

11.09.2024
Sl. No.11
ss

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 804 of 2024
With
IA No. CAN 1 of 2024

Sri Pulin Raul & ors.
Vs.
Smt. Sabitri Gayen

Mr. Sukanta Das

... for the appellants

1. It is a suit for partition wherein the plaintiff claimed to run a tailoring shop from a shop room situated in part of the joint property. The plaintiff claimed that the defendants/present appellants were repeatedly interfering with the possession of the plaintiff and trying to dispossess the plaintiff from the shop room. Under such circumstance, the plaintiff sought an *ad interim* injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure restraining the defendants/appellants. The *ad interim* injunction was granted in favour of the plaintiff on 17.03.2023.

2. It is the case of the plaintiff that in spite of such injunction the defendants/appellants had put a padlock to the shop in question. Thereafter, an application has been made for mandatory injunction, which also has been allowed on 27.02.2024. The order

dated 27.02.2024 is a composite order whereby and where under not only mandatory injunction has been allowed but the earlier injunction order dated 17.03.2023 has also been made absolute to continue till disposal of the suit.

3. It is under this factual background that the learned Counsel for the appellants submits that the order/(s) had been obtained by resorting to misrepresentation. In fact, it is the present appellants who were in possession of the shop room from where they were running their own business. It is obvious from the letter dated 04.03.2023 which was part of the plaint filed by the plaintiff.

4. It is submitted that in view of the fact that the order had been obtained by misrepresentation. It is a fit case to be set aside by this Court.

5. We have gone through the records in the appeal and the application and also considered the submissions of the learned Counsel for the appellants. We find that the trial court has taken into consideration the fact that a trade licence of the shop room issued by the local Panchayat in the name of the plaintiff's son has been produced as also the electricity bill payment receipt with respect to the shop room in question. As against this the defendants/appellants have not produced any material either in the proceedings for injunction or in the proceedings for

mandatory injunction. Reliance placed on letter dated 04.03.2023 in the present proceedings is also without raising any such issue before the trial court in the said two proceedings.

6. We, however, refrain to make any comment on the letter dated 04.03.2023 as it is to be considered at the appropriate stage in accordance with law.

7. In the aforesaid circumstances, the application being **CAN 1 of 2024** is dismissed.

8. In view of the order passed in the application nothing survives in the present appeal and the **appeal** is also dismissed without calling for the trial court records or formal preparation of paper books.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)