

MAT 1435 of 2019
with
IA No. CAN 1 of 2019 (Old No. CAN 9981 of 2019)
with
IA No. CAN 2 of 2019 (Old No. CAN 9982 of 2019)

(Gouranga Saha & Anr. Vs. Jayanta Kumar
Pramanic & Ors.)

Mr. Firdous Samim
Ms. Gopa Biswas
Ms. Mousumi Hazra

.... For the appellants

Mr. Srijib Chakraborty
Mr. Soumyajit Bhatta

..... For the respondent no. 1

Ms. Chama Mookherjee
Mr. Bivekananda Tripathi

..... For the State

The present application being CAN 9982 of 2019 has been preferred by two applicants, namely, Gouranga Saha and Krishna Dey, seeking leave to prefer appeal against the order dated 12th September, 2019 passed in the writ petition being W.P. No. 16915 (W) of 2019.

Mr. Firdous Samim, learned advocate appearing for the applicants submits that the applicants are essential parties and their rights have been infringed by the order passed by the learned Single Judge on 12th September, 2019. The said order had been obtained by the writ petitioner upon suppressing material facts and in a deceitful manner. The writ petitioner is a land grabber, who wants to raise a boundary wall and to illegally possess and utilise the land in question. He has preferred the writ petition impleading

three persons as private respondents, who happen to be his relatives. The learned advocate appearing for the said respondents submitted at the time of hearing of the writ petition that they do not have any objection to the writ petitioner raising the boundary wall and considering such submission the order was passed.

Drawing our attention to an application under Section 144 of the Code of Criminal Procedure preferred by the writ petitioner and one Manoj Kumar Shaw, being M.P. Case No. 2672 of 2019, Mr. Samim submits that the opposite parties in the said application, who were preventing the writ petitioners from constructing the boundary wall, were not made parties to the writ petition.

He further submits that the land in question is a vested land and the same is being used as a playground by the applicants and the inhabitants of the locality. The applicants are enjoying easementary right over the property in question. The Block Land & Land Reforms Officer, who was a necessary party, was also not impleaded in the writ petition. From the said sequence, it would, thus, be explicit that the writ petitioners misled the learned Court.

Per contra, Mr. Chakraborty, learned advocate appearing for the writ petitioner/respondent no. 1 herein submits that the applicants have no semblance of right over the property in question. It is a settled proposition of law that unless any legal right is violated and prejudice is caused due to the order impugned, the applicants cannot pray for leave to prefer the appeal. In support of such

contention, reliance has been placed upon a judgment delivered in the case of *V. N. Krishna Murthy and Another Vs. Ravikumar and Others*, reported in 2020 (9) SCC 501.

Placing reliance upon an unreported judgment delivered in an appeal being FMAT 463 of 2017 (*Belur Sree Guru Sangha & Ors. -vs- M/S Ghata Balaji Realded Private Limited & Ors.*), Mr. Chakraborty submits that a club cannot claim ownership in respect of a property by way of adverse possession against the real owner. Exercise of possessory right by playing some games over somebody else's property even for a long period, cannot create title.

Ms. Mookherjee, learned advocate appearing for the State submits that pursuant to the earlier orders passed by this Court, a report has been filed by the Commissioner of Police, Barrackpore Police Commissionerate after conducting a discreet enquiry. A perusal of the same would reveal that the dispute is purely civil in nature. She has also drawn our attention to an inspection report filed on behalf of the municipality wherefrom it would appear that the land in question is totally vacant.

In the order impugned, the learned Single Judge has directed that the respondent no. 5 shall depute a personnel at the locale to take appropriate measures to protect and preserve the water body, if any found at the locale. It has been further directed that the police will allow the writ petitioner to erect boundary wall only after the respondent no. 5 completes the exercise of inspection of land in

question and identifies the area which forms a water body or a pond.

The applicants have preferred the application primarily alleging that their rights have been infringed by the order impugned dated 12th September, 2019. From the contents of the petition under Section 144 of the Code preferred by the applicants, it appears that the applicants were claiming themselves to be the members of one Nandannagar Math Bachao Committee and stating that they were using the land as a playground along with the inhabitants of the locality.

The pleadings as well as the other documents as placed before us do not reveal that the applicants have any legal right over the property in question. No material has been placed before this Court indicating that the applicants have suffered any legal wrong or injury, in the sense, that their interest, recognized by law, has been prejudicially and directly affected by the order impugned.

For the reasons discussed above the application for leave to appeal being CAN 9982 of 2019, MAT No.1435 of 2019 and the application being CAN 9981 of 2019 are dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)