

S/L 8
09.06.2022
Court No.1
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IN THE HIGHCOUR AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION

CO No. 109 of 2021

Terai Resorts and Country Club Private Limited
Vs.
Smt. Sarda Tamang & Ors.

Mr. Joyjit Choudhury
Mr. Sitesh Kumar Gupta
Mr. Sarbojit Chowdhury

...for the Petitioner.

Mr. Kunaljit Bhattacharjee
Mr. Abhishek Palit

...for the Opposite Parties.

The revisional application is directed against the judgment and order dated November 22, 2021 passed in Misc. Appeal No. 4 of 2021 by the learned District Judge, Darjeeling.

By the impugned judgment and order, the learned District Judge was pleased to reject the miscellaneous appeal.

The revisional application is at the behest of the plaintiff in a suit for declaration and injunction.

The plaintiff filed Title Suit No. 2 of 2021 claiming *inter alia* for the following reliefs:

“17. That the plaintiff prays for the following reliefs:

(i) For Declaration of perpetual right, title & interest of the plaintiff over and upon the Schedule ‘B’ land below.

(ii) For Decree of recovery of khas possession of the Schedule 'B' land after removing all structures standing thereon at the cost of the defendants,

(iii) For permanent injunction in the form of mandatory restraining the defendants from disturbing/obstructing the construction of temporary boundary wall undertaken by the plaintiff and for removing all structures standing in the Schedule 'B' land and hand over the same in vacant condition to and in favour of the plaintiff,

(iv) Any other reliefs for which the plaintiff is entitled in the eye of law."

In such suit, the plaintiff filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 praying for the following reliefs:

"Under the above circumstances it is therefore prayed that the Ld. Court may graciously be pleased to pass an injunction order restraining the defendants from disturbing/obstructing the construction of temporary boundary wall undertaken by the plaintiff and all unauthorized commercial/business activities are stopped by the defendants in the Schedule 'B' land and/or pass such other orders as your Honour may deem fit and proper for the ends of justice."

The learned trial judge was pleased to grant an order of injunction on January 27, 2021. The order dated January 27, 2021 of the learned trial judge is as follows:

"It is,

ORDERED

that the prayer for ad interim injunction is considered and allowed. The defendant is hereby restrained from alienating or encumbering any portion of the suit property in any way whatsoever. He is further prevented from raising any construction over the B Schedule property till the next date. The defendants Nos. 1 to 22 are directed not to disturb the peaceful construction of the boundary wall over the A schedule property till next date. The plaintiff is to comply with the provision under order 39 Rule 3(a) and (b) of CPC.”

Being aggrieved by the order dated January 27, 2021 passed by the learned trial judge, to the extent that the learned trial judge did not restrain the defendants from carrying on unauthorized commercial/business activities from the suit properties, the plaintiff preferred Misc. Appeal No. 4 of 2021 which was disposed of by the impugned judgment and order.

By the impugned judgment and order, the learned District Judge was pleased to observe that, the plaintiff did not pray for any permanent injunction in respect of the relief that was sought for in the application for injunction. On such score, the District Judge was pleased not to allow the Misc. appeal.

The Court is informed that the plaintiff applied under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for the purpose of amendment of the plaint and was allowed.

The opposite parties are represented.

There is no material irregularity in the impugned judgment and order. The plaintiff is seeking an order of injunction which does not find place in the unamended plaint. The learned trial judge granted injunction to the extent that was supported by the unamended plaint. The prayer for injunction to the extent which does not find place in the place in the unamended plaint was not granted by the learned trial judge. The appeal carried therefrom was rightly rejected by the impugned judgment and order.

In such circumstances, there being no material irregularity in the impugned judgment and order no interference is called for.

None of the observations made herein will prejudice any of the parties to the pending suit.

Accordingly, CO 109 of 2021 is disposed of.

(Debangsu Basak, J.)