

20.09.2023
Item No.ADSL 3
RP
Ct. No.7

CO 3330 of 2023

**Amalendu Biswas & Anr.
Vs.
Sudhir Ranjan Biswas**

Mr. Partha Pratim Roy
Mr. Malay Bhattacharyya
Mr. Subhrajyoti ghosh
... for Petitioners

Mr. Tanmay Mukherjee
Ms. Pampa Dey (Dhabal)
Mr. Souvik Das
Mr. Rudranil Das
... for Opposite Party

1. The learned advocate for the petitioner mentioned this matter at the first sitting of the Court citing grave urgency. Accordingly this matter was directed to be listed in the supplementary list to be taken up today at 2 P.M.
2. The plaintiffs in a suit for declaration of title, confirmation of possession in respect of B Schedule property and for partition have challenged the judgement and order dated September 13, 2023 passed by the learned Additional District and Sessions Judge, Bishnupur, Bankura in Misc. Appeal No.01 of 2023. By the said judgement and order, the order no.5 dated May 12, 2023 passed by the learned Civil Judge, Senior Division, in Title Suit No.31 of 2023 was set aside.

3. The plaintiffs claim that their predecessor, namely, Rabi Sadhan Biswas, became the owner of 3 decimals of land in plot no.22 under Mouza-Indus in the district of Bankura by virtue of a registered deed of gift dated December 1, 1993. The plaintiffs further claim that the defendant transferred 1 (one) decimal of land out of his 7 decimals in plot no.22 by executing a registered sale deed sometimes in the year 1993. The plaintiffs further claim that by virtue of the aforesaid deeds their father became the owner of 4 decimals of land out of 10 decimals in plot no.22 and upon death of their father the plaintiffs became the joint owners in respect of 4 decimals of land out of 10 decimals in plot no.22. Alleging that building materials have been accumulated for making construction by the defendant, the instant suit was filed praying for declaration of their right, title and interest and for confirmation of possession in respect of Schedule B property measuring about 4 decimals of land. Alternatively, a preliminary decree for partition to the extent of 4 decimals of land out of 10 decimals was also prayed for in the said suit. The plaintiffs filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 and the learned trial Judge by order no.5 dated May 12, 2023 passed an order directing the plaintiffs and

defendant not to change the nature and character of the schedule suit property till 31.05.2023. The defendant preferred a miscellaneous appeal, being no.1 of 2023, which was disposed of by the learned Additional District Judge, Bishnupur, by the order impugned, thereby setting aside the order passed by the learned trial Judge.

4. Mr. Roy, learned advocate appearing for the plaintiffs/petitioners submits that the defendant/opposite party does not have any manner of right, title and interest in respect of 4 decimals of land in plot no.22 being the B Schedule property and, therefore, they should be restrained by an order of injunction from making any construction in respect of the aforesaid 4 decimals of land in plot no.22.
5. Mr. Mukherjee, learned advocate appearing for the defendant/opposite party submits that the opposite party in making construction on the portion of plot no.22 measuring about 6 decimals. He further submits, on instruction that the opposite party is not making any construction in respect of the 4 decimals of land in plot no.22, which is the B Schedule property.
6. In reply, Mr. Roy submits that since there may be a dispute as to whether 1 decimal of land in plot no.22, which was sold by the defendant to the

father of the plaintiffs, is a demarcated portion or not, the plaintiffs, for abundant caution, have prayed for passing of a preliminary decree in respect of their share of 4 decimals of land in plot no.22.

7. Heard the learned advocates for the parties and perused the materials placed. After going through the averments made in the plaint as well as the application for injunction, this Court finds that the petitioners have not specifically averred as to in which portion of plot no.22 the defendant/opposite party is making construction. From the averments made in the plaint it is evident that the plaintiffs are not claiming right, title and interest in respect of entire 10 decimals of land in plot no.22. Therefore, the plaintiffs cannot pray for an order of injunction in respect of entire 10 decimals of land in plot no.22. In course of argument of this civil order, Mr. Roy submits that he is not pressing his prayer for injunction in respect of entire 10 decimals of land in plot no.22. He, however, restricts his prayer for injunction in respect of 3 decimals of land in plot no.22 which has been gifted by their grandfather to their father and one decimal which has been transferred by way of sale deed by the defendant in favour of the

predecessors-in-interest of the plaintiffs which is the B Schedule property.

8. This Court is of the prima facie view that the B Schedule property is a well demarcated one and the defendant/opposite party do not have any right to make construction in respect of any portions of the plot no.22 which is the subject matter of the aforesaid gift deed, being no.3244 dated 1.12.1993 and the sale deed, being no.3247 of the year 1993 which has been described in Schedule B to the plaint. It is the specific stand of the defendant/opposite party that he is not making any construction on any portion of B schedule property.
9. The petitioners have made out a strong prima facie case to go for trial. The balance of convenience and inconvenience is also in favour of the petitioners. The petitioner will suffer irreparable loss and injury unless an order of injunction in respect of B Schedule property is passed.
10. Accordingly, there shall be an order of injunction restraining the defendant/opposite party from making any construction upon B schedule property of the plaint till the disposal of injunction application. Since the application for temporary injunction is still pending and the defendant/opposite party has already filed written

objection thereto, the learned trial Judge is requested to take up the hearing of the injunction application and to dispose of the same as expeditiously as possible.

11. In the light of the aforesaid observation, CO 3330 of 2023 is disposed of.

(HIRANMAY BHATTACHARYYA, J.)