy property in favour of the present petitioner no. 2 on 21st January, 2013. That disputed property stands duly mutated in the name of present petitioner no. 2 in the record of Kolkata Municipal Corporation and where he has been paying the Tax and other charges and land revenue to Thika Tenancy Controller since 2013.

Further, RTI informations filed by the petitioners show that the property in the question is a Thika Tenant property recorded in the name of Bhukailash Debutter Estate and not in the names of Mahadayi Debi and Rajan Shaw alleged transferors of Md. Loqueman Khan and his brother Md. Fahim Khan. Therefore, it has come on record that the property in question is a Thika Tenancy property. In view of provision of section 21 of Thika Tenancy Act, the Civil Court is barred from entertaining any matter relating to Thika Tenancy property. It is the Thicka Controller who has been vested with power to deal with all matters relating to Thicka Tenancy Property. Then it is not known how the present opposite parties could file suit for declaration and for partition in respect of Thika

Tenancy property in the Court of Civil Judge (Junior Division) 4th Court Alipore, and Civil Judge (Senior Division), 5th Court Alipore.

That apart the documents which have come on record prima facie shows that it is the petitioner no. 2 who is the lessee in respect of the disputed Thika Tenancy property under the Bhukailash Debutter Estate.

Since the present petitioner no.2 being the recorded lessee in respect of the disputed Thicka Tenancy property, he cannot be restrained by an order of injunction from doing any kind of act over his lease hold Thick Tenancy property. Therefore, this Court holds that impugned injunction order in the form of status quo that has been passed by the learned Court below in respect of such property is not sustainable in the eyes of law and liable to be set aside.

Accordingly, **C.O. 2036 of 2021 is disposed of.**

Consequently CAN 1 of 2022 is also disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)