

S/L 54
13.02.2023
Court No.652
SD

CO 3510 of 2019

Jaynal Dhali
Vs.

Land Mark Promoter Pvt. Ltd. & Anr.

Md. Farhaduddin

...for the Petitioner.

Mr. Anirudha Mitra

Ms. Joey Chatterjee

Mr. Abhishek Roy

...for the Opposite Parties.

Being aggrieved and dissatisfied with the order dated July 6, 2019 passed by the learned Additional District Judge, 6th Court, Barasat in Misc. Appeal No.38 of 2016, present revisional application has been preferred.

The petitioner contended that the petitioner filed a suit for declaration and permanent injunction against the defendant. In connection with the said suit, plaintiff filed an application for ad interim injunction restraining the defendants and their men and agents from dispossessing the petitioner from suit property and from alienating the suit property to any third parties and from changing the nature and character of the suit property along with other reliefs.

The petitioner contended that the petitioner being the absolute owner of the suit property mutated his name in the record of rights and still continues his possession. On 02.3.2016 proforma defendant and some unknown person claiming to be the representative of the principal defendant/respondent forcibly came to the petitioner's

residence in the suit property and handed over xerox copy of deed and claimed that they are the owners of the suit property.

However, the prayer for ad interim injunction filed in the said suit came up for hearing before the court below on 10.3.2016. But the learned court below refused to grant ex parte ad interim injunction. Being aggrieved and dissatisfied with the said order no.1 dated 10.3.2016 passed in aforesaid Title Suit No.165 of 2016, the plaintiff/petitioner preferred Misc. appeal being No.38 of 2016 before the appellate court and learned appellate court by the impugned order dated 06.7.2019 was pleased to dismiss the Misc. appeal on contest.

Being aggrieved by that order dated 06.7.2019 passed by the appellate court, present revisional application has been preferred contending that learned appellate court failed to appreciate that the suit shall become infructuous or delayed in the event there is further change of ownership in respect of the suit property and the court below failed to consider the deed of settlement, khajna receipts, tax receipts, sanctioned building plan and other documents wherefrom it shall reveal that the petitioner is in physical possession and occupation of the suit property.

During hearing, I am informed that the injunction application is still pending for disposal before the court below. It appears from the record that this court vide its order dated October 1, 2019 was pleased to restrain opposite

party no.1 by way of injunction from disturbing the possession of the petitioner in respect of the suit property and/or from selling, transferring, alienating and/or encumbering the suit property in favour of any third party and the said order of injunction subsequently extended till disposal of the revisional application.

In view of the aforesaid facts and circumstances of the case, the court below is directed to dispose of the injunction application within a period of twelve weeks from the date of communication of the order and is further directed to expedite the hearing of the suit. Till disposal of the injunction application, the opposite party no.1 shall be restrained by the order of injunction from disturbing the possession of the petitioner in respect of the suit property and/or from selling, transferring, alienating and/or encumbering the suit property in favour of any third party.

I make it clear that I have not gone into the merits of the case and the learned trial court will adjudicate the injunction application after hearing both the parties and without being influenced by any of the observations made herein.

Accordingly, CO 3510 of 2019 is disposed of.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)