

05.07.2024
(D/L-5)
Ct. No.4
(NKB)

**F.M.A. 126 of 2024
With
CAN 1 of 2023**

**Sri Naba Kumar Maity
Vs.
Sri Gopal Maity & Ors.**

Mr. Supravat Bhattacharya,
Mr. Kanailal Samanta.

... for the Appellant

Mr. Debashis Banerjee,
Mr. Supreem Naskar,
Mr. Rakesh Jana.

... for the Respondents

1. Heard learned counsel for the appellant as well as learned counsel for the respondents.
2. Affidavit-of-service has been filed by the learned counsel for the appellant and the same be kept on record.
3. Learned counsel appearing on behalf of the respondent nos.1 and 2 submits an undertaking that he is under receipt of duly executed Vakalatnama which shall be filed during course of the day.
4. This is an appeal arising out of an order of injunction passed in a suit. The suit has been filed for declaration, partition and injunction. The facts are not in dispute that the defendant

no.1/appellant and the respondent/plaintiff are co-sharers in the suit property.

5. The learned counsel for the appellant, however, vehemently submits that there was no case made out in the application for injunction under Order 39 Rules 1 and 2 necessitating the passing of any orders in the nature of the order that has been passed. The Court, however, has proceeded to pass such an order and therefore, the same is unsustainable. It is his specific submission that no assertion was made in the application for injunction regarding any threatened dispossession or apprehension in relation to the possession/dispossession of the property in dispute.
6. We find from the application filed before the Court that the plaintiff has specifically made assertions regarding series of other litigation between the parties over the possession of the land in question. There is explicit assertion in paragraph 13 of the application regarding the defendant encroaching upon lands in excess to which he is entitled and plaintiffs threatened dispossession of certain lands at the hand of defendant no.1. The submission of the learned counsel for the appellant regarding no such apprehension being mentioned in the

application, therefore, is found to be unsustainable.

7. The Trial Court has found on the basis of the material being the pleading of the parties for the purposes of injunction that a *prima facie* case exists in favour of the plaintiff based on the apprehension expressed in the application; and the circumstances in the background, being the series of litigation between the parties and efforts being made to dispose the plaintiff. Though the aforesaid findings are tentative, we find that *prima facie* case was made out for the purposes of grant of temporary injunction to the plaintiff. We are, therefore, not inclined to interfere with the order of injunction dated 18.07.2023.
8. At this juncture, it is also submitted by the learned counsel for the appellant that the order inasmuch as restraining the defendant from interfering the plaintiff's ingress and egress is unsustainable as it is not similar to threatened dispossession.
9. We are unable to agree with such submission in view of the fact that when the application for temporary injunction in the present case clearly expresses threatened dispossession then an order for restraining the defendant from disturbing or interfering with the ingress and

egress is only in furtherance of intent for which orders are passed under Order 39 Rules 1 and 2, i.e. for maintaining of *status quo* between the parties with regards possession of the property, since they are co-sharers.

10. The application, therefore, in our opinion merits no consideration and is dismissed.
11. In view of the fact that both parties have made submissions on the appeal itself, we dispensed with formal preparation of paper books and proceeded to consider the appeal also.
12. In view of dismissal of the application, we hasten to add that nothing survives in the main appeal being against the self-same order. The appeal, therefore, is also disposed of.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)