

JPD-26
Ct No.01
26.07.2024
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

FMAT 23 of 2023
IA No: CAN 1 of 2023

Smt. Gita Barman and others
Vs
Indranath Barman and others

Mr. Suman Sehanabis (Mandal)
.... for the appellant.

Mr. Bikramaditya Ghosh
...for the respondent no.1.

Mr. Kunaljit Bhattacharjee
Mr. M. Ali
Mr. Alok Sah
Mr. Satyam Sankar
...for the respondent nos.19 & 32.

1. Affidavit-of-service filed in court today be kept on record.
2. Upon hearing learned counsel for the parties, we are of the opinion that in view of the nature of the order proposed to be passed, nothing will remain for adjudication in the appeal if the application is decided in isolation and as such the appeal and the application are taken up together for hearing.
3. We find from the impugned order that in connection with a partition suit filed by the present appellants, the plaintiffs/appellants prayed for an injunction restraining the defendants from making further

construction and from alienating the property in favour of third parties.

4. The learned Trial Judge, although arriving at the *prima facie* finding that the defendants are indeed in possession of plot no.4138 and that construction work as allegedly photographed *prima facie* appears to be indeed erection of peripheral wall to encircle the compound of a dwelling house, came to the conclusion that there would be no justification in passing a restraint order against the defendant no.1 in plot no.4138.
5. The premise of the said order was that the defendant no.1 produced plot information indicating his possession in respect of plot no. 4138 whereas nothing else was produced regarding the other portions of the property.
6. Learned counsel appearing for the defendant/respondent no.1 vehemently opposes the prayer of the appellant.
7. It is contended that the learned Trial Judge was fully justified in passing the impugned order, since the defendant no.1/respondent no.1 has sufficiently proved his exclusive possession in respect of plot no.4138.
8. It is further contended by the respondent no.1 that the plaintiffs/appellants themselves have constructed their dwelling house and are seeking to

restrain the respondent no.1 from doing so when the respondent no.1's turn came to do the same.

- 9.** It is further contended that if an injunction order is passed, the same would also prevent the respondent no.1 from carrying out necessary repair and renovation work to the dwelling house of the respondent no.1, based on the fact that the respondent no.1 is in occupation of plot no.4138.
- 10.** Upon a careful consideration of the submissions of parties, we are of the opinion that in a partition suit, which encompasses a joint property, there cannot be any concept of exclusive possession of any portion or parcel of the property by one co-owner in exclusion of the other co-owners, since it is well-settled that every co-owner has right, title and interest over each and every inch of the joint property.
- 11.** However, learned counsel for the respondent no.1 is justified to the extent that since the possession of the respondent no.1 has been found in a particular portion of the property, the same ought not to be disturbed during the pendency of the suit.
- 12.** However, it is equally well-settled that in the event the nature and character of a suit property is altered, it may create certain undue advantages in favour of one of the parties in exclusion of the

others, which might attain an irreversible character at the final hearing of the suit.

- 13.** Even as regards creation of third party interest, although the respondent no.1 does not seriously intend to create such interest as per submission of learned counsel for the said respondent, we are of the opinion that since a portion of the property has already been transferred, there is sufficient and justified apprehension that further transactions may be carried out to encumber the property and/or transfer it in favour of third parties.
- 14.** In such view of the matter, we are of the opinion that the learned Trial Judge erred in law and in fact in refusing to grant injunction as sought by the appellant.
- 15.** Accordingly, FMAT 23 of 2023 along with CAN 1 of 2023 is allowed, thereby setting aside the impugned order bearing Order no.12 dated May 20, 2023 passed in Title Suit No.20 of 2022 by the learned Civil Judge (Senior Division), Sadar at Cooch Behar. The parties shall maintain status quo in respect of the nature and character of the suit property as well as in respect of creation of third party interest and/or sale, transfer, encumbering and/or alienation of the property in favour of third parties till disposal of the suit.

16. It is, however, made clear that nothing in this order shall prevent either of the parties from making appropriate application for repair and/or renovation of the portions of the subject property in their occupation before the Trial court.
17. If such an application is filed, the same shall be decided by the learned Trial Judge upon giving opportunity of hearing to both parties without being influenced in any manner whatsoever by any of the observations made herein.
18. It is further clarified that the above observations are tentative and made only for the purpose of deciding the injunction matter and shall not be binding in any manner at the final hearing of the suit.
19. There shall be no order as to costs.
20. Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)