

22.3.2024
112
Ct. no. 652
sb

**CO 1622 of 2019
With
CAN 1 of 2022**

**Protap Motilal, since deceased, rep. by Sri
Subhadeep Motilal & Ors.
Vs.
Kajal Ballab & Ors.**

Mr. Swapan Banerjee
Mr. Supratim Dhar
Mr. Tirupati Mukherjee
Ms. Megha Sarkar ...for the Petitioners

Mr. Tapas Dey
Ms. Sumita Senfor the Opposite parties

This application under Article 227 of the Constitution of India has been preferred against the order no. 24 dated 11th March, 2019 passed by the learned Civil Judge (Junior Division), 1st Court, Serampore, Hooghly in Title Suit no. 115 of 2018.

The petitioners herein as plaintiffs instituted aforesaid suit for eviction, permanent injunction and mandatory injunction against the opposite parties herein. The defendants/opposite parties entered appearance before the learned court below on 16th April, 2018 and filed written statement on 20th August, 2018.

Simultaneously with the institution of the said suit, the petitioners also took out an application under Order XXXIX rule 1 and 2 read with Section 151 of the Code of Civil Procedure seeking ad interim order of

protection in the form of temporary injunction, restraining the defendants from disturbing peaceful possession of the suit property by the plaintiffs. In the said application, plaintiffs also prayed for restraining the defendant from changing the nature and character of the suit property.

The injunction application was moved ex parte before the court below on 14th March, 2018 and upon hearing the submissions made by the petitioner, the learned Trial judge was pleased to pass an ad-interim order of injunction ex parte restraining the defendants/opposite parties from disturbing peaceful possession of the suit property by the plaintiffs and also from changing the nature and character of the suit property for a limited period. Such interim order of injunction was subsequently extended from time to time and the same is still subsisting.

The petitioners further contended that though there is a specific direction passed by the court below restraining defendants from disturbing peaceful possession of the suit property by the plaintiffs and also from changing the nature and character thereof but the defendants/opposite parties were continuously disturbing peaceful possession of the suit property by the petitioners and for which the petitioners constrained to initiate a proceeding under Order XXXIX rule 2A of the Code.

Thereafter, in order to ensure due compliance of injunction order, the petitioners took out an application under Section 151 of the Code seeking police assistance to raise boundary wall surrounding the suit property, so that defendants cannot disturb petitioner's possession as ordered by the court.

The defendant filed written objection against such application contending that the suit property had stood vested to the Government of West Bengal, however such contention was opposed by the petitioner relying upon the order passed by the Block Land and Land Reforms Officer, mutating the suit property in the name of the petitioner wherein also the Block Land and Land Reforms Officer had observed that the land comprising in the suit property has not been vested to the State. Learned court below had taken up said application under Section 151 of the Code for hearing and the hearing was concluded on 14th December, 2018 and the court below fixed 19th December, 2018 for passing necessary order.

Being aggrieved by that order, petitioners herein preferred an application before this Court under Article 227 of the Constitution of India being C.O. 364 of 2019 and this court by an order dated 20th February, 2019 upon hearing rival contentions made on behalf of both the parties, inter alia, observed that in the absence of any challenge to the order dated 14th March, 2018, said

order has attained finality and it has equal binding force as any contested order and the court below is duty bound to see that its order be not flouted. However, since granting permission to construct boundary wall would seal the fate of the suit at a premature stage without deciding the matter on merits, such permission for raising boundary wall was not given and thereby this court also directed the court below for modification of the order by granting the police assistance to protect the petitioners' possession in respect of the suit property and for implementation of the order passed on 14th March, 2018 restraining the opposite parties from disturbing peaceful possession of the plaintiff of the suit property and from changing the nature and character thereof.

Accordingly, the petitioners took out present application under Section 151 of the Code which was heard by the trial court and upon hearing rival submissions of both the parties, the court below had not granted any opportunity to the petitioners to raise boundary wall surrounding the suit property with the assistance of police. The court below specifically held that there shall be no order of police assistance to allow the plaintiff to raise the boundary wall over the suit property.

Being aggrieved by that order, the petitioners herein specifically contended that police assistance may

be rendered to the petitioners herein, so that they can construct the boundary wall surrounding the suit property which is their personal property. However, such prayer has been opposed by the learned counsel for the opposite parties contending that the property is not owned by the plaintiffs and as such, they cannot claim for constructing boundary wall surrounding the suit property.

At the time of disposal C.O. 364 of 2019, this Court specifically held that permitting the petitioners to construct boundary wall at this stage without deciding the matter on merit would amount to seal the fate of the suit at a premature stage.

Such order was passed in view of the fact that true picture will emerge only after hearing both sides. Moreover, in the order dated 14.3.2018 by which ad interim order was passed, does not indicate that any equitable relief for raising boundary wall was granted, which can be sought to be implemented with the assistance of police. Accordingly, I do not find any substance in the petitioner's aforesaid prayer at this stage.

Having considered the facts and circumstances of the case, it appears to me that the parties have come up before this court for implementation of the ad-interim order of injunction which was passed on 14th March, 2018. Since then, the injunction application is pending

for hearing and it had not yet been disposed of in spite of passing about six years.

In such view of the matter, C.O. 1622 of 2019 is hereby disposed of with a direction upon the court below to dispose of the injunction application within a period of eight weeks from the date of communication of the order after giving opportunity to both the parties to contest.

I have made it clear that I have not gone into the merits of the injunction application and the court below will dispose of such application without being influenced by any observations made herein. Till disposal of the injunction application, learned trial court is directed to pass necessary order by granting police assistance to the petitioners for protecting their possession in respect of the suit property and from restraining opposite parties from changing the nature and character of the suit property till disposal of the injunction application.

C.O. 1622 of 2019 is accordingly disposed of. Pending application, if any, also stands disposed of.

All parties will act on the basis of server copy of this order.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)