

March 8, 2024
Sl. No.17
Court No.19
s.biswas/srm

CO 423 of 2024

Sri Abhisek Dari

vs.

Sri Tapan Kumar Dari

Mr. Saptansu Basu, Sr. Adv.

Mr. Ayan Banerjee

Ms. Debjani Sengupta

... for the petitioner

Mr. Tanmoy Mukherjee,

Mr. Kajol Ray,

Mr. Rudranil Das,

Mr. Soumava Santra,

Mr. Suman Nandi

... for the opposite party

1. The revisional application arises out of an order dated January 18, 2024 passed by the learned Civil Judge (Senior Division), Chandernagore in Title Suit No.13 of 2024, as also the order dated January 25, 2024 passed by the learned Additional District Judge, Chandernagore in Misc. Appeal No.01 of 2024. Both the orders arise out of Title Suit No.13 of 2024. The learned Civil Judge (Senior Division), Chandernagore rejected the prayer for ad interim injunction made by the petitioner for status quo with regard to the 'A' Schedule.
2. The petitioner preferred a misc. appeal along with an application for injunction. In the application for injunction an ad interim prayer for status quo was also made. The petitioner apprehended that the opposite party/father of the petitioner was likely to sell out the land and building on a

portion of LR plot No.325. The hotel-cum-bar was running from a four storeyed building on the said plot, which the petitioner submits, had encroached into the portion belonging to Purnima Dari (since deceased).

3. According to the petitioner, 8.25 decimals of land in LR Plot No.385 had been gifted to Purnima Dari (since deceased), by the original owner Kanaklata Dari (since deceased). The said 8.25 decimals of the plot was a vacant plot and the rest 9.5 decimals was gifted to the opposite party. Upon death of Purnima Dari, both the opposite party and the petitioner acquired right, title and interest on 8.25 decimals in the northern side of LR plot No.385.
4. The learned appellate court, upon refusing ad interim prayer, decided to hear the application for injunction, upon notice being issued to the opposite party. The ground for rejection, as it appears, was non-applicability of Section 22 of the Hindu Succession Act and also Section 44 of the Transfer of Property Act. The learned appellate court was further persuaded to reject the ad interim prayer on the ground that the son/petitioner did not show any intention to purchase the property.

5. Mr. Basu, learned Senior Advocate, assails both the orders passed by the respective courts and submits that admittedly 8.25 decimals of land in the northern portion of LR plot No.385 had been gifted to the petitioner's mother and 9.5 decimals had been gifted to the opposite party. The opposite party and Purnima Dari were husband and wife and a portion of the hotel that was constructed and being run from the area gifted to the opposite party, had also extended to the area which had been gifted to Purnima Dari, i.e., Schedule A property. Thus, the ad interim order of injunction would be necessary, unless and until there was a partition by metes and bounds. Mr. Basu further submits that the petitioner is willing to purchase the portion sought to be sold.
6. Paragraph 6 of the plaint has been relied upon in support of the contention that although distinct and demarcated portions had been mentioned in respect of the plots in the different gift deeds with boundaries, yet as the plots belonged to the same family, a clear distinction by proper boundaries had not been effected. The opposite party has constructed the hotel which had encroached the portion which had been gifted to Purnima Dari.
7. Mr. Mukherjee, learned advocate for the opposite party, submits that the petitioner, in effect, was

praying for injunction on a non-suit property. Referring to Schedule A of the plaint and paragraphs 2 and 3, Mr. Mukherjee submits that the suit was restricted to demarcation and the partition of 8.25 decimals in the northern side of L.R. plot No.385, which was the property of Purnima Dari, which she had acquired on the basis of a deed of gift executed by her mother-in-law. Such property was sought to be partitioned upon death of Purnima. As the property of the opposite party was not the subject matter of the suit, the opposite party could not be restrained from selling out the building and the land on his portion, which was within his exclusive control and possession.

8. Mr. Mukherjee, further contends that Section 22 of the Hindu Succession Act would apply in case of 8.25 decimals of land, but not in respect of the property which the opposite party had acquired by a deed of gift from Kanaklata Dari, because the same was his exclusive property.
9. Moreover, the submission that the petitioner was willing to purchase the hotel and bar, was incorrect as he had never approached his father. On the other hand, he was restraining the sale as he wanted to enjoy the entire property.

10. The plaint case is that 8.25 decimals in the northern side was gifted to Purnima and after Purnima's demise the petitioner and the opposite party became owners. The suit for partition was filed in respect of the said property and some others.
11. Next, it appears that the fact that 9.5 decimals of land in LR Plot No.385 had been gifted to the opposite party is also admitted in the plaint. It has also been admitted in the deeds that there are distinct boundaries, but the pleadings in paragraph 6 somewhat indicates that portion of the construction of 'Sangam Tourist Lodge, Hotel, Restaurant-cum-Bar' may have extended to the 8.25 decimals in the northern side, which was gifted to Purnima.
12. I find that although 9.5 decimals was gifted to the opposite party and Mr. Mukherjee contends that a four-storeyed building stands on the said property which houses the bar-cum-restaurant, but in the advertisement, an area measuring 10 decimals has been mentioned. Thus, the contention of the petitioner that a part of the construction may have extended to the portion belonging to Purnima, since deceased, in the northern side of the said plot measuring 8.25 decimals cannot be ruled out at this stage. There

may be overlapping of 0.5 decimals which has to be ascertained by way of a local investigation.

13. Under such circumstances, this Court is of the view that till the dispute with regard to the boundary is elucidated by a local investigation, there must be an ad interim order restraining sale of the property.
14. I do not find any reason to keep Misc. Appeal No.01 of 2024 pending before the learned Additional District Judge, Chandernagore, Hooghly. Accordingly, the appeal stands disposed of.
15. The matter is relegated to the learned trial Judge. The learned trial Judge will appoint a survey passed commissioner either from the same court or from the district or from the panel maintained by the High Court or the Alipore Court for the purpose.
16. The parties will file their applications and make a joint prayer for implementation of this order. The learned court will only be required to nominate the commissioner and fix the remuneration which will be equally borne by both parties. No further hearing on such application would be necessary.
17. The points for local investigation is framed by this Court

- (a) The survey passed commissioner shall identify the respective properties in the presence of the parties and measure and demarcate the same on the basis of the deeds of the parties namely, Deed Nos.4129 of 2004 and 3938 of 2004. The original deeds will be supplied to the commissioner at time of inspection. Any other deed, especially the mother deed of plot No. LR 385 shall also be consulted if available.
 - (b) A report shall be filed indicating whether any portion of 'Sangam Tourist Lodge, Hotel, Restaurant-cum-Bar' had extended to the portion which is the subject matter of schedule 'A' property in the plaint.
18. Till such exercise is completed, ad interim injunction restraining sale of the property including land and building known as Sangam Restaurant and Bar shall continue. Thereafter, on the basis of the report, the learned court shall pass necessary orders.
19. The entire exercise shall be completed within three months from the date of communication of this order. Thereafter the court shall dispose of the injunction application within a short period after the report is filed.

20. However, pendency of the proceedings shall not prevent the petitioner from approaching the opposite party with his offer to purchase the property.
21. With the aforesaid observations, the revisional application is disposed of.
22. There shall be no order as to costs.
23. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)