

08.10.2024

TUESDAY

Court : 04
Item : 03
(AD)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**F.M.A. 661 of 2023
with
IA NO: CAN 1 of 2023**

Islam Molla & Ors.
Versus
Sekh Amirul & Ors.

**Mr. Kushal Chatterjee,
Mr. Oishik Chatterjee.**

.....for the Appellants

**Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. Kaustav Bhattacharya,
Ms. Priyanka Jana.**

.....for the Respondents

1. The present appellant was defendant in the suit for declaration, partition and injunction.
2. It is the plaintiff's case that after acquiring undivided share in the suit scheduled property the plaintiff and defendants were jointly possessing the same as co-owners and occupiers. The defendant assisted by local henchman tried to change the nature and character of the suit property and to grab the same by ousting the plaintiff from their occupied portion. It is also alleged that the defendant was trying to raise illegal construction by encroaching upon the occupied portion of the plaintiff.
3. The repeated request for amicable partition is not being acceded to by the defendants. Claiming a

strong prima facie case for going to trial alleging that the plaintiff and defendants have acquired title from a common lineage being traced to Abdul Mahid Molla, an application was taken out in the suit for temporary injunction against the defendant their men or agents restraining them from distributing the plaintiff or from raising any construction, and also restraining to alienating any portion of the suit property and from changing the nature and character of the same.

4. Upon consideration of the case set out by the parties in the application and an objection; and after hearing the parties the Trial Court has allowed the application under Order XXXIX Rule 1 and 2 read with Section 151 C.P.C. and directed the plaintiff and defendants to maintain *status quo* in respect of the suit scheduled property. The defendants/appellant has also been restrained from transferring or alienating any portion of the suit property to any 3rd party till disposal of the suit. It is this order dated 01.04.2023, which is the subject matter of the present appeal.
5. The learned Advocate for the appellant/defendant submits that after the death of Abdul Mahid Molla there was a family arrangement between his son and daughters whereby the entire plot of L.R. Dag No. 1686 was allotted in favour of Jalal Ahmad Molla. Taslima Khatoon was not allotted any share and, therefore, the plaintiff claiming as legal heirs of Taslima Khatoon were never allotted any share in the

suit scheduled property. The plaintiff, therefore, had no right, title and interest.

6. The present defendants have acquired the interest in the suit property by way of transfer from their mother namely Asma Khatoon, wife of Jalal Ahmad Molla, as Jalal Ahmad Molla had transferred the property to Asma Khatoon.
7. The property bearing L.R. Dag No. 1717 and 1716 was transferred by Jalal Ahmad Molla to one Madrasa namely Darun Korania Madrasa. The Madrasa was thus a necessary party. The defendant/appellant has also claimed that after demise of Abdul Mahid Molla who was admittedly the original owner a family arrangement was entered into between the sons and daughters wherein Taslima Khatoon (his daughter) was excluded from the property.
8. The Trial Court has recorded a finding on these submissions to the effect that the defendant did not produce any document in respect of the alleged family arrangement or in respect of alleged Hebanama by which the portion of the share is said to have been transferred to the Madrasa. Considering the fact that an oral Hebanama is a matter of evidence to be considered at the stage of hearing the Trial Court has rejected the submission regarding the suit suffering from the defect of non-joinder of the party at this stage.
9. The Court has recorded a *prima facie* finding based on the case made out by the plaintiff that they were

descendance of the family of Abdul Mahid Molla the admitted original owner and were possessing and occupying their respective shares of the suit scheduled property along with the defendants.

10. Thus finding a strong *prima facie* case for going to trial and considering it necessary to protect the rights of the plaintiff and defendants and considering the balance of convenience and inconvenience in favour of the plaintiff directed both the parties to maintain status quo. The additional direction against the present appellant/ defendant is a restraint from alienating any portion of the suit property till disposal of the suit.

11. Having regard to the case of the rival parties based on the application and objection filed before the Trial Court and the nature of claim noted above we are of the opinion that a strong *prima facie* case was established by the plaintiff regarding threatened ouster or dispossession. The plaintiff and defendants are both claiming their rights by virtue of being descendants of one common original owner of the suit property, namely Abdul Mahid Mollah. Therefore, in our opinion it was just and proper for the Trial Court to exercise its jurisdiction under Order XXXIX Rule 1 and 2 C.P.C. and pass orders for maintaining *status quo* and for restraining the defendant from alienating any portion of the suit property.

12. Weighed on the balance of comparative

inconvenience also we find that the defendant would not suffer such loss or inconvenience as would be suffered by the plaintiff unless an injunction was granted.

13. We, therefore, find no reason to interfere with the order dated 01.04.2023 passed under Order XXXIX Rule 1 and 2.

14. CAN 1 of 2023 is accordingly disposed of.

15. The appeal is arising out of the self-same order of injunction dated 01.04.2023 which is subject matter of CAN 1 of 2023. In view of the order passed on the CAN application, nothing survives in the appeal and pendency of the same would be futile. The appeal also stands disposed of.

16. We make it clear that any observation finding in this order is *prima facie*, for the limited purpose of this appeal against interim injunction, which shall have no persuasive value upon the Court while considering the pending suit.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)