

Item No.2
12.09.2023
Court. No. 19
GB

C.O. 2643 of 2022

Jaydeb Jana & Ors.
Vs.
Shankar Jana & Ors.

*Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal*

...for the Petitioners.

The order dated July 25, 2022 passed by the learned Additional District Judge, Fast Track 5th Court at Barasat in Misc. Appeal No.69 of 2022, affirming the order dated August 26, 2022 passed by the learned Civil Judge (Senior Division), 3rd Court at Barasat in Title Suit No.598 of 2022, is the subject matter of challenge in this revisional application.

The petitioners as plaintiffs, filed a suit for declaration and permanent injunction against the opposite party nos.1 to 38. The petitioners prayed for a decree of declaration that they were the owners in respect of 'A', 'B', 'C', 'D', 'E', 'F' and 'G' schedule properties. A prayer for injunction was made, that the defendants/opposite parties and their men and agents be restrained from changing the nature and character of the suit property and/or from causing any wastage and damage to the same. Further prayer for injunction restraining the defendants/opposite parties from ousting the plaintiffs/petitioners from the suit properties and from creating third party interest, was also made.

The petitioners also filed an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. It was specifically averred in the said application

that the defendants were threatening to dispossess the plaintiffs/petitioners by creating a cloud over their right in respect of the said properties. That the threats by the defendants continued on regular basis and immediate protection was necessary.

According to the petitioners, the defendant nos.1 to 20 along with the petitioners were joint owners of 'B' to 'G' schedule property. In respect of 'A' schedule property the petitioners claimed exclusive right, title and interest. Thus, a prayer for injunction was made restraining the defendants and their men and agents from grabbing the 'A' schedule property or any part thereof, and/or from changing the nature and character of the suit property and/or from alienating the suit property by created third party interest. A prayer for ad interim injunction was also made before the learned trial judge.

The learned trial judge, upon considering the plaint case and the fact that the plaintiffs/petitioners were co-owners along with the defendant nos.1 to 20 in respect of all the suit properties, rejected the prayer for ad interim injunction. The learned court further found that although the defendant nos.21 to 38 were stated to be rank outsiders in the plaint, the L.R. record of rights indicated that the names of the said defendant nos.21 to 38 had been entered in respect of the property in question. Further, the learned court found from the records that the plaintiffs/petitioners and the defendants were joint owners in respect to schedule 'A' to schedule 'E' property.

On this, prima facie, finding the learned trial court was of the view that it would not be proper to pass any ad interim injunction and directed issuance of notice.

Such order was challenged before the learned District Judge, Barasat, North 24 Parganas in Misc. Appeal No.69 of 2022. The prayer for ad interim injunction made by the petitioners in the misc. appeal was heard and refused by the learned Additional District Judge, Fast Track 5th Court at Barasat. The learned lower appellate court was also of the, prima facie, view that the petitioners and the opposite party nos.1 to 20 were co-owners of the property in question and the L.R. record of rights were in the name of the opposite parties/defendant nos.21 to 38. Thus, the court held that there was no urgency to pass an ad interim injunction without hearing the parties.

Under such circumstances, both the courts exercised their discretion on the basis of the prima facie case, balance of convenience and inconvenience and irreparable loss and injury. This Court does not find any reason to interfere with the orders impugned. However, the learned lower appellate court must make sincere endeavour to dispose of Misc. Appeal No.69 of 2022 within a period of two months from the next date fixed, upon ensuring that all the parties are served with notice of appeal, in the meantime.

The plaintiffs/petitioners will be at liberty to communicate this order to the learned lower appellate court by filing a 'put up' application, upon service of the same upon the opposite parties and thereafter the learned court below

shall fix the matter as per convenience and in accordance with law. The period as mentioned hereinabove, for disposal of the Misc. Appeal No.69 of 2022 must be adhered to.

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.)