

03 16.08.23

Ct. No. 04

akd

F.M.A. 679 of 2022
CAN 1 of 2022

Monjit Mazumder
Vs.
Riya Adhikary & Ors.

Mr. Arjun Mookherjee,
Mr. Malay Kumar Seal,
Mr. Sourjya Roy.

... for the appellant.

Mr. Nitai Chandra Saha.

... for the respondent no. 1.

A recalcitrant litigant has approached this Court assailing an order passed by the Trial Court refusing to pass ex parte ad interim order of injunction suppressing the important and significant facts.

The suit is filed for declaration as an owner along with other defendants and for a mandatory injunction in respect of the property alleging that the defendants/respondents attempted and/or tried to encroach upon the property without any authority of law.

The Trial Court refused to pass an ex parte ad interim order of injunction, but on 14th July, 2023 when this Court admitted this appeal, it was noticed that since the original owners have divested their right, title and interest in favour of the plaintiff/appellant it cannot be expected to encroach upon the property already sold, transferred and conveyed and, therefore, restrained the defendant nos. 1 to 5 from transferring, alienating and/or selling of the property being the subject matter of the said suit as also from creating any third party interest.

After the returnable date when this matter is listed today, out attention is drawn by the contesting respondents that the mother of the petitioner, who is admittedly a party in the instant appeal, filed a Title

Suit No. 276 of 2021 before the learned Civil Judge (Junior Division), 5th Court, at Alipore seeking identical declaration and injunction. It has further been brought to our notice that the Trial Court refused to pass the ad interim order of injunction in the said suit and, therefore, it is an attempt on the part of the present plaintiff/appellant to achieve the desired order by instituting an independent suit.

The Court while considering an application for temporary injunction takes a serious view in the event it is found that there has been a gross suppression of material fact at the behest of the appellant. The Court exercises its jurisdiction at the temporary injunction stage in order to protect the interest of the parties pending the suit, so that it may not dissipate nor diminish nor destroy the existing right and, therefore, the Court exercises the discretion, which must be based upon the reasonability, rationality and on the recognized parameters of law.

A person approaching the Court by suppressing the material facts does not expect to receive a blessing of the Court in exercising the discretion in the form of any interim or ad interim order. It has come up in course of hearing that both the appellant and the mother traced their title by virtue of devolution of interest from common ancestor and, therefore, cannot be said to have a title in severance.

The law does not recognize an unscrupulous litigant who frequently files litigation through one person and having failed to achieve the desired result invited others to take a chance and the moment the achieved results are eminent and evident, because of the suppression of material facts the Court should not encourage such action of the litigant nor should give any impetus in the mind of such litigant that the

system of the Court is capable of being abused or misused.

Order XXXIX Rule 4 of the Code of Civil Procedure postulates that in the event an interim order is passed by suppressing the material facts, there is no fetter on the part of the Court to vary, vacate and/or set aside the said order.

In the instant case both the mother and the son being the present appellant have a joint interest in respect of the property and have a common cause of action. The suppression of the institution of the suit by the mother and the denial of any ad interim order passed therein cannot be viewed so lightly and, therefore, the Court must stand to deal such litigant with iron hand.

In view of the aforesaid fact, the ad interim order dated 14th July, 2023 is hereby vacated.

The appeal and connected application are dismissed with costs assessed at Rs. 25,000/- to be deposited with the State Legal Services Authority within a week from date.

In the event of deposit of such amount with the State Legal Services Authority, the same shall be kept in a separate account earmarked for *juvenile*.

In default of payment of costs as indicated above, liberty is granted to the parties to apprise the Court in this regard for further action.

(Harish Tandon, J.)

(Ajay Kumar Gupta, J.)

