

Ct. 29.04
No. 652
124
akb
2024

C.O. 3335 of 2019
Amitava Dutta @ Bapi Dutta
-Versus-
Ashim Kumar Dutta @ Pintu Dutta & Ors.

Mr. Siva Prosad Ghosh
Mr. Jyotsna Roy Mukherjee...For the Petitioner

Mr. Rohit Banerjee
Mr. Saptarshi Basu
Ms. Jesmin Khatun
Ms. Pinki Singh **...For the Opposite Party No. 1**

Supplementary affidavit filed on behalf of opposite party No. 1 dated 19th April, 2024 is taken on record. It appears from the said supplementary affidavit affirmed by opposite party no. 1 herein that he is in possession of the entire second floor measuring about 1004 sq. ft., and one flat measuring about 303 sq. ft. at the ground floor and one shop room measuring about 90 sq. ft. at the ground floor at 3/2, Gholia Road, P.O. Belghoria, Calcutta – 700 056.

Being aggrieved by and dis-satisfied with the judgment and order dated 30th August, 2019 passed by the learned Additional District Judge, Fast Track Court, Barrackpore passed in Miscellaneous Appeal No. 32 of 2018, present Application has been preferred. Petitioner's contention is that the petitioner filed the suit being Title Suit no. 181 of 2016 for a decree of permanent injunction restraining the defendants from disturbing the plaintiff's peaceful possession in the entire suit building. It is further case of the plaintiff that thereafter the plaintiff amended the

plaint and sought for cancellation of the two registered deed of revocation executed by his father. The opposite parties herein entered appearance in the said suit and filed joint written statement.

The petitioner filed an application in the said suit under Order XXXIX, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, contending that the petitioner is residing in the said property, which is a three storied building and has been running business in three shop rooms situated in the front portion of the said property. It is further case of the petitioner that he has constructed the said property spending huge money after taking permission from his father and accordingly father of the petitioner executed two Deeds in favour of the petitioner, one is registered Deed of Gift dated 5th January, 2010 whereby he bequeathed one shop room situated in the said property in favour of the petitioner and another Deed of Settlement dated 26th July, 2010 wherein the father of the petitioner has settled the said property in favour of petitioner.

The defendant No. 1 is elder brother of the petitioner and defendant No. 2 is the son of the defendant No. 1. Thereafter the settlor i.e. father of the plaintiff/petitioner had allegedly revoked the same by executing two registered Deeds. Now the defendants are

trying to disturb his possession in the suit property, so he filed the injunction Application

The prayer for injunction came up before the Court below and the Court below after contested hearing directed both the parties to maintain status quo in respect of the said property and was further directed not to change the nature and character of the suit property, with a prima facie observation that the plaintiff is in possession of the suit property and that plaintiff is apprehending danger in respect of suit property.

Being aggrieved by the said order being no. 15 dated 26th March, 2018, the defendant / opposite party No. 1 preferred an appeal before the Court below and the Court below by the order impugned disposed of the Miscellaneous Appeal, directing the Trial Court to hear afresh the petition under Order XXXIX, Rule 1 and 2 read with Section 151 of the Code in the light of the observation made in the body of the judgment and to dispose of the said petition within one month without granting any unnecessary adjournment to the either of the parties.

I have perused the order impugned and I have also heard the learned Counsel appearing on behalf of both the parties. Learned Counsel appearing on behalf of both the parties did not raise serious objection, if the application for

injunction is heard afresh by the Trial court, taking into account all the aspects of the matter, as well as the issues raised by the court below, for adjudication.

Having considered the facts and circumstances of the case and the spirit of the order impugned, I did not find any perversity or impropriety in the order impugned, which can call for interference by this Court, invoking jurisdiction under Article 227 of the Constitution of India.

Accordingly, C.O. 3335 of 2019 is hereby disposed of directing the trial Court to hear afresh the plaintiff's injunction application filed under Order XXXIX, Rule 1 and 2 after giving opportunity to both the parties to contest and to pass a reasoned order without being influenced by any observation made herein preferably within a period of one month. Parties are to maintain status quo in respect of possession in the suit property as it stands today till disposal of the injunction application by the Trial court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)