

07.08.2023
Sl. No.175(ML)
srm

C.O. No. 1336 of 2023
Sri Gouri Shanker Arya
Versus
Sri Babulal Arya & Ors.

Mr. Partha Pratim Roy,
Ms. Sudeshna Basu Thakur

...for the Petitioner.

The revisional application has been filed by the plaintiff in Title Suit No.1789 of 2022, which is pending before the learned Civil Judge (Senior Division), 1st Court at Alipore, South 24-Parganas. The petitioner has challenged the order dated February 7, 2023 passed in Misc. Appeal No.13 of 2023 by the learned District Judge at Alipore, South 24-Parganas.

The learned lower appellate court refused the prayer for ad interim injunction made by the plaintiff/petitioner, in a suit for partition.

The misc. appeal was filed by the petitioner, being aggrieved by an order passed by the learned trial judge refusing the petitioner's prayer for ad interim injunction. The learned trial court found that the petitioner was already in possession of the suit property. That the defendant Nos.1 to 5 were claiming ownership on the basis of an arbitral award.

The petitioner urged before the learned court that the arbitral award was a nullity as the petitioner was not a party, and could not contest the proceeding. He was a minor. The learned court also found that eviction suits were filed in 2003 and 2014, but the plaintiff did not take adequate measures to protect his right, title and interest in respect of the property in question. It also appears from the averments in the plaint that the petitioner was paying rent to the defendant Nos.1 to 5 in respect of the schedule property. As such, the mere apprehension of the plaintiff/petitioner that the defendants/opposite parties would part with the property was, *prima facie*, found to be unconvincing as the petitioner did not produce any documents in support of such contentions.

Aggrieved by such order, the plaintiff approached the learned lower appellate court. The learned lower appellate court found that as there was an issue with regard to the rights of the plaintiff and the defendants in respect of an alleged coparcenary property and all of them claim through late Prabhu Dayal Arya, an ad interim injunction could not be passed, without hearing all the parties. The learned lower appellate court rejected such prayer and directed notice be issued.

Upon perusing the plaint, the factual findings of the learned trial Judge and those of the learned lower appellate

court, this Court is of the view that *prima facie* case, balance of convenience and inconvenience does not warrant an *ex parte* ad interim order of injunction. The plaintiff/petitioner was found to be in possession. Hence, an *ex parte* injunction upon the defendants, without proper documents indicating that they were trying to either sell or change the nature and character of the property, behind the back of the plaintiff, would not be justified. I hold that the learned courts rightly rejected the prayer for ad interim injunction. The learned courts below did not accept the submission of the plaintiff that the defendant Nos.1 to 5 were chalking out a sinister plan or a design, to dispossess the plaintiff. However, such issue shall be decided upon hearing the parties.

The learned court of appeal below is directed to dispose of the Misc. appeal along with the pending application within a period of two months from service of notice of appeal upon the respondents. The learned lower appellate court will proceed independently and the observations made hereinabove, shall not influence the learned lower appellate court, in any manner.

All the points raised in the revisional application shall be available to the petitioner to urge before the learned lower appellate court.

The revisional application is, thus, dismissed.

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

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

(Shampa Sarkar, J.)