

Ct. 11.06.2025
No
29
307
ss

C.O. 3834 of 2024

Ashoke Saha
-Versus-
Shree Shree Raghunath Jew Thakura
being represented by
Shebait Mohanta Ramanuj Das

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Haldar

...For the petitioner

Mr. Samrat Choudhury
Mr. Anit Dey

**... For the respondent/
opposite party**

The petitioner herein being aggrieved by the order dated 21st August, 2024 passed by the learned Additional District Judge, 4th Court, Tamruk, Purba Medinipur in Misc. Appeal No.6 of 2022 has preferred the present application.

By the impugned order learned court below has affirmed the order of the trial court by which the trial court after contested hearing directed the defendant not to change the nature and character of the 'ka' schedule property till further order.

Being aggrieved by the said order Mr. Sounak Bhattacharya, learned Counsel appearing on behalf of the petitioner submits that the court below acted its jurisdiction illegally and with material irregularity in affirming the order of *status quo* passed by the learned trial Judge.

He submits that the petitioner is admittedly in

possession of the 'ka' schedule property by constructing a temporary shop room over the same and the name of any deity has not been recorded in respect of 'ka' schedule property and as such, both the courts below ought not to have passed an order of *status quo* with regard to nature and character of the 'ka' schedule property. He further submits that the said property has been recorded as 'Hutkhola' and 'Anumoti Dhakhaldar' and as such, the prayer made by the petitioner should have been allowed in view of the fact that with the introduction of West Bengal Estate Acquisition Act, he has acquired right, title and interest over the 'ka' schedule property. He also submits that the petitioner has been doing business from 'ka' schedule property for several decades and after taking permission from the appropriate Government authorities, which the courts below failed to consider and accordingly, he has prayed for setting aside the aforesaid order of injunction.

Learned Counsel appearing on behalf of the opposite party submits that from the plaint it is clear that the entire 'kha' schedule property of which the 'ka' schedule property is a part are being used only once in a week i.e. on the 'Hut' days and on the other days of the week, it is being used for the purpose of puja, mela and festival of deity. He further submits that the 'kha' schedule property is measuring in total 42 decimal out of which 'ka' schedule property has been recorded in the name of defendant as 'anumati dakhaldar' (permissive occupier).

He further submits that the said recording in the name of defendant is erroneous and also against the principle of natural justice as the plaintiff/ deity never granted any permission to the petitioner and such recording is not binding upon the plaintiff/deity. In fact, the defendant taking advantage of the aforesaid erroneous recording is now trying to change the entire nature and character of the 'ka' schedule property by making pacca construction which is not permissible in the eye of law. Accordingly, he submits that the order impugned is justified and does not call for interference of this Court invoking this Court's jurisdiction under Article 227 of the Constitution of India.

On perusal of the record it appears that the trial court after considering the submissions made by both the parties rightly came to a conclusion that the main object of the temporary injunction is to preserve and protect the 'ka' schedule property till disposal of the suit. Therefore, the dispute arising out of the claim and counter-claim about right, title and interest of the suit property, shall be decided during trial but since then the nature and character of the suit property is required to be protected.

The First Appellate Court has dealt with the issue elaborately and came to a finding that the observation of the trial court is not perverse and the question of irreparable loss and injury is also in favour of the plaintiff since the possessor having no absolute possession over the property and who allegedly possessing under permission, if allowed to make construction of permanent

nature without the permission of the true owner, it would be unjust for the true owner and there is likelihood of suffering irreparable loss and injury by the plaintiff. Learned trial court and the court below also considered the local inspection report filed by the Advocate Commissioner and after appreciation of all material evidence available in record, has passed the order impugned.

Upon hearing learned counsel for both the parties, at the very outset, it requires to be taken on record that High Court under Article 227 of the Constitution of India have little scope to interfere with the orders of the Courts below as a matter of routine, nor this power can be taken as right of another appeal to the aggrieved party. The object of invoking jurisdiction under Article 227 is to keep the Courts below within the bounds of their authority and to ensure that law is followed by such Courts in exercising jurisdiction vested in them.

In fact direction of the Courts below upon the defendant whose name has been recorded as permission occupier in respect of a 'hutkhola' property, not to change nature and character of 'ka' schedule property till further order, has not resulted in any gross or manifest failure of justice nor while passing the said order Courts below have committed any illegality or perversity. Moreover order passed by the Courts below is only temporary in nature in the interest of protection and preservation of property pending litigation and as such I find nothing to interfere

with the order impugned.

C.O. 3834 of 2024 is accordingly, dismissed.

However, this dismissal order will not preclude the petitioner from making prayer before the court below for granting permission for necessary repairing work to keep the suit property safe for human habitation and in the event of filing such application by the petitioner herein, before the court below without reserving any right to claim equity in future, the court below will dispose of such application in accordance with law without being influenced by any observation made here.

(Dr. Ajoy Kumar Mukherjee, J.)