

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 488 of 2022

Smt. Bina Dey
Vs.
Smt. Tapasi Mondal & Anr.

Ms. Swapna Choubey
Mr. Navneet Sweak
Mr. Aditya Chakraborty
... For the petitioner

Mr. Susenjit Banik
Mr. Prasanta Bishal
Ms. Sutapa Mukhopadhyay (Das)
Mr. Mrinal Sahu
... For the opposite parties

1. Supplementary affidavit filed on behalf of the petitioner is taken on record.
2. In this revisional application, order dated 3rd February, 2020 passed in connection with Misc. Appeal No.8 of 2017, has been assailed wherein the learned Additional District Judge, 11th Court, Alipore dismissed the appeal on contest against the respondents/opposite parties herein observing, inter alia, that right of the plaintiff/petitioner herein over the south-eastern side iron collapsible gate was not established from the sale deed by which the petitioner purchased the ground floor flat at 21/6B, Gariahat Road, Police Station – Gariahat, Kolkata – 700019.
3. Learned counsel appearing on behalf of the petitioner has submitted that enjoyment of common

areas and other facilities have been disturbed at the instance of the defendants/opposite parties herein. Learned counsel appearing on behalf of the petitioner has also drawn my attention to the prayer of the injunction application restraining the defendants from creating any disturbances to the plaintiff from peaceful possession and enjoyment in the common areas and facilities available in the suit premises.

4. Learned counsel appearing on behalf of the petitioner has further submitted that according to the sale deed, admittedly, the right of enjoyment in common areas and facilities was given to the purchaser/petitioner herein with respect to the ground floor flat. By referring to the prayers of the injunction application, learned counsel appearing on behalf of the petitioner has submitted that both the learned Trial Judge as well as the learned First Appellate Court only focused on the issue of obstruction and disturbances with respect to the collapsible gate.

5. Per contra, learned counsel appearing on behalf of the opposite parties has referred to the affidavit-in-opposition and submits that prior to filing of the suit, the opposite parties filed one suit for declaration and permanent injunction also with respect to the use of the northern side common passage and also to provide entrance door etc.

6. I have gone through the sale deed, particularly, the schedule, I find that all flats including the easement right and right over the common passage facilities were given to the petitioner with respect to ground floor flat.

7. From both the orders passed by the learned Civil Judge as well as by the learned First Appellate Court, I find that both the learned Judges only concentrated on the prayer with respect to the south-eastern iron collapsible gate thereby ignoring the peaceful possession and enjoyment in common areas and facilities available to the petitioner according to the sale deed executed in favour of the petitioner.

8. Considering all facts and circumstances, the prayer for temporary injunction in respect of peaceful possession and enjoyment in common areas and facilities according to the sale deed executed in favour of the petitioner stands allowed.

9. Defendants/opposite parties herein are hereby restrained from creating any obstruction with respect to the peaceful possession and enjoyment of the common areas and facilities with respect to the ground floor according to the deed executed in favour of the petitioner till the disposal of the suit, subject to enjoyment of the opposite parties over the common areas and facilities.

10. With the aforesaid observation, the revisional application stands disposed of.

11. Learned Trial Judge is requested to dispose of the suit, which is pending since 2015, as expeditiously as possible, without giving any unnecessary adjournment to any of the parties to the suit.

12. Interim order, if any, stands vacated.

13. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)