

Item No. 21
23.08.2023
Court. No. 19
GB

C.O. 2702 of 2023

Ayat Developers & Ors.
Vs.
Monowara Bibi

Mr. Ashim Kumar Rauth,
Ms. Anindita Auddy

...for the Petitioners.

The revisional application arises out of an order dated July 19, 2023, passed by the learned Additional District Judge, Fast Track 3rd Court at Barasat in Misc. Appeal No.93 of 2023. Misc. Appeal No.93 of 2023 arises out of Title Suit No.235 of 2023. The learned Civil Judge (Junior Division), Bidhannagar rejected the prayer for ad interim injunction on the ground that the plaintiff no.1 was not a registered partnership firm and hence, could not file the suit.

The petitioners preferred an appeal which was registered as Misc. Appeal No.93 of 2023. The learned lower appellate court rejected the prayer for ad interim injunction on the ground that equitable relief of injunction could not be granted as the material on records did not indicate that the petitioners had a good, prima facie, case. It was observed that the question of prima facie title was required to be gone into, in order to decide whether the balance of convenience and inconvenience was in favour of grant of ad interim order of injunction.

It is submitted that, from the plaint, it would appear that the plaintiffs claimed to be in possession of the property in question and were developing the property. Other persons, claiming to be partners were also plaintiffs in the suit and

hence, the observation of the learned trial judge that on the ground of non-registration of the partnership firm, the other partners could not obtain ad interim order of injunction, was incorrect.

According to the learned advocate for the petitioners, the learned lower appellate court did not take into consideration the prima facie case, balance of convenience and inconvenience and irreparable loss and injury. If the defendants were not enjoined from disturbing the possession of the plaintiffs, the plaintiffs would not be able to construct.

Considering the list of documents at page 8 of the injunction application which was filed with the said application, it appears that photocopies of the plaint, injunction application together with annexures and certified copy of the orders passed by the learned trial judge, had been produced before the Court. The records do not reveal that any other material was before the court which would indicate that the plaintiffs were being disturbed by the defendants from enjoying the property and steps had been taken in this regard. The plaintiffs claimed to be in possession of the property all through.

Thus, upon prima facie coming to the conclusion that a deeper probe was necessary, ad interim order of injunction was refused. Along with the plaint, the registered deed of amalgamation, the registered development agreement, the tax receipts and L.R. Porcha as also a G.D. Entry were filed. Such G.D. Entry was dated May 14, 2023. There does not

appear to be any complaint before the police authorities either before or after that date. No steps were also taken under Section 144(2) of the Code of Criminal Procedure. The plaintiffs failed to make out a good, prima facie, case warranting an ad interim order.

Under such circumstances, this Court does not find any reason to interfere with the order impugned. The learned lower appellate court shall dispose of the appeal within a period of two months from the next date fixed upon hearing all the parties.

This order shall not influence the decision of the learned lower appellate court.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)