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Ct. No. 04

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F.M.A. 1359 of 2017
CAN 1 of 2017 (Old No. CAN 8797 of 2017)
CAN 2 of 2018 (Old No. CAN 7687 of 2018)

Srimati Barnali Roy Das & Ors.

Vs.

Sri Brindavan Saha Roy & Anr.

Mr. Srijib Chakraborty,
Ms. Sulagna Mukherjee,
Mr. Ashis Kumar Mukherjee,
Mr. Sourabh Prasad.

... for the appellants.

Mr. Supriya Chattopadhyay,
Mr. Sudip Kumar Maiti,
Mr. Deborsi Chatterjee.

The instant appeal arises from a judgement and order dated 3rd June, 2017 passed by the learned Civil Judge (Senior Division), Siliguri in Title Suit No. 53 of 2016; whereby and whereunder the application for temporary injunction was dismissed.

The suit for declaration of right, title and interest in respect of the suit property and permanent injunction restraining the defendants from creating any obstruction or making any change in the nature and character of the suit premises along with a decree for recovery of possession is instituted by the plaintiffs/appellants.

It is averred in the plaint that originally one Sukdeo Bhagat owned and possessed 67 decimal of land comprised in R.S. Plot No. 94 of 180 in Mouza – Thiknikata, P.S. Matigara, Dist. Darjeeling on the basis of a deed of sale bearing no. 2137 dated 10th April, 1964. Subsequently the said Sukdeo Bhagat sold, transferred and conveyed 33 decimal of land to Kalachand Roy by executing and registering a deed of sale bearing no. 1482 for the year 1980 out of 67

decimal of land, which he owned. Subsequently the said Kalachand Roy sold 8.25 decimal of land out of 33 decimal of land to Smt. Bulan Dey with specific boundaries and the said purchaser possessed the same and also discharged the obligation upon payment of taxes applicable thereto. The said Bulan Dey subsequently sold the entire land, which she purchased from Kalachand Roy by executing a deed in the year 2008.

It is further averred in the plaint that after purchasing the said property they protected the same by constructing a boundary wall, as it was bare land. It is alleged in the plaint that in the year 2015 the defendant no. 1 claiming to have possessed and owned the land adjacent to the said land intended to encroach a portion of the said land and make a construction thereupon. It is alleged that after getting information that the said defendant with some unknown persons entered into the suit land without having any right, title and interest and started to make pucca construction by engaging mason and labourers, the plaintiffs rushed to the suit land and found that a structure with pucca roof up to the ground floor level has been completed and the construction work is going with rapid pace.

It is further alleged that taking advantage of the wrong recording in the Record of Rights, the said defendant has, in fact, encroached upon one decimal of land and ultimately sold to the defendant no. 2. On the basis of the aforesaid fact the reliefs, which are claimed in the plaint, are the decree for declaration of right, title and interest in respect of the suit property, the declaration that the purported deed executed by the defendant no. 1 in favour of the defendant no. 2 is void

and for recovery of possession apart from the relief of permanent injunction restraining the defendants / respondents from transferring and changing the nature and character of the suit property.

The defendant no. 1 is contesting the said suit and it would appear from the stand taken therein that they also traced their title from Sukdeo Bhagat, who sold and transferred 6 cottahs of land to Mihir Dutta Gupta in the year 1983 and another 3 cottahs of land to Narayan Chandra Gupta in the same year. Mihir Dutta Gupta in turn sold 4.5 cottahs out of 6 cottahs of land to Sri Madhab Chandra Saha in the year 1996.

We need not to have narrated the full facts for the reason that it is a specific stand of the defendant no. 1 that he acquired the land comprised in new L.R. plot no. 418, which would be evident from the schedule appended to the deed of sale dated December 21, 2001. The only question arises in the instant suit whether the defendants have acquired any right, title and interest in respect of the L.R. plot no. 416, which the plaintiffs claimed on the basis of the deed of purchase.

On the conspectus of the aforesaid facts an application for temporary injunction was taken out and an ad interim order of injunction was granted by the Trial Court. By the impugned order the Trial Court dismissed the application for temporary injunction on the premise that the moment there is a dispute as to the extent of properties purchased by both the parties and as the decree for recovery of possession is sought, no injunction should be granted by the Trial Court.

It appears from the affidavit-in-opposition to the application for temporary injunction filed by the defendant no. 1 that the defendant no. 1 has categorically stated that his name has been recorded in the LR Record of Rights in relation to the LR plot no. 416 and, therefore, they have acquired the right, title and interest in respect thereof. It is further contended that upon obtaining permission from the concerned Gram Panchayat for construction of a house, the construction is made and, therefore, the plaintiffs are not entitled to any temporary injunction pending the suit.

At the time of admission of the instant appeal, this Court passed an ad interim order of injunction restraining the respondents from transferring, selling and/or alienating and/or creating any third party interest in the suit property and/or changing the nature and character thereof and/or parting with the possession of the suit property till the disposal of the application. The aforesaid interim order was passed as far back as on 24th October, 2017 and it is not in dispute that the said interim order is operative till date.

The first and foremost point involved in the instant appeal is whether the Trial Court is justified in rejecting the application for temporary injunction on the grounds indicated therein.

The dispute pertains to the right, title and interest in respect of the LR plot no. 416, which according to the plaintiffs, belonged to them. The schedule of the deed dated December 21, 2001 disclosed by the defendant no. 1 reveals that the LR plot no. 418 was sold, transferred and conveyed to him

by the predecessor. The antecedents of several transactions having entered into is evident from the fact that both the parties traced their title through Sukdeo Bhagat who admittedly owned 67 decimal of land and by virtue of several dint of sale sold, transferred and conveyed a part of the said land to different persons. The schedule of the deed executed in favour of the defendant no. 1 would reveal that the LR plot no. 418 to the extent of the land as shown therein is transferred in his favour by the said Sukdeo Bhagat.

The moot question that arises in the suit is whether the land over which the constructions have been made come within the ambit of LR plot no. 416 or LR plot no. 418. Though the defendant no. 1 has claimed that his name is recorded in the LR Record of Rights in relation to LR plot no. 416, but we do not find any corroborative evidence produced by him that the right, title and interest in respect of the said LR plot no. 416 or a part thereof has been conveyed to him. Mere entry into the Record of Rights neither creates any title into a person nor extinguishes a title of a rightful owner. The aforesaid entry is intended to impose a liability upon a person for payment of land revenue or at best can have a presumptive value of possession.

Indubitably, the plaintiffs claimed to have lost possession in respect of 1 decimal of land allegedly comprised in LR plot no. 416 and prayed for recovery of possession against the respondents. Obviously once the possession is lost and the declaration of right, title and interest in respect thereof has been claimed in the suit, we do not find any impediment on the part of the plaintiffs/appellants in seeking decree for recovery of possession on the strength of such title. The dispute

hinges upon 1 decimal of land, which according to the appellants is allegedly sold to the defendant no. 2 by the defendant no. 1 and unless the Court arrives at a conclusive finding that such one decimal of land is comprised in LR plot no. 416, the further relief of recovery of possession cannot be passed at this juncture.

Since the defendant no. 1 never claimed any right, title and interest on the strength of the sale deed dated December 21, 2001 over the LR plot no 416, but purchased LR plot no. 418 to the extent of land indicated therein, any further improvement if made thereupon would create immense injury to the plaintiffs and, therefore, we do not subscribe the view expressed by the Trial Court that the temporary injunction cannot be granted if the relief in the form of recovery of possession is sought by the plaintiffs.

The ad interim order of injunction passed in the instant appeal is operative for nearly five years and it further appears that the defendant no. 1 has already filed the written statement, we do not find any impediment on the part of the Court to proceed with the suit and dispose of the same within a time frame.

Once the appellants have been able to make out a prima facie case in respect of their right, title and interest over the LR plot no. 416, we thus do not find any ambiguity in the ad interim order of injunction passed against them relatable to the said LR plot no. 416 to operate against the respondents.

Accordingly, the ad interim order of injunction dated 24th October, 2017 passed by the earlier Division

Bench in the instant appeal is hereby made absolute to operate till the disposal of the suit.

However, to remove any difficulties or ambiguities in interpreting the temporary injunction granted by this Court, it is hereby made clear that the said order of injunction is restricted in respect of the suit plot, i.e. LR plot no. 416 against the respondents.

With the above observations, the appeal is dismissed.

The Trial Court is requested to expedite the hearing of the suit and endeavour shall be made to dispose of the same within six months from the date of the communication of this order in presence of the parties or their respective Counsels.

It is further made clear that the Trial Court shall refuse to grant adjournment to either of the parties unless necessitated by unforeseen and unavoidable circumstances.

In view of the dismissal of the appeal, the connected applications are accordingly dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

