

Ct.
No.
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2024

C.O. 743 of 2020
Smt. Antara Dutta
-Versus-
Narayan Pal & Ors.

Mr. Partha Pratim Roy ...For the Petitioner
Mr. Kishore Mukherjee ...For the Opposite Parties

The subject matter of the present revisional application is order dated 2nd December, 2019 passed by the learned Civil Judge (Senior Division), Kandi, Murshidabad, in Partition Suit No. 29 of 2013, whereby the learned Court below has rejected plaintiff's application filed under Section 151 of the Code of Civil Procedure.

The petitioner's case in a nutshell is that the plaintiff filed aforesaid suit for partition of the suit property and for permanent injunction contending that the plaintiff and the defendants are the joint owners in respect of the aforesaid suit property and as they are facing inconveniences in joint possession, plaintiff filed the aforesaid suit for partition. In the said suit plaintiff also filed one application for injunction under Order XXXIX, Rule 1 and 2 of the Code, wherein the defendants/opposite parties filed written objection and the Trial Court after hearing both the parties, disposed of the application for injunction directing both the parties to maintain status quo in respect of the nature, character and possession of the suit property till the disposal

of the suit.

In this connection plaintiff's further case is that the predecessor in interest of the opposite parties herein as plaintiff filed a suit for permanent injunction, being Title Suit No. 162 of 2012, wherein the present petitioner was not a party. However, the said suit was dismissed for non-prosecution.

Petitioner's further case is that being aggrieved by the aforesaid order of injunction in the form of status quo, the defendants/opposite parties herein preferred an appeal before this Court, being F.M.A. 1258 of 2017 along with an application for injunction, being CAN 4764 of 2017 and this Hon'ble Court after hearing both the parties on 18th July, 2019 was pleased to dispose of the said application with a direction upon the Trial Court to decide the application for temporary injunction application afresh after affording an opportunity of hearing to both the parties within two weeks from the date of communication of the said order.

Thereafter, the Trial Court had taken up the injunction application afresh and by an order dated 30th September, 2019 was pleased to reject the application for injunction inter alia on the ground that the petitioner has suppressed the fact of pendency of the Title Suit No. 162 of 2012.

Thereafter, the plaintiff/petitioner filed an application under Section 151 of the Code for recalling the said order dated 30th September, 2019, which according to plaintiff was passed under the wrong impression that the earlier suit is pending.

The plaintiff's said application under Section 151 of the Code was taken up for hearing by the learned Court below and by the impugned order, being Order No. 40 dated 2nd December, 2019 Court below had recalled only a portion of the impugned order but he had not recalled the rejection order in respect of injunction application which was passed under wrong impression.

Mr. Partha Pratim Roy, learned Counsel appearing on behalf of the petitioner submits that the aforesaid earlier suit, being Title Suit No. 162 of 2012 was dismissed for non-prosecution on 2nd August, 2014 but the Court below under wrong impression held that the said suit is still pending and the plaintiff has suppressed the pendency of the said earlier suit and had rejected the plaintiff's prayer for injunction. Moreover, Court below has exceeded his jurisdiction by not fixing the date of hearing of the application for injunction in spite of the specific direction given by this High Court. Accordingly, he has prayed for setting aside the order impugned.

Mr. Kishore Mukherjee, learned Counsel appearing on behalf of the opposite parties submits that the Court below after considering all aspects of the matter and the ingredients for granting injunction, has been pleased to reject the plaintiff's prayer for injunction and the said order dated 30th September, 2019 is a reasoned order and as such the order impugned does not call for any interference.

I have considered the submissions made on behalf of both the parties. On perusal of the order passed by this Court in F.M.A. 1258 of 2017 along with application, being CAN 4764 of 2017 it appears that while disposing the said application this Court was pleased to direct the Court below to decide the application for temporary injunction afresh after affording opportunity of hearing to both the parties since the Court below did not record its independent finding as to what is the status of the suit property and without making such finding he had passed the order of status quo in respect of the suit property. However, on the basis of such direction, the Court below after hearing rejected the plaintiff's said prayer for temporary injunction mainly on the ground that the plaintiff has not disclosed each and every fact including the material fact in the plaint though it is natural that being the wife, she had knowledge that her husband is a party to the suit for declaration being Title Suit

No. 162 of 2012 which is pending before the Trial Court. Such finding is palpably erroneous since aforesaid suit being T.S. 162 of 2012 was dismissed long back on 2nd August, 2014 and was not pending when the impugned order was passed.

However, by filing an application under Section 151 of the Code when such erroneous finding was pointed out before the Court below, the Court below did not make any finding to that effect and he had only recalled a portion of his order by which he had stayed the trial of aforesaid suit, being Title Suit No. 29 of 2013 till disposal of the Title Suit No. 162 of 2012.

The aforesaid disposal of the Court below in connection with the plaintiff's said application filed under Section 151 without making any finding regarding order of injunction which was passed on the basis of erroneous finding, is palpably perverse and is not sustainable in the eye of law. In such view of the matter, the order dated 2nd December, 2019 passed in connection with the plaintiff's application under Section 151 of the Code (i.e. the first paragraph of the said order) is hereby set aside.

The Court below is directed to hear the plaintiff's application for injunction afresh after giving opportunity to both the parties to contest and to pass a reasoned order

within a period of 8 (eight) weeks from the date of communication of this order.

In view of the above, C.O. 743 of 2020 is accordingly disposed of.

On the basis of the prayer made on behalf of both the parties, Trial Court is further requested to make every endeavour to dispose of the aforesaid partition suit at the earliest preferably within a period of 10 (ten) months from the date of communication of this order, since the suit is pending for more than a decade.

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

(Ajoy Kumar Mukherjee, J.)