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Ct. No. 04

akd

F.M.A.T. 357 of 2023
CAN 1 of 2023

Smt. Moumita Das & Anr.
Vs.
Shri Sanjay Biswas & Ors.

Mr. Saptangshu Basu,
Mr. Gopal Pahari,
Ms. Piyali Kulavi.

... for the appellants.

Mr. Sibasis Ghosh,
Mr. Dwarika Nath Mukherjee,
Mr. Biplab Kumar Khatua,
Mr. Arafat.

... for the respondent
nos. 4 and 5.

The appeal is at the instance of the plaintiffs assailing the order by which an ex parte ad interim order of injunction is refused by the Trial Court.

There appears a serious dispute on the title claimed by the rival parties. Several transactions have been made in respect of the properties spanning over more than sixty years and litigation ensued when the defendant nos. 4 and 5, who are arraigned as respondent nos. 4 and 5, constructed a boundary wall in order to protect the possession or interference from any squatters.

The suit came to be filed by the plaintiffs claiming to be the heirs of one Mina Saha, who according to the plaintiffs was the original owner having acquired the right, title and interest in respect of the property by dint of purchase in the year 1959 from one Khushi Bala Dasi. As per the plaint case their predecessor all along held and possessed the title in respect of the suit premises and recently the respondent nos. 4 and 5 started to make boundary wall over the same claiming an independent title from a person, who never had the right, title and interest therein.

Since the appeal was against the refusal in passing an ex parte ad interim order of injunction, we directed the service to be effected upon the respondents and also invited the respondents to disclose their stand by way of affidavit, as serious question of forgery and fraud having committed was raised by the contesting respondents.

It reveals from the pleadings and documents annexed to the affidavit-in-opposition that though they claim title from their vendor, but the antecedents of title manifest that the claim of title flows from the said Khushi Bala Dasi. Therefore, a common thread can be established in relation to rival claims on the title, which is a matter of trial.

The certified copy of the deed of sale executed by Khushi Bala Dasi in favour of Mina Saha in the year 1959 was produced before the Trial Court and is also annexed with the stay application filed in connection with the instant Appeal. The learned Judge could not comprehend the nuances of the incidents of title flowing from the deed and surreptitiously jumped to the conclusion that it is not a fit case to pass an ex parte ad interim order of injunction. Even at the stage of ad interim order of injunction to be granted in favour of the plaintiffs, there is no fetter on the part of the Court to examine the claim of the contesting respondents and we find that the question of forgery and fraud though taken by the contesting respondents, but have to be proved by cogent evidence, as the certified copy issued by the competent authority, which is relied upon by the plaintiffs/appellants, cannot be discarded at this stage. Even an information sought from the Additional District Sub-Registrar's Records as relied upon by the contesting respondents does not indicate that the purported deed of 1959 is a product of fraud and

forgery without any further corroboration or reliable piece of evidence.

What it indicates that no information regarding the aforesaid deed of 1959 can be provided as the Volume in which it is so recorded is untraceable. If the Government record is not traceable and the certified copy appears to have been given, it does not affect the title in order to render the deed automatically ineffective and/or void. Furthermore, the certified copy of the registration of the deed was obtained in the year 2010, which is apparent from Annexure 'D' and the information sought to be relied upon having obtained from the Additional District Sub-Registrar Records reveals that the said record becomes untraceable and a General Diary was lodged with the concerned police station on 21st September, 2011, that is much after the issuance of the certified copy as relied upon.

Such being the position, we cannot arrive at the conclusive opinion whether the deed of 1959 is an outcome of forgery and fraud, as it is a serious triable issue. The moment the Court finds that the issues are triable in nature, it is an ardent duty of the Court to protect the interest of the parties.

The plaint would reveal that the possession is with the respondent nos. 4 and 5 and an allegation is made that the said respondents have constructed a boundary wall; which ipso facto proves the assertion of title and possession in respect of the suit premises. Since there is a serious dispute as to the title as we find that the contesting respondents claimed title through Khushi Bala Dasi in favour of their predecessor in the year 1968 and the claim of the plaintiffs originates from a purported deed allegedly executed in the year 1959, we thus find that the plaintiffs are entitled to protect the property from any further dealings, as it would

cause multiplicity of proceedings.

In such view of the matter, we set aside the impugned order.

The respondent nos. 4 and 5 are restrained from encumbering, transferring, alienating and/or creating any third party interest in respect of the suit premises for a period of two months from date or until further order as may be passed on an application for temporary injunction.

Since the contesting respondents have entered appearance, they are permitted to file affidavit-in-opposition to the application for temporary injunction within ten days from date; reply thereto, if any, be filed within five days thereafter.

The Court below shall proceed to hear out the application for temporary injunction after ensuring that the copy of the said application is served upon all the defendants and shall ensure that the application for temporary injunction is disposed of within two months from date.

In the event and because of unavoidable and unforeseen circumstances the Trial Court is unable to dispose of the application for temporary injunction, it is open to the learned Judge to consider the prayer for extension, if made, shall be free to pass any order as he may deem fit and proper.

With the above observations, the appeal and connected application are disposed of.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

