

28.03.2024
Ct. No. 19
Sl. No.61
Cp

C.O. No. 2383 of 2023

Smt. Gita Pal @ Sabita Pal
Vs.
Sri Bharat Pal & Ors.

Mr. Samrat Choudhury
Mr. Sugata Mukhopadhyay
....for the petitioner.

1. The revisional application arises out of an order dated March 8, 2022 passed in Miscellaneous Appeal No. 67 of 2021, thereby affirming the order of ad interim injunction passed by the learned Civil Judge (Junior Division), 4th Court at Howrah dated June 29, 2021. The parties were directed to maintain status quo in respect of possession regarding B, C, D and E schedule property. The said order was passed upon the learned Trial Judge coming to a specific finding with regard to a triable issue and a prima facie case having been established by the plaintiffs. On perusal of certain documents like the original information details of the dag, original gift deeds, original sale deeds etc. the court found that the father of the plaintiffs had a share over the B, C, D and E schedule property along with the predecessor-in-interest of the defendants. Thus, in order to prevent wastage and damage to the property, the learned court was of the view that both parties should maintain status quo with

regard to his possession in respect of B, C, D and E schedule property. The said order was challenged in the Misc. Appeal.

2. From the order impugned, it appears that the learned appellate court also considered the cardinal principles justifying grant of ad interim order of injunction. The learned court was of the view that the status quo in respect of possession with regard to B, C, D and E schedule property had been rightly passed by the learned Trial Judge. The suit was filed by the plaintiffs in order to protect their interest and possession over the said properties. The learned appellate court was of the view that the defendants could not pose any threat to the property by allegedly demolishing the structure which, according to the plaintiffs, were within their share. Further case of the plaintiffs was that the defendants, by taking advantage of the absence of the plaintiffs, had tried to demolish the two rooms and take over possession thereof.
3. The plaint case was that 'A' schedule property had been partitioned between the two brothers, namely, Tustu Chayan Pal and Upendranath Pal. Several transfers had taken place in respect of the suit properties. The defendant no. 2 along with defendant nos. 1, 3 and 4 had started a construction over the B schedule property, thereby, disrespecting the alleged

partition which had taken place between Tustu Chayan Pal and Upendranath Pal. Thus, the learned appellate court was of the view that before the case of the defendants could be heard, it was necessary to protect the property in question and passed the order of status quo. The learned appellate court did not find any justification to interfere with the order passed by the learned Trial Judge.

4. The learned advocate for the petitioner submits that upon execution of a deed of family settlement between the predecessor-in-interest of the plaintiffs and the defendants, the parties were enjoying their separate demarcated portion. The two rooms which were being demolished were actually being repaired as the said rooms fell within the portion enjoyed by the defendants. Unless the repair work was allowed by the court, the defendants would suffer irreparable loss and injury. The balance of convenience and inconvenience was in favour of allowing such construction.
5. Having considered the contentions of the petitioner, it appears to this court that the facts which have been submitted before the court may be urged during the injunction hearing. The document/family settlement which the petitioner wants to rely on was not before the learned appellate court. This court, at this stage, does not find it necessary to interfere with the order of

the learned courts. On the basis of a prima facie satisfaction that the documents relied upon by the plaintiffs would indicate that the plaintiffs did have interest in B, C, D and E schedule property, the learned Trial Judge had only directed status quo with regard to possession of the property in question. I do not find any illegality in the orders impugned. Taking note of the balance of convenience and inconvenience and the issue of irreparable loss and injury, both the parties had been directed to maintain status quo with regard to the possession. It was a correct decision at the relevant stage.

6. The learned Trial Judge will dispose of the application for injunction within a period of two months from date, upon considering the rival contentions of the parties.
7. The petitioner is at liberty to file a written objection and also an application for vacation, modification or variation of the order and the entire matter of injunction shall be disposed of on the basis of the contentions of the respective parties within the aforementioned period.
8. The revisional application is disposed of. There shall be no order as to costs.
9. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)