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2024

Ct. No. 04

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FMA 483 of 2023
IA No. CAN 1 of 2023

Goutam Sinha Roy
Vs.
Kabita Singha Roy and others.

Mr. Angshuman Chakraborty,
Mr. Shivaji Mitra.

... for the appellant.

Mr. Prasanta Bishal.

... for the respondent no. 1.

Mr. Tapash Kumar Bhattacharya,
Ms. Sahima Mollah,
Mr. B. P. Singha Roy.

... for the respondent nos. 2 to 4.

Mr. Partha Pratim Roy.

... for the respondent no. 5.

An ex parte ad interim order of injunction granted by the Court on 14th February 2022 in a suit for declaration of the Deeds of Gift to be void with the consequential relief of partition, stood recalled and/or set aside by the impugned order while disposing of an application under Order XXXIX Rule 4 of the Code of Civil Procedure (hereinafter referred to as “Code”) filed by the respondent nos. 2 to 5.

The plaint proceeds with the assertion that originally the properties included in Schedule – A to the plaint belonged to one Tarak Nath Singha Roy, who, during his lifetime, married twice. The appellant and the respondent no. 1 are the issues from the first wife and the respondent no. 2 is the second wife and respondent nos. 3 and 4 are the daughters from the said second wife. It is not in dispute that the said owner married the respondent no. 1 after the death of the first wife and the children from the second wife are also arraigned as party in the said suit. It is averred in the plaint that taking advantage of the illness of the said owner, the respondent no. 1 managed to procure the Deed of Gift in her name and in the name of the respondent nos. 3 and 4. The

aforesaid properties are described in Schedule – B and C to the plaint, which are undeniably the parts of the Schedule – A property. The Deed of Gift is sought to be impinged on the plea of undue influence and that the said owner was not mentally and physically capable of taking a decision.

The Court while passing an ex parte ad interim order of injunction directed the respondent nos. 2 to 7 from evicting the plaintiff/appellant from Dag No. 930 and 931 of Bhatua Mouza and Plot Nos. 2089, 2156/3245, 251/3220, 252, 2895 of Rajhat Mouza without following the due process of law. After the service under Order XXXIX Rule 3 of the Code, an application under Order XXXIX Rule 4 of the Code came to be filed by the respondent nos. 2 to 5 jointly. It is disclosed in the said application that on the basis of the Deed of Gift, said respondent no. 2 transferred the same in favour of the respondent no. 5 and put her in possession of those properties.

What appears from the respective stands that the possession in respect of the aforementioned properties is disputed, but in support of the aforesaid contention, no documentary evidence was filed by the said respondent nos. 2 to 5.

Be that as it may, we do not delve to go into such aspect for the simple reason that the Trial Court decided an application under Order XXXIX Rule 4 of the Code in isolation to an application for temporary injunction and, therefore, the first and foremost point, which arise in the instant appeal, is whether any case contemplated under Order XXXIX Rule 4 of the Code has been made out by the said respondents.

As indicated above, the said application does not reveal any averments relating to suppression of material facts, making the statement, which is false or making a misleading statement, but solely on the ground that the possession as claimed by the plaintiff/appellant is with

the said respondents. It is apposite to quote the provisions contend under Order XXXIX Rule 4 of the Code, which runs thus:

“4. Order for injunction may be discharged, varied or set aside.- Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

[Provided that if in an application for temporary injunction or in any affidavit supporting such application a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interest of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.]”

From the meaningful reading of the aforesaid provision, it is manifest that the Court after passing an ex parte ad interim order of injunction is conferred with power to discharge, vary or set aside the said order on an application made by a person dissatisfied with such order. The said provision contained two provisos; the first proviso, in our opinion, clinches an issue in the instant appeal as the order passed ex parte is sought to be varied and/or set aside. The proviso makes the position more clear that the Court can discharge, vary and/or set aside the order provided it is disclosed that the party in whose favour the ex parte ad interim order of injunction was passed knowingly made a false and misleading statement in relation to a material particular.

It admits no ambiguity that the aforesaid provision can further be activated in the event the Court find the ex parte ad interim order of injunction is secured by suppressing the material facts. It is a trite law that

exercise of jurisdiction or the power by the Court must emanate from the respective provisions of the statute as the authority of the Court derives therefrom and, therefore, cannot be transgressed from its boundaries. The moment the particular incidents are given in the provision, the exercise of power appears to have been restricted within such ambit and, therefore, it is a duty of the Court to see whether the ingredients of the aforesaid provision have been fully disclosed and/or revealed by a person approaching the Court.

We do not find any averments in the application under Order XXXIX Rule 4 of the Code relating to making a false and misleading statement nor we find any allegation as to suppression of material facts in securing the said ex parte ad interim order of injunction. The Court exercises jurisdiction and the powers within the four corners of the statutory provisions and must also returned its findings while dealing a case covered under the particular provision of the statute in tune with the spirit and the soul of the said provision. The transgression from the boundaries of the said provision cannot be appreciated unless the Court finds a situation where the inherent power enshrined under Section 151 of the Code is required to be activated.

The contents of the entire order projected an impression in us that the Trial Court has proceeded to decide the matter on merit despite the fact that an application for temporary injunction is still pending, which empowers the Court to decide the matter on the basis of the respective pleadings of the parties.

We, thus, do not find that the ingredients required under Order XXXIX Rule 4 of the Code have been addressed by the Court nor any case of such nature is made out by the respondent nos. 2 to 5 and, therefore, the decision of the Trial Court cannot be sustained.

The order impugned is, thus, set aside.

We have been given to understand that the

objection to an application for temporary injunction has already been filed by the respondent nos. 2 to 4 and, therefore, there is no impediment on the part of the Court to dispose of the said application for temporary injunction. Since the respondent no. 5 derived right, title and interest through the respondent nos. 2 to 4, he cannot take any defence de hors the defence of the aforesaid respondents and, therefore, we feel that the disposal of the said application for temporary injunction should not wait for filing his defence.

Though we are not inclined to give further opportunity to the respondent no. 5, but we feel that since he is appearing and contesting the proceedings, he should be given such opportunity to file a written objection to the application for temporary injunction, which shall be filed within one week from date. The appellant is directed to file reply to the written objection within a week from date so far as the respondent nos. 2 to 4 are concerned and shall further file the reply within three days after receiving the copy of the written objection filed by the respondent no. 5 within the time stipulated herein above.

The Trial Court is requested to prepone the date for hearing the application for temporary injunction, which shall not exceed beyond 15 days from date and endeavour shall be made to dispose of the said application within fortnight therefrom after giving an opportunity of hearing to the contesting parties in accordance with law.

With these observations, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

