

Ct. 23.02
No. 652
114
akb
2024

C.O. 1033 of 2019
Srikanta Maity & Anr.
Vs.
Santosh Kumar Barman & Ors.

Mr. Iftekar Munshi **...For the Petitioners**

Mr. Rabindra Nath Mahato **...For the Opposite Parties**

Challenging Order dated 12th March, 2018 passed by the learned Additional District Judge, Paschim Medinipur in Misc. Appeal No. 29 of 2014, present application under Article 227 of the Constitution of India has been preferred. By the impugned order learned Appellate Court has affirmed the order of temporary injunction passed by the learned Civil Judge (Junior Division), Dantan, Paschim Medinipur in Title Suit No. 32 of 2012.

Opposite party Santosh Kumar Barman filed the aforesaid suit for declaration of title and permanent injunction. Petitioners herein as defendants contested the said application for injunction. According to the defence contention the suit mentioned 'ga' schedule property is measuring 73 decimals and it was recorded in the name of Ashutosh Barman, Ram Ratan Barman and Shyamapada Barman having 1/3rd share each. After their death, their heirs inherited the suit property according to their respective share.

Thereafter a partition suit was filed by the heirs and Late Ram Ratan Barman against other co-sharers, being Title Suit No. 44 of 1980 and the said suit was decreed.

The petitioners/defendants submits though the suit plot No. 856 measuring 73 decimals was recorded in the R.S. Record of Rights in the name of Ashutosh, Ram Ratan and Shyamapada having 1/3rd share each, but in the aforesaid Title Suit No. 44 of 1980 all the co-sharers of Shyamapada and Ram Ratan were not made parties. So the plaintiff cannot claim his share on the basis of that decree, which is bad for non-joinder of necessary parties and as per final decree passed in Title Suit No. 44 of 1980, '*kha*' schedule land and other proprieties were not lawfully allotted to the heirs of Ashutosh and accordingly, the plaintiff cannot claim '*ka*' schedule suit property out of that schedule as his exclusive property and the plaintiff has not right to transfer any portion of '*kha*' schedule suit land. Moreover, the plaintiff alleged that one of the heirs of the Ashutosh namely Bhagabati had transferred her share in favour of her three brothers but she had no legal right to transfer any share of Prafulla, Ajit and Santosh by Deed of Gift. Accordingly, the said Deed of Gift executed by Bhagabati is not lawful and proper and therefore, plaintiff cannot claim .028/9 decimals

in the suit plot.

Petitioners herein/Defendants further claimed that they have become owner of the suit property through three sale Deeds executed in their favour by the legal heirs of Shyamapada Barman in the year 2012 and got possession but plaintiff in the aforesaid suit illegally obtained order of injunction against the present petitioners where aforesaid facts were not considered. Being aggrieved by that order of injunction, plaintiff preferred aforesaid Misc. Appeal but by the impugned order said Appeal was also dismissed by the Court below without considering petitioner's case.

Since defendants are in possession of the suit property, Court below ought not to have passed order of injunction against the defendants, specially when plaintiff in his plaint has not disclosed, which properties he has transferred and in whose favour. Accordingly defendants/petitioners have prayed for setting aside orders impugned.

Learned Counsel appearing on behalf of the petitioners in support of his submissions relied upon paragraph 18 in the case of *Prafulla Maji and Others Vs. Sukhbindar Singh and Others*, reported in 2022 SCC OnLine 2253.

Mr. Rabindra Nath Mahata, learned Counsel

appearing on behalf of the opposite parties submitted that it is not in dispute that the 73 decimals of land in the “*ga*” *schedule* originally belonged to Ashutosh, Ram Ratan and Shyamapada having $\frac{1}{3}$ share each in the ‘*ga*’ schedule suit property. So even if there was no partition suit filed by the heirs of those three persons, even then heirs of said three persons inherited $24\frac{1}{3}$ share each. Accordingly the share of Ashutosh having an area of $24\frac{1}{3}$ decimals devolved upon his four legal heirs namely Santosh, prafulla, Ajit and Bhagabati. Bhagabati thereafter transferred her share to her three brothers and accordingly said three brothers including plaintiff/Santosh inherited $.08\frac{1}{9}$ share each in the property.

It is further case of the plaintiff/Santosh that by separate Deeds he has sold some properties from his share to different purchasers and he has retained $.02\frac{8}{9}$ decimal share of land which is *ka* schedule property to the plaint, in respect of which he has sought for injunction.

He further submits that the defendants/petitioners herein have purchased land from the heirs of Shyamapada, who also inherited $24\frac{1}{3}$ decimals of land in the said *ga* schedule property. He further submits that from the supplementary affidavit, it appears that in the R.S. Record the name of petitioner Srikanta Maity has been recorded only

in respect of .01 decimal in the said plot No. 856, though according to the defendants/petitioners' case, they have purchased $.02\frac{8}{9}$ decimals of land. However, even if they have purchased $.02\frac{8}{9}$ decimals of land they have purchased it from legal heirs of Shyamapada and it has got no connection with the property allotted to the heirs of Ashutosh namely Santosh/plaintiff/opposite party No. 1. Plaintiffs' specific case in the pleading is that defendants never had/have any right title interest in '*ka*' or '*kha*' schedule property which exclusively allotted to the heirs of Ashutosh.

I have considered the submissions made on behalf of both the parties and I have also gone through the findings of the Trial Court as well as the Court below.

In view of the facts and circumstances, it appears that neither the decree passed in Title Suit No. 44 of 1980 nor the Deed executed by Bhagabati in favour of her three brothers has been declared as void by any competent Court of law and accordingly prima facie it appears that Santosh acquired title in the property to the extent of $.81\frac{1}{9}$ decimals of land from which, according to the plaintiff, after disposing some properties to the different purchasers, he has retained $.02\frac{8}{9}$ decimals in his favour in respect of which he has

claimed possession.

The Court of first instance on the basis of plaintiff's aforesaid prima facie case in the suit property came to a finding that the plaintiff's right title interest in the property is required to be protected till disposal of the suit and he also observed that balance of convenience and inconvenience also tilted in favour of plaintiff and if an interim order be not passed plaintiff will have to suffer irreparable loss and injury, which observation has also been concurred by the Appellate Court.

I do not find any perversity in the concurrent view of the Court below. Unless and until there is absolute perversity, it would not be appropriate for the High Court to interfere in a proceeding initiated under Article 227 of the Constitution of India, in the prima facie findings of the Courts below, which they observed on the basis of affidavits sworn by the parties.

The Application, being C.O. 1033 of 2019 is accordingly dismissed.

The Court below is directed to take every endeavour for early disposal of the suit and to conclude the entire proceeding preferably within a period of 10 (ten) months from the date of communication of the order.

It is made clear that observations made herein are for the disposal of present Application and shall not bind the Trial Court at the time of final adjudication of suit.

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.)