

21.08.2023
Court No. 19
Item No.10
CP

C.O. 522 of 2023
Subal Chandra Sahoo
Vs.
Smt. Gouri Sahoo & ors.

Mr. Gopal Chandra Ghosh
Mr. Sobhan Majumder
Ms. K. Paul

...for the petitioner.

This revisional application arises out of an order dated January 21, 2023, passed by the learned Additional District Judge at Haldia, Purba Medinipur in connection with Misc. Appeal No. 08 of 2022. By the order impugned, the learned lower appellate court reversed the order dated April 1, 2022 passed by the learned Civil Judge (Junior Division), Haldia, Purba Medinipur, in Title Suit No. 27 of 2021.

The learned lower appellate court found that the learned Trial Judge had incorrectly laid emphasis on payment of the consideration money by the defendant no. 1, and acquisition of right, title and interest in respect of the property in question. The fact that plaintiff/opposite party no. 1 had failed to prove that she had paid the consideration money, was the ground for rejection of the plaint. The question of benami transaction had prevailed upon

the learned trial judge, while denying such injunction.

The plaintiff preferred an appeal. The learned lower appellate court found from the pleadings that the plaintiff's clear case was that she had acquired some money and convinced the defendant no. 1 to buy the suit property for herself and for the children. That the plaintiff and the family members were all along possessing the suit property and they were residing in the house, since long. That was their only residential house. That the defendant nos. 2 and 3, to whom the defendant no. 1 was planning to sell the property, did not have physical possession of the property in question.

The averments in the written statement filed by the defendant nos. 2 and 3 and the counter claim, for eviction of the plaintiff from the suit property, indicated the plaintiff's possession.

A proceeding under the Domestic Violence Act against the defendant no. 1 was also pending.

The contention of benami transaction was dealt with by the learned appellate court below, inter alia, holding that in the plaint case there was no averment that the defendant no. 1 was the benamdar of the plaintiff.

The suit was filed for permanent injunction against the defendant no. 1 (husband) as also the

defendant nos. 2 and 3, i.e., the persons to whom the husband allegedly was trying to sell the property. It was averred that in a clandestine manner the defendant no. 1 was trying to sell the property to the defendant no. 2 and 3 to the detriment of the family. That the defendant no. 1 was a drunkard, wayward and a reckless person, who should be prevented from transferring the property, thereby making the plaintiff and the children, homeless. The plaintiff and the children should not be evicted, except in accordance with the due process of law. Such was the prayer made in the plaint.

Having perused the order impugned and the documents before this court, it appears that the defendant nos. 2 and 3 have filed a counter claim and admitted possession of the plaintiff. They have prayed for a decree of recovery of khas possession from the plaintiff, who was allegedly a trespasser. Thus, the possession of the plaintiff is not in dispute. The plaintiff is also protected under the Domestic Violence Act and the proceedings are pending.

At this stage, not allowing some kind of protection to the plaintiff, would result in denial of her right under another special law, from being adjudicated. Secondly, the plaintiff has filed the suit for permanent injunction against the defendants, with a prayer for permanent injunction, restraining

the defendants from evicting her, except in accordance with the due process of law. Thus, the learned lower appellate court found that justice would be subserved if a status quo is directed in respect of the suit property. Such order shall enure to the benefit of both parties, i.e., if the plaintiff, who is in possession, changes the nature and character of the property and encumbers the same, the defendant nos. 2 and 3 may also be prejudiced, if they have a good case.

If the plaintiff and the possession of the plaintiff and their children in the alleged matrimonial household is not protected during trial, the same would also amount to injustice. At the interlocutory stage, when the court found that there was a case for trial, protection in the nature of status quo, was inevitable and this court is of the view that if such protection was not given, the plaintiff could be forcefully evicted along with her children which would result in irreparable loss and injury and such injury could not be compensated by cost.

I do not find any reason to interfere with the order impugned.

The learned lower appellate court rightly held that the plaint case, read as a whole did not disclose that the suit would ipso facto barred under the

provisions of the Prohibition of Benami Property Transactions Act, 1988.

The order impugned is not interfered with.

However, this court has not expressed any view with regard to the application under Order 7 Rule 11 of the Code of Civil Procedure which is pending before the learned court below. The same shall be disposed of expeditiously, upon allowing all parties to contest the same.

The revisional application is disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)