

11.03.2024
Court No. 19
Item no.25
CP

C.O. No. 4308 of 2023

Vigneshwara Properties Private Limited
Versus
Ajoy Mondal & Ors.

Mr. Probal Kr. Mukherjee
Mr. Arnab Roy
Mr. Satyam Mukherjee
Ms. Sayani Ahmed
Mr. Purnendu Shekhar Ghosh

...for the Petitioner.

Mr. Prosenjeet Mukherjee

...for the Opposite Party Nos. 1 & 2.

1. Liberty is granted to correct the cause title.
2. The order dated July 15, 2023, passed by the learned Additional District Judge, 7th Court at Barasat in Misc. Appeal No. 81 of 2023 is under challenge before this court. By the order impugned, the learned appellate court rejected the Misc. Appeal on contest and affirmed the order of temporary injunction dated May 11, 2023. Status quo with regard to the nature, character and possession of the property in question was directed to be maintained till disposal of Title Suit No. 509 of 2021 which is pending before the learned Civil Judge (Junior Division), 1st Court, Barasat.
3. Mr. Probal Kr. Mukherjee, learned senior advocate appearing on behalf of the petitioner,

submits that the order impugned, suffers from the following irregularities:-

- a) Although, the learned appellate court came to the finding that the balance of convenience was in favour of the petitioner and the plaintiffs had failed to prove prima facie case, the Misc. Appeal was rejected mechanically.
- b) If prima facie case and balance of convenience and inconvenience were found to be against the plaintiffs, the order of status quo could not have been affirmed. The plaintiffs had failed to satisfy the basic parameters for grant of an order of injunction.
- c) The court was unjustified in holding that in the absence of an undertaking from the defendant that they would not claim any equity in respect of the construction if the suit would be decreed in favour of the plaintiffs, an order of injunction could not be passed. According to Mr. Mukherjee, if the plaintiffs were successful in the suit, the consequences would follow and the petitioner would not have any right to the construction.

4. Mr. Prosenjeet Mukherjee, learned advocate appearing for the plaintiffs/opposite party nos. 1 and 2, submits that the specific plaint case was that the plaintiffs were in possession of the property and were using the same for cultivation. That the title of the plaintiffs could be traced from the Deed of 2018, by which the vendor of the plaintiffs had become the absolute owners. The plaintiffs had purchased the property from one Achintya and the deed was executed by Sibnath Mondal, the constituted attorney of Achintya. The learned trial judge arrived at a finding on appreciating the facts and document that both the parties had their respective title deeds in respect of the property in question and unless the suit was decided, status quo should be maintained. Such finding itself would amount to a recognition of the right of the plaintiffs and such right could only be preserved by injuncting the petitioner from causing damage and wastage to the property in question. That the plaintiffs had also got their names mutated. Any construction would create an irreversible situation and the plaintiffs would not be able to reap the benefit of the decree even if the plaintiffs succeeded.

5. Having heard the learned Advocates for the respective parties, this court thinks it fit to discuss the plaint case and the defence case in short. The plaint case was that the property originally belonged to Aswini. While Aswini was in exclusive possession, the property was transferred to the proforma defendant nos. 3 and 4, namely, Jiten Mondal and Shipra Mondal, by a registered deed dated December 12, 1990. The possession was delivered. Later, the said proforma defendants transferred the suit property to Achintya by Deed No. 2517 of 2018. Thereafter, Achintya executed a general power of attorney bearing No. 5745 of 2020 in favour of one Sibnath Mondal. Sibnath Mondal sold the property by a registered deed bearing No. 7440 of 2020 to the plaintiffs. The plaintiffs erected a bamboo fencing around the property and started enjoying the same by growing vegetables. The defendants being land grabbers were trying to take possession of the suit property and had also offered to buy out the plaintiffs by paying a meagre amount. The suit was thus filed for declaration and permanent injunction.
6. The petitioner's case was that the petitioner was the absolute owner in respect of the property in

question by purchase of the same from Jiten Mondal and Shipra Mondal. The property originally belonged to Aswini who had acquired the right, title and interest and possession over the property in question. Thereafter, the property was transferred to Jiten Mondal and Shipra Mondal. Subsequently, Jiten Mondal and Shipra Mondal transferred the property in 2019 to the petitioner. They handed over the mother deed being Deed No. 7989 of 1990, by dint of which the said proforma defendants had purchased the property from Aswini. That Jiten Mondal and Shipra Mondal were directors of a company which had availed a cash credit loan from the Central Bank of India, Shyambazar Branch on January 28, 2002 by mortgaging the title deed No. 7989 of 1990. The loan account was declared NPA and the bank filed an application for recovery of the loan before the Debt Recovery Tribunal at Kolkata being O.A. NO. 28 of 2005, followed by an execution case. The Mondals applied for a compromise or settlement of the loan account by payment of the entire outstanding to the Central Bank. That the outstanding loan amount and interest came to around Rs.90,00,000/-. The settlement amount was paid by the petitioner and the bank

had delivered the title deed in favour of the petitioner. A possession letter was also issued in favour of the petitioner. That subsequently, the name of the petitioner was mutated. Conversion was permitted. Sanction plan was issued by the authority and the construction continued. When the construction had reached an advanced stage, the suit was filed.

7. On an analysis of the facts before the court, the appellate court found that the plaintiffs did not possess any document to show that Achintya had paid any money to the bank in respect of the property mortgaged by the Mondals. The sale deed by which the plaintiffs purchased the property from Achintya through a power of attorney, reflected that the plaintiffs were well aware of the loan from the Central Bank, which was availed of by Jiten Mondal and Shipra Mondal. They were also aware of the litigation before the DRT.

8. The court further records that it could be said that the plaintiffs had purchased an encumbered property, with knowledge. Prima facie, the title of the plaintiffs was defective according to the court. Such findings are available at page 12 of the order impugned. While perusing the documents of the

petitioner/defendant no. 1, the mother deed, the no objection certificate of the bank, the mutation certificate, the land conversion certificate, the possession letter, the photographs of the suit property, the sanction plan etc. indicated that the defendant had purchased the land free from all encumbrances and were raising the construction over the suit property on the strength of a sanctioned building plan.

9. Under such circumstances, this court is of the view that when the appellate court had come to a specific finding with regard to a prima facie defect in the plaintiffs' title and had recorded that the documents were all in favour of the defendant/petitioner, the learned appellate court ought to have held that the plaintiff had failed to satisfy the requirements of prima facie case, balance of convenience and inconvenience and irreparable loss and injury which were required to be established by the plaintiffs before any order of status quo in respect of a G+4 storeyed building (which had been constructed partially) could be granted.
10. Moreover, in the decision of Ece Industries Limited (2) vs. S.P. Real Estate Developers Private Limited & anr., reported in (2009) SCC

776, the Hon'ble Apex Court held that when the concurrent findings of fact were in support of the defence case, injunction could not be granted as a matter of right at the fag end, unless a security was deposited by the party claiming injunction on such construction. Secondly, in paragraph 11 of the plaint and in the order impugned, there is mention that the plaintiffs had failed to get their names mutated in the record of rights. Their possession has been doubted.

11. Thus, the balance of convenience and inconvenience is in favour of not granting an order of status quo. However, to prevent multiplicity of proceedings this court directs that the construction may continue at the risk and peril of the petitioner, but the defendant/petitioner will be restrained from creating any third party interest in respect of the property.
12. As the suit is at the stage of framing of issues, the learned trial judge will make attempts to dispose of the suit within a period of six months from the date of communication of this order.
13. Needless to mention, if the construction is completed and the petitioner is ultimately unsuccessful, the consequences will follow and

the petitioner will not have any claim on the construction.

14. All the observations hereinabove are tentative.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)