

April 2, 2024
Sl. No.17
Court No.19
s.biswas

CO 2779 of 2023

Mahim Mallik and others
vs.
Sk. Asraf and others

Mr. Sabyasachi Hazra

... for the petitioners

Mr. Tanmoy Mukherjee
Ms. Subhanwita Ghosh
Mr. Souvik Das
Mr. K. Raihan Ahmed
Mr. Rudranil Das
Mr. Soumava Santra
Mr. Tapas Chatterjee

... for the opposite parties

1. The revisional application arises out of an order dated July 31, 2023 passed by the learned Additional District Judge (re-designated court), Paschim Medinipur in Misc. Appeal No.215 of 2022. The misc. appeal was filed by the opposite parties, being aggrieved by an order of temporary injunction passed by the learned Civil Judge (Junior Division), 3rd Court, Midnapore in Title Suit No.581 of 2022.
2. The learned trial judge arrived at the conclusion that the plaintiffs had been able to establish a prima facie case. Denial of an order of injunction would lead to a possible injury. The application for temporary injunction was allowed and the defendant nos.1, 2 and 3 were restrained from disturbing the possession of plaintiffs over the suit property, in any manner whatsoever.

3. Such order was challenged in a Misc. Appeal. The learned appellate court came to the finding that the plaintiffs could not prove any prima facie right over the property in question as they were claiming on the basis of a deed of sale executed between the father and the mother of the defendant no.3. The father was not the owner of the property. The defendant no.3, admittedly, was gifted the property by his grand father. As the defendant no.3 was a minor at the relevant point of time, his father had accepted the deed of gift on behalf of the minor. Thereafter, the father sold the property to the mother Sukri Bibi at a time when the defendant no.3 was already a major. Even assuming that the father had a right to sell the property of a minor, no permission for sale of a minor's property had been taken. Thus, the learned appellate court was of the prima facie view that the plaintiffs had not acquired any title on the basis of the sale executed by Sukri Bibi. Moreover, the record of rights was also in the name of defendant no.3. Under such circumstances, the learned court set aside the order of injunction.
4. Having heard the learned advocates for the respective parties, this court is of the view that when the learned trial judge had found that the

plaintiffs had a case to go for trial, the learned appellate court ought to have protected the possession and right of the plaintiffs over the property. In my view, in event the plaintiffs are successful in proving their case in the suit, but the land is transferred to any other party, it will only lead to multiplicity of proceedings as the situation will become irreversible.

5. Under such circumstances, the order impugned is modified to the extent that the parties are restrained from changing the nature and character of the suit property and from alienating or transferring the same. This court has not interfered with the other findings of the learned appellate court.
6. The revisional application stands disposed of accordingly.
7. All the parties are directed to act on the basis of the server copy of the order.
8. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)