

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

THE HON'BLE JUSTICE HARISH TANDON

&

THE HON'BLE JUSTICE APURBA SINHA RAY

F.M.A. 20 of 2024

with

IA NO: CAN 2 of 2024

Supriya Mukherjee & Ors.

Vs.

Siliguri Cinema & Trading Company Limited & Ors.

Appearance:

For the Appellants : **Mr. Abhrajit Mitra, Sr. Adv.
Mr. Chayan Gupta, Adv.
Mr. Nigam Ashis Chakraborty, Adv.
Mr. Anujit Mookherji, Adv.
Mr. Arijit Ghosh, Adv.**

For the Respondents Nos. 1 to 6 : **Mr. Dhrubo Ghosh, Sr. Adv.
Mr. Somnath Ghosal, Adv.
Mr. Debajit Kundu, Adv.**

Judgment On : **13.09.2024**

HARISH TANDON, J.:

The instant appeal arises from the Order no. 11 dated 13.10.2023 passed in T.S. no. 95 of 2022 by the learned Civil Judge (Senior Division) at Siliguri by which an application for injunction filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure was rejected on contest. At the time of admission of the instant appeal, an ad interim order of injunction restraining the respondents from carrying on any further construction and/or creating any third party interest and/or encumbrance on the suit property also from transferring and/or alienating of the suit property in favour of a third party was passed.

The salient facts required for the purpose of determining the point urged in the instant appeal are adumbrated hereinafter. One Rajani kanta Mukherjee, since deceased was the owner of large tract of land situated at Rajani Bagan, Hill Cart Road, Siliguri and left behind him surviving two sons namely, Durgapada Mukherjee and Babu AnandaKanta Mookerjee upon his death. A family settlement was entered into between the aforesaid two sons whereby and whereunder both the sons have decided to divide the joint property to the exclusion of other. It is undisputed that one of the son namely Durgapada Mukherjee was exclusively allotted the property being the subject matter of the instant suit. The said Durgapada Mukherjee subsequently executed a lease in favour of the Respondent no. 1 which was duly registered on 4th June, 1947 for a period of 9 years. The demised property is, in effect, the subject matter of the

dispute in the suit instituted by the appellants before the Trial Court. Undisputedly, after the expiration of the period of lease, it was neither extended nor renewed by the said owner but the lessee remained in possession all along. The said Durgapada Mukherjee subsequently died on 28th January, 1964 leaving behind him surviving his widow, three sons and one daughter. There has been a several transactions amongst the heirs of the said Durgapada Mukherjee which we are not concerned with. However, the appellants being the successors of the said original owner has filed the suit for declaration of the title and permanent injunction. The salient facts which led to an injunction being sought in the instant suit pertains to the incident when the respondent demolished the old structure and attempted to make construction at the demised land upon entering a Joint Venture Development Agreement with the Respondent no. 7. It is a specific stand of the appellant that they are owner of the subject property by virtue of an inheritance from the admitted owner and mere possession of the Defendant no. 2-6, does not create any indefeasible right, title and interest in respect thereof. On the conspectus of the aforesaid fact, an application for temporary injunction was filed restraining the respondents from dealing with and/or disposing of and/or alienating or creating a third party interest in respect of the suit property and also from changing the nature and character thereof. The contesting defendants admitted the factum of the suit property having demised on the strength of a deed of lease for a period of 9 years but took a shelter under

the West Bengal Estate Acquisition Act, 1953 to the extent that after the promulgation of the said Act, the right of the intermediary vested with the State and, therefore, the tenancy of the said defendants was diverted under the State. In other words, it is contended that the defendants are the tenant under the State and the plaintiff/appellant have no semblance of right, title and interest therein. It is a specific stand of the contesting defendants that the original owner namely Durgapada Mukherjee was aware that by virtue of coming in force of the said Act of 1953, the land was vested with the State and, in fact, a notice was also issued by the Revenue Officer under Section 44(2) of the said Act. It is further stated in the opposition that the said original owner subsequently caused a letter being conscious that the demised land has vested with the State on coming in force of the Act of 1953 but some excess land was still occupied *de horse* the said lease for which he claimed a compensation. It is further stated that, in fact, the original owner challenged the vesting proceedings before the Civil Court which ultimately ended in dismissal for default. It is thus contended that the claim of the appellants that they are still the owner in respect of the properties is untenable and, therefore, they cannot seek any injunction against the principal defendants.

The Trial Court dismissed the injunction application primarily on the ground that the moment the original owner accepted the incident of vesting of the land on coming in force of the Act of 1953 and caused a letter to the principal defendants for compensation in respect of an excess land which do not comprise

in the said lease, the appellants being the successor cannot claim that the land never vested into the State under the aforesaid Act. At the time of admission of the instant appeal, the earlier Division Bench was of the view that if a demised property is a homestead or if it contained the structure constructed thereupon, the same is kept outside the purview of the Act of 1953 and, therefore, the retention under the said Act is automatic. The Division Bench was of the view that whether the property is a homestead or not is a question to be decided at the time of trial and, therefore, the moment a triable issue is raised, the temporary injunction ought to have been passed and proceeded to pass an interim order of injunction.

The West Bengal Estates Acquisition Act which came into force in the year 1954 provides the vesting of all states and right of every intermediary holding the land beyond the respective ceilings. It also contained the specific provisions not only exempting certain categories of the land but also the retention of certain lands within the permissible ceiling limits. Section 6(1)(b) of the said Act permits the retention of a land comprised in or appertaining to the building and structure without any ceiling. It is thus manifest from the language of the said provision that the operation of the said Act shall not cover the land with the structures as there is no provision contained in the said Act for any compensation in respect of the structures. Even the Supreme Court in case of ***State of West Bengal vs. Ratnagiri Engineering Pvt. Ltd. reported in (2009) 4 SCC 453*** held that the

spirit of Clauses (a) and (b) of sub-Section (1) of Section 6 is manifest to the extent that the retention is automatic in the following:

“10. A perusal of Section 6 of the 1953 Act discloses that there is a difference between clauses (a) to (e) of Section 6(1) on the one hand, and clauses (f) and (g) of Section 6(1) on the other. While in the case of lands which can be retained under clauses (a) to (e) of Section 6(1) the retention is automatic from the date of vesting and no order of any authority need be passed for that purpose, in the case of clauses (f) and (g) of Section 6(1) the retention after the date of vesting is not automatic, but it is only when the State Government passes an order under Section 6(3) of the 1953 Act. In other words, after the date of vesting the lands mentioned in clauses (f) and (g) of Section 6(1) cannot be retained by the intermediary unless and until an order is passed by the State Government under Section 6(3) of the 1953 Act. Also, unlike lands mentioned in clauses (a) and (b) of Section 6(1) which can be retained after the date of vesting irrespective of the area, in the case of lands mentioned in clauses (f) and (g) only so much of the said land can be retained which in the opinion of the State Government is required for the tea garden, mill, factory or workshop.”

The ratio laid down in Ratnagiri (supra) is further reinstated and reiterated in the subsequent decision rendered in case of State of **West Bengal vs. Star Iron Works Ltd. & Ors. reported in (2012) 2 CLT 639** that the retention of a land comprised in a homestead and appertaining to the building and structure

within the ceiling limit under sub-Section (1) of Section 6 of the Act on the date of vesting is automatic.

The question, therefore, remained to be answered is whether the land so demised unto the original lessee contained the structures to be regarded as a homestead so as to keep outside the purview of the Act of 1953. Such question in our view has to be decided upon the evidence to be adduced in this regard by the respective parties.

While considering an application for temporary injunction, the Court should not only ascertain the existence of prima facie case but also the conduct of the plaintiff to be taken into account in relation to dealing with the property and asserting the rights in relation thereto. Admittedly the lease was for a period of 9 years and despite having expired by efflux of time there were no steps taken for recovery of the same. The lessee continued in possession and even the record of right was altered, incorporating their name and the land revenue was paid all along by them. The lessees are still in possession and enjoying the property as on this date. We do not find any fetter in the document that the lessee is not permitted to make construction at the demised land when admittedly the lessor is not in physical possession thereof. Any construction made thereat is always subject to the right which the person making construction had in respect of a property and, therefore, we do not find that in absence of any express restrictions

imposed in the document in making the construction, the appellants cannot resist such claim. Interestingly, there is no relief claimed by the appellant seeking the recovery of possession but filed the said suit for declaration that the joint venture agreement is null and void and be deliver up. In such a suit, we do not find any justification that a prima facie case is made out for restraining the respondents from making a construction at the demised land. However, we are conscious that if any third party interest is created without letting them aware that the suit is pending, it may invite an equitable defence and the position may, at times, become irreversible. In such aspect, the support can be lend to a judgment of the Apex Court in case of ***Mandali Ranganna and Ors. Vs. T.R. Ramachandra and Ors. reported in (2008) 11 SCC 1*** wherein the Apex Court held that in the event any third party interest is created, the deed must reflect that it is subject to the result of the suit in the following:

“27. We, therefore, are of the opinion that the interest of justice would be subserved if while allowing the respondents to carry out constructions of the buildings, the same is made subject to the ultimate decision of the suit. The trial court is requested to hear out and dispose of the suit as early as possible. If any third-party interest is created upon completion of the constructions, the deeds in question shall clearly stipulate that the matter is sub judice and all sales shall be subject to the ultimate decision of the suit. All parties must cooperate in the early hearing and disposal of the suit. All parties must cooperate in the early hearing and disposal of the

suit. The respondents must also furnish sufficient security before the learned trial Judge within four weeks from the date which for the time being, is assessed at rupees one crore.”

We, thus, modify the order to the extent that in the event any third party interest is created in respect of the subject property, the agreement or the deed shall contain that such interest is subject to the result of the Title suit no. 95 of 2022 pending before the learned Civil Judge (Senior Division) at Siliguri, District - Darjeeling.

With these observations, the appeal is disposed of.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Apurba Sinha Ray, J.)

Later:

After the delivery of judgment in the open Court, the Counsel for the appellant prays for continuance of the operation of the interim order for a limited period.

Taking into the facts as disclosed in the judgment, we do not think that there is any necessity of continuing the interim order.

The prayer is refused.

Urgent Photostat certified copy of this order be given to the police, if applied for, within three days of such application.

(Harish Tandon, J.)

(Apurba Sinha Ray, J.)