

AD- 29
Ct No.16
10.02.2025
(SSS)

FMAT 213 of 2024
With
CAN 1 of 2024

Yajur Fibres Limited
Vs.
Dharmendra Tiwari and Ors.

Mr. Chayan Gupta,
Mr. Sayantan Chatterjee,
Mr. Dwip Raj Basu
....For the Appellant.

Mr. Partha Pratim Roy,
Mr. Rajdeep Bhattacharya,
Mr. Soumadeep Dutta

...For the Respondents.

1. The present appeal has been preferred against the dismissal of a temporary injunction application filed by the plaintiff/appellant in a suit for identical reliefs by way of permanent injunction and other ancillary reliefs.

2. Learned Counsel for the appellant submits that the learned Trial Judge failed to consider the title deed of the plaintiff, by virtue of which the Schedule-B property, which is the suit property, was purchased through a court sale. The property was subsequently let out to a third party which, however, later on

merged with the plaintiff. Thus, the plaintiff is the exclusive owner of their suit property, that is, the Schedule-B property marked with green hatches in a plan annexed to the plaint.

3. It is contended that the defendants/respondents produced certain documents before the trial court at the time of final hearing of the injunction application, copies of which were not handed over to the plaintiff at the relevant juncture. However, by virtue of the order of this court, copies of those have now been handed over to the plaintiff/appellant. Even from the said documents, it is found that the name of the defendants/respondents do not find place to be in occupation of the suit property.

4. Learned Counsel further contends that although the names of two persons appear as *bargadars* in respect of one of the plots of the suit property, there was a paper publication of the pendency of the suit and the injunction application pursuant to the direction of the trial court, by way of substituted service, and none has come up to resist the suit/injunction or implead themselves in the present suit.

5. That apart, although the names of one Kanoria Jute Mills and one M/s. Hanuman Cotton Mills find place in the LR records, it is the Hanuman Cotton

Mills, the predecessor of which was Kanoria Jute Mills, from which the purchase was made by the plaintiff.

6. The learned Trial Judge, it is argued, failed to consider that the defendants have not been able to produce any document in support of their contention that they are in occupation of the suit property by virtue of an irrevocable licence granted in their favour by M/s. Hanuman Cotton Mills.

7. Learned Counsel appearing for the defendants/respondents contends that it is not clear from the schedule of the title deed, produced by the plaintiff in support of its case, as to whether the suit property, as described in the plaint and depicted in the plan annexed thereto, is the exact property which is, according to the plaintiff, lying vacant. The plaintiff itself has admitted that some portions of the property have been encroached upon and as such, it is doubtful as to whether the property marked by the green lines is vacant or not.

8. Moreover, the grant of the present temporary injunction would tantamount to granting the final relief of permanent injunction sought in the suit itself, which is not permissible in law.

9. Learned Counsel for the respondents further argues that as per the finding of the learned Trial Judge and the materials on record, some portions of

the property has been shown to be *doba* or pond, which is contrary to the case of the plaintiff.

10. We find, upon hearing learned Counsel for the parties and a perusal of the impugned order, that the learned Trial Judge proceeded *inter alia* on the premise that a portion of the property has been depicted in the records-of-rights as pond or *doba*. However, we are of the opinion that the said factor is not germane at all for the present consideration, which is whether the property-in-question belongs to the plaintiff and is lying vacant or is in occupation of the defendants.

11. The learned Trial Judge has also proceeded on the premise that it is doubtful as to whether the Schedule-B property extends to the Hooghly river and as such, whether there is a bank, which would substantiate the case of inundation of the said bank requiring boundary wall to be created, as made out by the plaintiff.

12. However, irrespective of whether there is any inundation and/or caving in of any bank of the river, the plaintiff has also made out an independent case of title and vacant possession of the suit property, which, by its very nature, requires the property to be protected by a boundary wall.

13. The defendants, even from the documents produced by them in the court below, have utterly

failed to substantiate their case of irrevocable licence. In any event, the concept of irrevocable licence flows in Indian jurisprudence from the Easements Act, which is not applicable in the State of West Bengal. Mere applicability of the principles incorporated in the said statute by way of justice, equity and good conscience is not a strong enough justification to import the specific doctrine of irrevocable licence in terms of the specific provisions of the said statute to the State of West Bengal.

14. Moreover, there is precious nothing on record to substantiate the defendants' case of irrevocable licence and/or the defendants being in occupation of the Schedule-B property.

15. In their written objection to the injunction application in the trial court, the defendants have sought to make out a case that they are running a security agency over the disputed property and it has its own office there. However, the records-of-rights produced by the plaintiff, that is, the RS records, clearly show the occupation and possession of the plaintiff exclusively. Even from the LR records sought to be produced by the defendants/respondents, there is nothing to indicate occupation of the defendants on the said property and the plots comprised of the same.

16. Insofar as the stray names of two purported *bargadars* in one of the plots comprising the suit property is concerned, there is substance in the contention of the plaintiff/appellant that despite paper publication if none has come forward to contest the suit or implead themselves herein, it cannot lie in the mouth of the defendants to espouse the cause of third parties. Also, if a decree is ultimately passed in the suit, it would only bind the parties to the suit and not third parties.

17. Moreover, we find from the materials on record that the title of the plaintiff to the suit property has been established beyond doubt by virtue of production of the title deed in their favour pursuant to a court sale.

18. The RS records, which carry a forward presumption unless rebutted, also indicate that the plaintiff is in possession of the property. The LR records, if they subsequently bring about a change in such position by incorporating the name of the predecessors of the plaintiff, thereby turning the clock back, cannot be lent credence, in the absence of foundational documents or proof to justify such alteration in the names of the occupiers from the RS records. In the absence in the present case of any document which provides the foundational premise of such alteration of the names of the occupants from

the plaintiff to someone else, we are of the opinion that the plaintiff's case has to be accepted as a sufficiently strong *prima facie* case for grant of injunction.

19. That apart, we also find that since the names of the recorded occupiers of the property in the LR records are substantially the predecessors of the plaintiff itself, there is no scope of disputing the plaintiff case by holding that those predecessors are still in occupation even after the court sale being effected in favour of the plaintiff and the plaintiff's name being recorded in the RS Records. Thus, palpably, such recording in the LR records is erroneous.

20. In such view of the matter, we find that the learned Trial Judge has completely misdirected himself in relying on irrelevant yardsticks to refuse injunction to the plaintiff in view of the plaintiff having substantiated its case of title by virtue of producing the concerned title deed and also possession by furnishing the extracts of the RS records, which could not be rebutted by the defendants/respondents at the injunction stage by showing any document whatsoever in support of the defence case of being in occupation of the said property by virtue of any licence, irrevocable or otherwise.

21. Hence, we are of the opinion that the learned Trial Judge erred in law and in facts in refusing the temporary injunction as sought for by the plaintiff in the court below.

22. Hence, FMAT 213 of 2024 is allowed on contest, thereby setting aside the impugned order dated May 14, 2024 passed by the learned Civil Judge (Senior Division), Second Court at Uluberia, District: Howrah in Title Suit No. 147 of 2021. We hereby restrain the defendants/respondents and/or their men, agents and assignees by an order of injunction from entering into or encroaching upon any part or portion of the suit premises described in Schedule-B of the plaint and also restrain the defendants/respondents and/or their men and agents from interfering with the construction and development of the suit premises, and constructing a boundary wall around the periphery of the Schedule-B property by the plaintiff in any manner whatsoever.

23. Such injunction shall operate till disposal of the suit.

24. However, we make it clear that all the above observations are on a *prima facie* footing insofar as the final adjudication of the suit is concerned, arrived at only for the purpose of deciding the present appeal arising out of the temporary injunction application.

25. In the event the suit of the plaintiff/appellant ultimately fails, it will be open to the defendants/respondents to seek appropriate orders from the trial court directing the plaintiff to demolish the boundary wall and constructions made on the Schedule-B property at the own cost of the plaintiff.

26. CAN 1 of 2024 is disposed of as well in the light of the above observations.

27. There will be no order as to costs.

28. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)