

13.06.2023
Sl. No.6(DL)
srm

C.O. No. 332 of 2023

Sudarsan Pal

Versus

Dilip Paul

Ms. Shebatee Datta,
Ms. Poulam Roy

...for the Petitioner.

Mr. Nilanjan Bhattacharjee,
Mr. Abhilash Chatterjee

...for the Opposite Party.

Affidavit-of-service is taken on record.

The petitioner, who is the defendant in Title Suit No.1293 of 2019 pending before the learned Civil Judge (Junior Division), 1st Court, Howrah, has filed this revisional application challenging the order dated January 6, 2023 passed by the learned Additional District Judge, Fast Track (1st Court), Howrah, in Miscellaneous Appeal No.94 of 2022.

The petitioner claims to be in possession of the entire 13 cottahs of land, which is the subject matter of the suit. It is submitted that the nature of user of the land is a horticulture farm, belonging to the petitioner, popularly known as "Pal Nursery". Such business is allegedly running from 1995 on the

basis of a verbal arrangement between the siblings and the mother.

The four brothers purchased the entire land by separate deeds and their portions have been demarcated in the said deeds. However, on the basis of the amicable settlement, the petitioner allegedly was allowed to continue with the business from the premises in question.

The suit was filed by one of the brothers when the petitioner allegedly started disturbing his possession, namely, Dilip Paul, the opposite party herein. The suit was filed for a declaration that the opposite party was the absolute owner in occupation in respect of 2 cottahs 15 chittacks of land in the entire 13 cottahs of land. Further prayer was made for permanent injunction restraining the defendant/petitioner from disturbing the peaceful possession of the opposite party. The application for injunction was heard by the learned trial Judge and the learned trial Judge was of the view that upon scanning the materials produced by both the parties, it appears that the entire property situated at 12/1, Pal Ghat Lane, had been purchased by the four brothers by virtue of separate sale deeds and they were in possession of the same by amicable settlement. However, when the plaintiff and the defendant

developed a discordant relationship over construction of a fencing arose.

From the assessment register of the Howrah Municipal Corporation produced by the parties, it appeared that the nature of the property was recorded as nursery. On the ground of suppression of the fact by the plaintiff, the learned court below refused to pass any order of injunction. The learned court also found that the property was inseparable and undivided and the horticulture business was being run therefrom, for more than 24 years. It was also found that the plaintiff had an electric meter in his name.

Challenging the aforementioned order, Misc. Appeal No.94 of 2022 was filed. The learned lower appellate court upon considering the deed of sale and the record of rights came to the conclusion that the plaintiff had purchased a demarcated share in the property and his name had been mutated in the LR records. The sketch map annexed to the registered deed was relied upon and after considering the demarcated portions with its boundaries in the sketch map, the learned lower appellate court allowed the appeal and restrained the defendant/petitioner from interfering with the peaceful possession and enjoyment of the schedule property by the plaintiff.

Aggrieved by the aforementioned order, the petitioner has moved this revisional application under Article 227 of the Constitution of India.

An order of injunction is passed upon taking into consideration the following:

- (a) *Prima facie*,
- (b) Balance of convenience and inconvenience,
- (c) Whether any protection was necessary for preservation of the property during the pendency of the suit,
- (d) The question of irreparable loss and injury.

Having gone through the records and the findings of the learned trial judge, this Court finds the following:-

- (a) All four brothers had purchased the property situated at 12/1, Pal Ghat Lane,
- (b) The areas of the respective parties were mentioned in the schedule,
- (c) The assessment register of the Howrah Municipal Corporation in case of each of the assesseees/brothers, described the property as godown or rooms, etc. and land used as nursery.
- (d) The property of the opposite party was subsequently rectified in the assessment register of the Bally

Municipality where the expression 'land used as nursery' was deleted. However, the Howrah Municipal Corporation registers which were available before both the learned courts below, at the time of hearing the application for injunction indicated that the land was used as nursery.

- (e) Two electric meters were available in the name of the petitioner and the opposite party.
- (f) The trade licence, certificates of enlistment receipts granted by the Bally Municipality as also the Howrah Municipal Corporation in respect of the Pal Nursery, a horticulture farm in respect of 12/1A, Pal Ghat Lane is also a part of the records.
- (g) Electricity bill in the name of the petitioner has been issued by the CESC Ltd. in respect of Premises No.12/1, Pal Ghat Lane, which is the entire 13 cottahs of land.

The opposite party claims right, title and interest over the premises No.12/1C, Pal Ghat Lane and the said premises has been curved out from the original Premises No.12/1, Pal Ghat Lane.

The opposite party contends that the nursery is restricted to Premises No.12/1A, Pal Ghat Lane and not the

entire 12/1, Pal Ghat Lane. The suit has been filed with the aforementioned prayer for declaration that the opposite party is the exclusive owner in possession of the 12/1C, Pal Ghat Lane, whereas the petitioner contends that the entire property of 12/1, Pal Ghat Lane was being used for the horticulture business for the last 24 years on the basis of an amicable settlement. Due to the ongoing business, the petitioner cannot be restrained by way of an injunction.

This Court, *prima facie*, finds that the adequate materials have been annexed to the revisional application to show that there may be an existence of a horticulture farm on the entire premises. Whereas, the fact that the opposite party had purchased along with his brothers and his share in the property was demarcated in the schedule of the deed is also not in dispute. These issues are ultimately to be decided in the trial, but the right, title and interest of the plaintiff in respect of the property presently at Premises No.12/1C, Pal Ghat Lane measuring about 2 cottahs 15 chittacks cannot also be, *prima facie*, denied. There is also an electric meter in the name of the plaintiff at the suit premises.

The learned lower appellate court instead of addressing the issue with regard to the present condition and the

documents available on record with regard to the nursery business from the land, relied upon the sale deed and the record of rights and passed the order of injunction. This, in the opinion of the Court, was not the correct approach, inasmuch as, at the stage of injunction, the question of title need not be decided. On the contrary, the balance of convenience and inconvenience, the *prima facie* case and irreparable loss and injury should have been considered. This Court is of the view that balancing the convenience and inconvenience that may be caused to the parties, an order of *status quo* must be granted in respect of the suit property which will, *inter alia*, protect the property itself including the property of the plaintiff and also shall not disturb the alleged business of the petitioner.

Under such circumstances, this Court is of the view that until the suit is finally decided, both the parties shall maintain *status quo* with regard to the nature, character and possession of the 12/1C, Pal Ghat Lane measuring about 2 cottahs 15 chittacks. The petitioner shall not encumber or damage or waste the said area of 2 cottahs 15 chittacks as demarcated by the boundaries mentioned in the sale deed of the plaintiff.

The observations made hereinabove are, *prima facie*, for disposal of the revisional application. The suit shall proceed in accordance with law and the suit shall be expedited and

preferably concluded within a year from the date of communication of this order. This order shall not affect the merits of the suit.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)