

Item No.28
20.03.2024
Court. No. 19
S. Biwas/GB

C.O. 511 of 2024

Durgamata Thakurani, represented by
Gouri Sankar Pradhan & Ors.

Vs.
Alpana Das & Anr.

With

C.O.3998 of 2023

Alpana Das & Anr.
Vs.
Gouri Sankar Pradhan & Ors.

Mr. Debasish Das

*...for the Petitioners
(In C.O. 511 of 2024).*

*Mr. Balaram Pandit,
Mr. Krishna Deo Das*

*...for the Opposite Party Nos.1 & 2
(In C.O.511 of 2024).*

1. C.O.511 of 2024 is a revisional application in which the order dated December 13, 2023, passed by the learned Civil Judge (Senior Division), Kharagpur, Paschim Medinipur in Misc. Appeal No.03 of 2023 is under challenge.
2. By the order impugned, the learned court had restored the order of the learned trial judge, passed in Title Suit No.90 of 2023 on the ground that although a caveat had been filed, the caveator had not been heard when the learned appellate court had passed an ad interim order of stay of the directions of the learned trial judge. The learned appellate court was of the view that as the parties were the same and the suit properties were the same and identical,

the caveator ought to have been heard while the stay application was being disposed of.

3. The learned advocate for the petitioners submits that the suit property is a debuttar property. The shebait had filed Title Suit No.83 of 2023 before the learned Civil Judge (Junior Division) at Daton, Paschim Medinipur. Upon perusal of the Nirupan Patra of 1947, the trial court by order dated May 19, 2023, directed that the parties should maintain status quo with regard to the property in question. Dispossession of the plaintiffs from the suit property, would cause irreparable loss and injury. The defendant no.1 in the said suit is one Sudam Das, who is the opposite party no.2 and the husband of Alpana Das, the opposite party no.1. Sudam Das transferred the property by way of gift to the opposite party no.1 in the year 2023, during the subsistence of the status quo order.
4. It is the specific case of the petitioners that they are in possession and upon finding such possession, the competent civil court had granted an order of status quo in Title Suit No.83 of 2023. Subsequently, by suppressing all the above contentions Title Suit No.90 of 2023 was filed by the opposite party no.1. Thus, the order of status quo which was passed by the earlier competent civil court, was completely negated not only by the transfer by way of gift but also by the ad interim order which was passed in Title Suit No.90 of 2023 by the learned Civil Judge (Junior Division) at Daton, Paschim Medinipur restraining the petitioners who are defendants in the said suit from

causing any obstruction in the construction work of the plaintiff/opposite party no.1.

5. Subsequently, on coming to know of such ad interim order the Misc. Appeal No.03 of 2023 was filed by the petitioners. In the misc. appeal, a caveat had been lodged by the opposite party no.1. For some reason, the same was ignored and the learned appellate court stayed the order of the learned trial judge dated June 5, 2023, passed in Title Suit No.90 of 2023.
6. Thereafter, the caveator appeared before the learned court and prayed for recalling of the order. The order was recalled and the order of the learned trial judge restraining the petitioners from disturbing the construction work was restored and extended till the disposal of the appeal.
7. The petitioners are aggrieved because the effect of such restoration of the order till disposal of the appeal, would amount to allowing construction on the debuttar property and dispossession of the petitioners therefrom. The petitioners were already protected by an ad interim order in a separate suit.
8. The learned advocate for the opposite party nos.1 and 2 submits that the earlier suit was not maintainable. The property was sold to the opposite party no.2 by the father of the petitioner nos.1 and 2. The petitioners did not have any right, title and interest in respect of the property in question and the property was not a debuttar property.
9. Having considered the rival contentions of the parties, it appears that there are conflicting ad interim orders in two

separate suits in respect of the self-same property and also between the parties. The opposite party no.1 who is the plaintiff in Title Suit No.90 of 2023, claims through her husband, opposite party no.2 who is the defendant no.1 in Title Suit No.83 of 2023. The suit is between the parties, claiming under same title and in respect of the self-same property.

10. The issue as to whether the property was a debuttar property or personal property of the opposite party nos.1 and 2 will be decided in the suit. However, the question which arises is what kind of protection should be permitted in Title Suit No.90 of 2023, given the fact that a competent civil court had already directed status quo earlier.
11. In Title Suit No.83 of 2023, the competent court has already passed an order of status quo, upon observing that the possession of the petitioners, who are the plaintiffs in the said suit, should not be disturbed.
12. On the other hand, in Title Suit No.90 of 2023, it appears that the opposite party no.1 as plaintiff had prayed for injunction restraining the petitioners from disturbing the ongoing construction. She is claiming through a deed of gift executed by opposite party no.2, the defendant no.1 in Title Suit No.83 of 2023. It appears that the factum of the said suit has not been mentioned in the subsequent suit. Neither was the ad interim order passed in the said suit, mentioned.

13. When such aspects were brought to the notice of the learned appellate court, the appellate court initially stayed the order of the learned trial judge passed in Title Suit No.90 of 2023. Thereafter, when the caveator prayed for recall, the entire order was recalled and the order of injunction passed by the trial judge was restored, thereby, restraining the petitioners from disturbing any construction by the plaintiff/opposite party no.1.
14. In my view, the learned Civil Judge (Senior Division), Kharagpur, Paschim Medinipur ought to have allowed the caveator to advance argument and decided the appeal itself on merits, instead of restoring the trial judge's order till the disposal of the appeal, which amounts to frustration of the very purpose of filing the Misc. Appeal, challenging an ad interim order which was allegedly obtained by suppression of an earlier order of the learned Civil Judge (Junior Division), Dantan.
15. Under such circumstances, the revisional application is allowed and this revisional application being CO 511 of 2024 stands disposed of. The order dated December 13, 2023 is set aside. The learned appellate court shall dispose of the Misc. Appeal No.03 of 2023 within two months from date, upon allowing the opposite parties to contest the proceedings by filing the written objection. All parties will be permitted to rely upon relevant documents. Till such disposal, no construction shall be permitted on the suit plot.

16. The observations made in this order shall be restricted to the disposal of this application and the learned appellate court shall decide the matter independently without being influenced by any observations made herein.

In re: CO 3998 of 2023

17. With the disposal of the CO 511 of 2024, CO 3998 of 2023 also stands disposed of as infructuous.
18. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)