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Ct. No. 04

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F.M.A.T. 295 of 2023
CAN 1 of 2023

Tapan Sarkar & Ors.
Vs.
Sushama Biswas.

Mr. Siddhartha Banerjee,
Mr. Rajib Kumar Acharyya,
Mr. Banshibadan Maity,
Mr. Mainak Chandra.

... for the appellants.

Mr. Prantik Ghosh,
Mr. Sourav Guha.

... for the respondent.

The instant appeal arises from an order no. 6 dated 14th June, 2023 passed by the learned Civil Judge (Senior Division), Basirhat, North 24-Parganas in Title Suit No. 186 of 2023, by which an application for temporary injunction was allowed restraining the defendants/appellants from disturbing the peaceful possession of the plaintiff/respondent in respect of the suit property and also from changing the nature and character and transferring the same to a third party till the disposal of the suit.

The suit filed by the plaintiff/respondent relates to a declaration that the purported deed of sale being no. 7338 dated 29th November, 2022 is an outcome of threat and/or coercion and no consideration in fact passes on as depicted in the purported deed and, therefore, should be declared as null and void.

The fact relating to a fraud having been committed is also pleaded in the plaint and on the basis thereof the Trial Court proceeded to decide the application for temporary injunction and passed the order as adumbrated hereinabove. A defence was taken by the defendants/appellants that the consideration was passed on to the vendor shown in the said deed and, therefore, the allegation as to the threat, coercion

and/or fraud having committed has no legs to stand in the eye of law.

It appears from the findings recorded in the impugned order that there is a dispute with regard to possession in respect of the suit property. Both the parties claimed possession and, therefore, it is an ardent duty of the Court to decide the said issue before embarking its journey in passing the temporary injunction in the manner as has been done in the instant case.

We are unable to reconcile the findings made in the penultimate paragraph above the ordering portion with the ultimate decision taken by the Trial Court. It has been observed by the Trial Court that if the defendants/appellants are allowed to raise construction in respect of the suit property the preservation thereof shall be at stake and the object and purpose as well as the reliefs claimed therein shall be frustrated causing irreparable loss and injury to the plaintiff/respondent.

Such being the findings returned in the impugned order, we are unable to comprehend the ultimate decision taken by the Trial Court by which the defendants/appellants are restrained from interfering with the possession of the plaintiff/respondent. The Court should be cautious while passing such an injunction when the possession of the respective parties are seriously disputed. The Court should prima facie arrive at the conclusion on the possession of the respective parties more particularly when both the parties claimed possession in respect of the suit premises. Had it been a case that the plaintiff/respondent is in possession, the later portion of the order by which the defendants/appellants have been restrained from changing the nature and character thereof appears to us inconsistent and

cannot be reconciled.

There is no hesitation in our mind that the learned Judge in the Trial Court has proceeded with closed mind without considering the stand of the respective parties taken in the pleadings and returning the findings which is reasonable logical and in consonance with the principles of law enunciated in relation to an application for temporary injunction.

We are not unmindful of the fact that the plaintiff/respondent has challenged the purported sale deed on the grounds as enumerated hereinabove and in the event any third party interest is created, that would not only invite the multiplicity of proceedings but would also cause injury.

We, therefore, set aside the impugned order and direct the Trial Court to rehear the application for temporary injunction on merit and shall dispose of the same within three weeks from the date of the communication of this order by recording proper reasons in accordance with law.

However, by way of an interim order the defendants/appellants shall be restrained from transferring, alienating and/or encumbering the suit premises in any manner whatsoever in favour of a third party which shall continue till the disposal of the application for temporary injunction.

With the above observations the instant appeal and connected application are disposed of.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

