

Item No.25
05.01.2024
Court. No. 19
GB

C.O. No. 4393 of 2023

Aslam Sk. & Anr.

Vs.

M/s. S.D. Infrastructure & Real Estate Ltd. & Ors.

Mr. Sabyasachi Chatterjee,
Mr. Omar Faruk Molla,
Mr. Sumit Nakar

...for the Petitioners.

Mr. Indranil Roy,
Mr. S. Choudhury,
Mrs. Priyanka Choudhury

...for the Opposite Parties.

1. The revisional application arises out of an order dated August 10, 2023, passed by the learned Additional District Judge, 6th Court at Alipore in Miscellaneous Appeal No.97 of 2022.
2. The said misc. appeal was filed by the petitioners, being aggrieved by an order of refusal of the prayer for an ad interim order of injunction, by the learned trial court. The learned lower appellate court was of the view that a partition suit was filed in 2022. In the said suit, injunction was refused. Such refusal was ultimately upheld by the High Court. Subsequently, the suit was withdrawn and the present suit was filed.
3. The defendant no.1 had purchased the suit property in 2005. Such purchase was prior to the purchase of the suit property by the plaintiffs. The plaintiffs purchased the suit property in 2019. The defendant no.1, upon observing all formalities and after obtaining necessary sanction plan, constructed a multistoried building being Regent

Super Market. The defendant no.1 had invested a lot of money in the said construction. It was also found that the multistoried building was surrounded by boundary walls on three sides, indicating that the said construction was within a specific demarcated area.

4. Mr. Chatterjee, learned advocate appearing on behalf of the petitioners submits that the learned trial judge had refused the injunction on the ground that a co-sharer could not be enjoined, in a suit for partition. The learned trial judge had also observed that the suit property being an ejmali property had not been partitioned by meets and bounds. According to Mr. Chatterjee, status quo with regard to the nature, character and possession of the property should be maintained in order to protect the rights of his clients.
5. It appears that the learned trial judge had held at the interim stage that without hearing the defendants, an interim order of injunction, could not be passed. The learned trial judge further held that any transfer during the pendency of the suit would be hit by the principles of lis pendence. Further transfer or addition or alteration in the suit property, during the pendency of the partition suit, would be subject to the result of such suit. There was nothing on record which would indicate that the defendants were trying to alienate or alter the nature and character of the suit property. Thus, there was no reason for passing an ad interim injunction, without hearing the defendants.

6. The learned lower appellate court observed that the suit property was purchased in 2005 by the defendant no.1. The defendant no.1 had raised a construction upon observing all formalities. The plaintiffs purchased the suit property in 2019 and the building was constructed by the defendant no.1 within a land which was well-demarcated by boundary walls.
7. Thus, the learned lower appellate court was of the view that there was no pressing urgency, which would necessitate any order of ad interim injunction. The learned lower appellate court directed the learned trial judge to dispose of the injunction application expeditiously.
8. This Court is of the view that the order impugned does not require any interference. The learned trial judge is directed to dispose of the application for temporary injunction on its own merits, without being influenced by any of the observations made by this Court or any other forum. Such application shall be disposed of within a period of two months from the next date fixed. The written objection, if not filed, will be filed within ten days from the next date.
9. Accordingly, the revisional application is disposed of.
10. However, there will be no order as to costs.
11. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)