

20.07.2023

Court : 04
Item : 01
Matter : FMAT
Status : DO
Bench ID : 266048
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FMAT 289 of 2023

with

CAN 1 of 2023

Mrs. Mousumi Nath

Vs.

Mr. Babulal Verma @ B.L. Verma & Ors.

Mr. Debjit Mukherjee, Advocate

Ms. Susmita Chatterjee, Advocate

Ms. Dipanwita Ganguly, Advocate

Mr. Kaustav Bhattacharya, Advocate

.....for the Appellant

Mr. Meghajit Mukherjee, Advocate

Ms. Mobina Ali, Advocate

.....for the Respondents

1. The instant appeal arises from an order no. 2 dated June 13, 2023 passed by the learned Civil Judge (Senior Division), First Court, Barasat in Title Suit No. 653 of 2023, by which the prayer for an *ex parte ad interim* order of injunction was refused.
2. The plaintiff/appellant filed a suit for declaration that the registered deed of conveyance dated November 20, 2008 purportedly executed by the respondent no. 7 in favour of the respondent no. 1 and the subsequent deed executed by the respondent no. 1, in favour of respondent nos. 2 and 6 are void, illegal and bad in law and be cancelled. Further declaration is sought in relation to the confirmation of possession over the 'A' schedule property and the record of rights standing in the name of respondent nos. 2 to 6 is erroneous and wrong.
3. The plaint proceeds that one Bhivarani Nath was the owner in respect of 'A' schedule property on the basis of the registered deed of conveyance dated 07.11.2015. She left behind her surviving two sons and two daughters and the respondent no. 7 is one of such daughters. The property owned by her is comprised in L.R. Plot Nos. 481 and 471 where the respondent no. 7 claimed to have undivided 1/4th share therein. The deed of conveyance

was executed on 20.11.2008 which includes L.R. Plot Nos. 481 and 471 but later on she further executed a deed of gift in favour of the plaintiff/appellant bequeathing her share which she inherited in respect of L.R. Plot No. 471. At the time of mutating the name, the plaintiff/ appellant noticed that the aforesaid L.R. Plot No. 471 has been mutated in the name of respondent nos. 2 to 6 on the basis of a purported deed of conveyance dated 20.11.2008 and immediately, thereafter, the suit was filed not only alleging fraud having been perpetrated upon the respondent no. 7 but on the ground of misrepresentation that the said sale deed was, in fact, intended to be executed for L.R. Plot No. 481.

4. On the conspectus of the aforesaid facts, since a declaration with regard to the entry in the record of rights to be erroneous and wrong, the Block Land and Land Reforms Officer, Rajarhat was also impleaded as proforma defendant. Since the said respondent no. 8 is a Public Officer, mandatory provisions contained under Section 80 of the Code of Civil Procedure is required to be adhered to and/or followed before the institution of the suit or claiming any injunction against the said respondent.
5. The record would reveal that a leave under Section 80 was sought by the plaintiff to institute a suit as it contemplates an urgent interim relief and the same was granted by an order no. 1 dated 13.06.2023 permitting the plaintiff to file the instant suit. The moment such leave has been granted, it is inconceivable and improbable that the Court would subsequently refuse to pass an *ex parte ad interim* order of injunction as there is no compliance of the provisions contained under Section 80(2) of the Code. Such provision can only be activated, in the event, the Court notice that the State or the Public

Officer has been impleaded as a party and the suit is instituted without taking any leave but it cannot be activated to negate the prayer for an *ex parte ad interim* order of injunction after the leave having been granted by the Court. The moment the leave is granted under Section 80 of the Code by the Court, it is imperative on the part of the Court to decide the prayer for *ex parte ad interim* order of injunction on merit which should not be defeated on technicalities.

6. We, therefore, do not concur with the view of the Trial Court and the findings returned therein in refusing to pass an *ex parte ad interim* order of injunction. The order dated 13.06.2023 by which the *ex parte ad interim* order of injunction was refused is hereby set aside.
7. However, we invited the contesting respondents to address the Court on the merit of the claim made in the injunction application for the limited purpose of passing an *ad interim* order of injunction. It has been candidly submitted on behalf of the contesting respondents that there is no construction made on the L.R. Plot No. 471. It is still retained as a green land and there is also no intention to make any construction thereupon. It is further submitted that the construction at L.R. Plot No. 481 has come up and, in fact, majority of the flats constructed thereupon have been sold out to different flat owners upon execution and registration of the deeds. The fact remains that the plaintiff/appellant has not claimed any right in respect of L.R. Plot No. 481 as she herself admitted that her mother, the respondent no. 7 actually divested her right, title and interest as an undivided co-owner in respect of the said plot in favour of the contesting respondents.
8. The dispute remained over the L.R. Plot No. 471 which according to the contesting respondents are lying vacant

and there is no construction made thereupon nor there is any intention in future to make such construction.

9. In view of the categorical stand taken before us, we do not find that there is any apprehension or imminent threat of depriving the plaintiff/appellant of her alleged right in respect of L.R. Plot No. 471 and, therefore, we do not feel that an *ad interim* order of injunction of such nature can be passed at this stage.
10. However, we feel that the moment the contesting respondents have entered appearance in the instant appeal, they are permitted to appear before the Trial Court by filing 'Vakalatnama' within a week from date. On the prayer of both the parties, the contesting respondents shall file written objections/affidavit-in-opposition to an application for temporary injunction filed by the plaintiff /appellant before the Trial Court within fortnight from date. Reply may be filed within a week thereafter.
11. We are given to understand that the next date is fixed on 11.08.2023 for SR & AD. Since the contesting defendants have entered appearance, we do not find any justification in keeping such date for such purposes as we have directed the contesting respondents to enter appearance within a week from date.
12. The Trial Court is directed to treat such date to have been fixed for the purpose of hearing of the application for temporary injunction and endeavour shall be shown to dispose of the said application within two weeks therefrom, in accordance with law.
13. With these observations, the appeal being **FMAT 289 of 2023** is **disposed of**. The connected application being **CAN 1 of 2023** also stands **disposed of**.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

