

04.01.2023
Item No.4
Ct. No.7
CHC
(disposed of)

C.O. 2429 of 2022

Subal Chandra Bala
Vs.
Ramani Mohan Bala

Mr. Sourav Sen,
Ms. Adrisnata Chakraborty
...for the petitioner

Mr. Sen, learned advocate appearing for the petitioner, while disputing with the impugned order dated 21st April, 2022, passed in Misc. Appeal No.4 of 2019, submits that the first lower appellate court, while making reversal of the order of the trial court declining to grant injunction, has not gone into the question pertaining to the possession of the subject property, which is extremely necessary for reversal of an order passed by the trial court.

Admittedly, it is a suit for declaration and injunction. The prayer for injunction proposed by either of the parties to this case, like plaintiff and defendant, was refused by the trial court. Without any controversy plaintiff has not preferred any appeal against the rejection of the prayer for injunction, while the petitioner/defendant preferred Misc. Appeal challenging the rejection of injunction. The first lower

appellate court in the above referred Misc. Appeal, has reversed the order of the trial court directing both the parties to maintain *status quo* over the suit property as regards nature and character, with a further direction not to create any third party interest during pendency of the litigation before the court below.

Mr. Sen contends that on the strength of a gift deed executed in favour of the defendant, petitioner has acquired right, title and interest in the suit property. After acquiring title to the suit property, petitioner got his name mutated in the record of right, and paid rent before the appropriate authority in proof of possession of the subject property. Such aspect pertaining to the possession of the petitioner neither could be discussed, nor could be considered by the first lower appellate court, while making reversal of the order of the trial court, Mr. Sen submits.

It is incidentally submitted by Mr. Sen that the trial court, while declining to grant injunction has gone into the aspect of possession by returning findings to that effect, but that aspect has not even explored by the first lower appellate court, while making disposal of this appeal.

It is thus endeavoured to submit that petitioner is in possession of the subject property.

After disposal of the Misc. Appeal the trial court is to go ahead to return logical conclusion of the suit. When the appellate court has not considered the significant aspect of possession, allegedly claimed by the petitioner, such point cannot be decided at this stage without entering into the trial, when it is the specific case made out by the petitioner that defendant is in possession of the subject property on the strength of his title deed.

Upon perusal of the impugned order, neither any express perversity is seen, nor any gross injustice is found to have occasioned, requiring interference by this Court.

The issue pertaining to the possession may be best ascertained with the aid of evidence, to be adduced by the parties to this case. In that view of the matter, the trial of the case pending before the court below may be expedited.

The revisional application is thus disposed of with a direction upon the court below to ensure expeditious disposal of the pending suit providing sufficient opportunity of hearing to either of the parties to this case, but without granting any

unnecessary adjournment, unless it is extremely unavoidable.

While adducing evidence, petitioner has every right to establish his claim of possession upon adducing evidence, both oral and documentary, in rebuttal of the evidence to be adduced by the opposite party during the trial. The logical conclusion of the suit may be endeavoured by the court below, preferably before the end of 2023.

Petitioner is directed to make communication of this order to the learned court below as well as to the opposite party and his learned advocate in the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)