

Ct. 21.9
No. 652
116
akb
2023

C.O. 3852 of 2018

Sri Sushil Shaw
-Versus-
Sulekha Shaw, since deceased,
represented by Suchitra Shaw & Ors.

Mr. Kalyan Kumar Chakraborty
Mr. Kasinath Bhattacharya
Ms. Rimasree Chatterjee **...For the Petitioner**

Opposite parties are not represented.

Being aggrieved by and dissatisfied with the order being dated 23rd August, 2018 passed by the learned Additional District Judge, Fast Track, 3^{re} Court at Malda in Miscellaneous Appeal No. 5 of 2017, affirming the order dated 30th November, 2016 passed by the learned Civil Judge (Senior Division), Malda in Partition Suit No. 195 of 2014, present application has been assailed under Article 227 of the Constitution of India.

The opposite party Nos. 1 & 2 herein as plaintiffs filed aforesaid suit for partition and permanent injunction against the petitioner and the proforma opposite parties herein.

The background of the plaintiffs' case is that the suit property exclusively belonged to one Somnath shaw (since deceased) and after his death, the plaintiffs being widow and daughter and the defendant No. 1 being the only son of Somnath Shaw, inherited the suit property to the extent of 1/3rd share each and have been owing, possessing and enjoying the suit property. Subsequently, plaintiffs No. 1 transferred some portion of the suit property from her share to the plaintiff No. 2. The plaintiffs jointly have 2/3rd share in the suit property and the rest 1/3rd belongs to the

defendant No. 1.

Petitioner states that in connection with the aforesaid suit, the plaintiff filed an application under Order XXXIX, Rule 1 and 2, inter alia, prayed for an order restraining the defendant No. 1 from making any construction in the suit property and from changing the nature and character of such property and from transferring and/or alienating the suit property in favour of any third party during pendency of the suit for partition. While disposing the interim injunction application the Trial Court vide its order dated 13th November, 2016 observed that the instant suit is a suit for partition and the parties are co-sharer of the property and as such the Court was satisfied to observe further that if an order of status quo with regard to the nature, character and possession of the suit property till the disposal of the suit be passed, it will cause no prejudice to the defendant.

Being aggrieved by that order defendant/petitioner preferred aforesaid Misc. Appeal before the learned District Judge, Malda and the Appellate Court after hearing both the parties affirmed the order passed by the Trial Court, by the impugned order.

Aforesaid order of Appellate Court has been assailed herein contending that suit for partition is not maintainable, unless deed of gift in favour of petitioner herein executed by the predecessor of the parties is declared as void by the competent Court of law because said deed was not challenged during the life-time of doner and the deed was executed in favour of defendant in presence of the plaintiffs.

However, Mr. Kalyan Kumar Chakraborty, learned Counsel appearing on behalf of the petitioner during hearing submits that the property in question is a dilapidated building, which needs immediate repairing and it also requires regular maintenance. Since the order of status quo is continuing the parties are not in a position to make necessary repairing work in their suit building/premises.

The First Appellate Court while disposing the Misc. Appeal was of the view that the plaintiffs/respondents have prima facie case to proceed for the trial. The balance of convenience and inconvenience also leans in favour of the plaintiffs and as such if the order of status quo, is continued with regard to the nature, character and possession of the suit property till disposal of the suit, it will not create much inconvenience to the appellant. He further held that probability of irreparable loss also lies in favour of the plaintiffs as admittedly the appellant looks after affairs of the suit property.

Having considered the facts and circumstances of the case it appears to me that the order of status quo in respect of the nature and character of the suit property in a suit for partition where plaintiff described the parties as co-sharer, is neither illegal nor irrational nor suffering from any procedural impropriety which may demand interference of this Court in exercise of supervisory jurisdiction. The power of superintendence under Article 227 of the Code cannot be invoked, converting itself into a Court of Appeal, when the legislature has not conferred a right of second appeal and made the decision of the Court below as final on facts.

However, I want to make it clear that the direction to maintain status quo in respect of nature and character of

the suit property does not include any act relating to such premises/building. It only imposes restriction on making any physical change in the premises such as demolition and/or alteration. Therefore, order of status quo should not prevent the parties from making necessary repairing work or maintenance work, to keep the premises/building habitable, where the parties are possessing their respective portion, specifically in the context where nobody knows how long it will require to resolve the dispute conclusively.

In such view of the case I am not inclined to interfere with the order impugned. However, liberty is given to the parties herein to make proper application before the Court below seeking urgent repairing and/or maintenance work in respect of the suit premises/building and in the event of filing such application mentioning details of work intended to be carried out, the Court below will dispose of such application within a period of six weeks from the date of filing such application, after giving opportunity to concerned Municipality to contest and also the other opposite parties. However, such prayer must not include a prayer for changing basic nature and character of the suit property violating order of status quo.

The revisional application, being C.O. 3852 of 2018 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)