

04.11.2022

WPLRT 119 of 2022

Court : 04
Item : 39
Matter : WPLRT
Status : DO
Transcriber: nandy

Sk. Jahar Ali & Ors.
Vs.
Sk. Firoz Mallick & Ors.

Mr. Kumar Jyoti Tewari, Advocate
Mr. Tarun Jyoti Tewari, Advocate
Mr. Aniruddha Tewari, Advocate
Ms. Rajlakshmi Ghatak, Advocate

.....for the Petitioner

Mr. Gopal Chandra Ghosh, Advocate
Mr. Rajkrishna Mondal, Advocate

.....for the Respondent No. 11

Mr. Manas Kumar Das, Advocate

.....for the Respondent Nos. 8, 9 & 10

There have been multiple litigations in respect of the subject properties at the behest of the parties to the instant proceeding claiming their rival right, title and interest in respect thereof. The respondent no. 1 claimed to have acquired the right, title and interest on the strength of a decree for specific performance of the agreement passed by the Civil Court; on the other hand, the petitioner claimed title by way of adverse possession on the basis of the compromise decree effected in a latter suit but prior in time of the decree passed, in a former suit filed by the respondent. On the strength of a decree for specific performance of agreement/contract, the mutation was effected in favour of the respondent no. 1 and the same being the subject matter of challenge by petitioner who claimed title by way of adverse possession.

A series of litigations were initiated between the parties before the statutory authorities and ultimately the appellate authority set aside the order of the prescribed authority solely on the ground that the moment the petitioner has perfected the title by way of adverse possession having recognized in the decree passed by the

Civil Court. The respondent no. 1 challenged the order of the appellate authority before the Tribunal and the Tribunal by passing an ad interim order of stay, was of the view that it would not cause prejudice to either of the side. The consideration for passing an order of stay cannot be assumed to such that it would not cause prejudice to either side. The Tribunal ought to have recorded its findings on the existence of a prima facie case and the convenience and inconvenience of the parties and the irreparable loss and injury to be suffered. The grant of a blanket stay of the operation of the order would virtually tantamount to granting the final reliefs at the interim stage in favour of the petitioner.

Both the parties are claiming rival title on the strength of the decree passed by the Civil Court. The larger question that voiced down is whether the decree relating to perfection of title by way of adverse possession can be passed on compromise. The respondent nos. 7 to 10 appears to be a mischief monger as they were the parties in both the suits and prevaricated their stands therein. Such being the situation, the Tribunal in stead of passing a blanket order of stay of the operation of the order should have modified the same in the manner as indicated herein-after. Since the entry in the record-of-rights stand in the name of the respondent no. 1, therefore, there shall be an order of *status quo* as on date with regard to such entry until the said tribunal application is finally decided.

We further find that the appellate authority has restrained the petitioner from transferring any portion of the suit property to the third party till the disposal of the pending civil cases. Since the rival titles are claimed on the strength of the decrees passed in the suit, we feel that both the

parties should be restrained from alienating, transferring and/or dealing with the property in favour of a third party till the disposal of the said tribunal application. They are accordingly restrained from alienating, transferring and/or dealing with the property in favour of a third party till the disposal of the said tribunal application.

Since the matter is pending before the Tribunal, we hope and trust that the Tribunal would dispose of the matter by giving priority to it. Accordingly, the Tribunal is requested to dispose of the proceeding as expeditiously as possible after affording an opportunity of hearing to the respective parties and preferably within six months from the date of communication of this order.

Nothing observed here-in-above, shall be construed to have any persuasive effect on the merit of the tribunal application which shall be decided independently in accordance with law.

With these observations, the writ-petition being **WPLRT 119 of 2022** is **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

