

Court No. 4
28.03.2024
(AD 20)
(S. Banerjee)

FMAT 547 of 2023
Sk. Taiyeb Ali
Vs.
Sk. Abul Kalam & Ors.
CAN 1 of 2024

Mr. Gautam Das
Ms. Riyanka Mondal

... for the appellant/petitioner

Mr. Mihir Kumar Das
Mr. Ajay Kumar Das

... for the respondent/ opposite party

The dispute involved in the instant matter pertains to a rival claim of title in respect of a self-same property. Both the parties claimed their right, title and interest on the strength of Hebanama executed by the admitted owner in a close proximity of time. A plea is taken by the respondent that the Hebanama executed in favour of the appellant was never acted upon. Obviously, it is a matter to be decided upon full-fledged trial. The injunction applications are decided on the basis of affidavit evidence and any finding returned there upon is tentative in nature.

It is a trite law that a person by executing a valid document divests his right, title and interest in respect of the immovable property, cannot re-divest same in favour of the other as the deed executed prior in time

would prevail over the deed executed later on. But in the instant case the question is of acting upon the first document which can be decided after affording an opportunity to the parties to lead evidence. It admits no ambiguity that apart from the relief in the form of declaration and injunction, the recovery of possession is also sought by the plaintiff/appellant against the defendants/respondents which implies that the defendants/respondents are in possession of 'Ka-1' schedule property. By way of an amendment in the plaint the plaintiff also incorporated the further facts that taking advantage of the suit having pending before the court, the contesting defendants have raised construction at 'Ka-1' schedule property and have also secured it by raising a boundary wall.

Interestingly, the trial court rejected the application for temporary injunction solely on the ground that the description of the property in 'Ka-1' schedule is vague and ambiguous. Probably the learned Judge intended to rely upon the provisions contained in Order VII Rule 3 of the Code of Civil Procedure which postulates that a suit relating to immovable property must be sufficiently described so as to identify it by boundaries or numbers as per the settlement or the survey.

We have been taken to the schedules appended to the plaint and we do not find prima facie that there is any difficulty in identifying the said property. Furthermore, the contesting defendants are claiming their right, title and interest in respect of 'Ka-1' schedule property and have also admittedly protected the same by raising a boundary wall. Therefore, we do not find that the vagueness or ambiguity in description of the property can be a ground to reject the application for temporary injunction.

Be that as it may, the counsel for the respondent in his usual fairness submits on instruction that his client has no intention either to transfer, sell or create any third-party interest in respect of the 'Ka-1' schedule property nor shall make any construction thereupon. It is, however, clarified by the counsel for the respondent that the construction has already been made and completed in all respect and, therefore, there is no necessity of passing an order of temporary injunction. Counsel for the contesting respondent further submits that his client would give an undertaking in this regard.

In view of such stand taken before us and the intention being laudable that the respondents are not attempting to transfer, alienate and/or create any third-party interest in respect of 'Ka-1' schedule property nor intended to make any further construction thereupon,

we thus find that sufficient protection has already been extended to the appellant in this regard. Since the respondents have volunteered to file an undertaking, let such undertaking be filed before the trial court within a week from date.

In view of the finding, the appeal and the connected applications are disposed of.

We find that the suit has reached to a stage of framing issues. We, therefore, request the learned Judge in trial court to make efforts to bring the suit to its logical ends within four months from the date of communication of this order.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)