

01.04.2024
MONDAY

Court : 04
Item : 02
Matter : FMAT
Status : DO
Bench ID : 266175
Transcriber : NANDY

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMAT 85 of 2024
with
CAN 1 of 2024

Gouri Shankar Hazra & Anr.
Vs.
Asraf Ali & Ors.

Mr. Birendra Kumar Jha, Advocate
Mr. Manish Patra, Advocate

.....for the Appellants

Mr. A. Chakraborty, Advocate

.....for the Respondents

1. Though the scope of the instant appeal is limited as the Trial Court while passing the impugned order no. 5 dated 15.03.2024 fixed the hearing of an application under Order XXXIX Rule 4 of the Code of Civil Procedure but according to the learned Advocate for the defendants/appellants, they wanted an interim order to be passed as the plaintiffs/respondents are continuing with the construction. For the limited purpose, we directed the notice to be served upon the respondents who are now represented before us.
2. It is uniformly submitted by both the Counsel that the hearing of an application filed under Order XXXIX Rule 4 of the Code is fixed on 16.04.2024. However, Counsel for the appellants not only submits that taking advantage of the ad interim order, the plaintiffs/respondents are banking upon to continue with the construction and, in fact, have doubled the manpower so that by the time the injunction application or an application

for vacating the ad interim order of injunction is decided, the situation would become irreversible.

3. We asked the Counsel for the respondents as to whether there is any permission or sanction obtained from competent authority for construction at the site. Counsel for the respondents in his fairness submits that the constructions are being continued under the umbrella of the order of the Court.
4. In such view of the matter, when we find there is a dispute as to the title in respect of a property, any construction made thereupon may create an invasion of the right, if ultimately decided in favour of the party.
5. Therefore, without interfering with the impugned order, we direct that the plaintiffs/respondents shall not continue with the construction already undertaken until the disposal of an application for temporary injunction as well as an application under Order XXXIX Rule 4 of the Code.
6. Since the next date is fixed for hearing of an application under Order XXXIX Rule 4 of the Code, we have been given to understand that the pleadings to an application for temporary injunction are complete in all respect.
7. We thus do not find any impediment on the part of the Court to decide both the applications, namely applications under Order XXXIX Rule 1 & 2 of the Code and another under Order XXXIX Rule 4 of the Code together.
8. Since the plaintiffs/respondents have not filed the written objection to an application under Order

XXXIX Rule 4 of the Code which according to the plaintiffs/ respondents is otherwise ready, we, therefore, permit the plaintiffs/respondents to file written objection to an application under Order XXXIX Rule 4 of the Code in course of this week. Rejoinder, if any, shall be filed within four days from the date of service of the copy of the written-objection.

9. We also direct the Trial Court to take up both the applications i.e. the application for temporary injunction and an application for vacating the ad interim order of injunction together on the next date so fixed i.e. 16.04.2024. The Trial Court shall not grant adjournment to either of the parties unless necessitated by unavoidable and unforeseen circumstances. Even in this regard, endeavour shall be shown by the Trial Court to dispose of the aforesaid applications within fortnight from the said date by passing a reasoned order in accordance with law.
10. Nothing observed herein shall have any persuasive impact on the decision to be taken on the aforesaid application and the Trial Court shall be free to decide the same in accordance with law.
11. With these directions and observations, the appeal being **FMAT 85 of 2024** and the application being **CAN 1 of 2024** are **disposed of**.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

