

Civil Revision

Present : The Hon'ble Mr. Justice Prasenjit Mandal

Judgement On: October 5, 2010.

C.O. No. 2813 of 2010

&

C.O. No.3000 of 2010

Kanai Krishna Das.

Versus

Ashim Das & ors.

Point:

INJUNCTION: Concurrent finding regarding injunction whether be reversed in revision-Granting liberty to file fresh application if situation arises whether proper-Code of Civil rocedure,1908,Order 39 Rule 1 & 2

Facts:

The plaintiff/petitioner filed the said title suit for partition and permanent injunction against the opposite parties before the learned Civil Judge (Senior Division), Baruipur. At the time of filing the suit, the plaintiff/petitioner filed an application for temporary injunction. Upon hearing the learned Advocate for the petitioner, the learned Trial Judge directed the parties to maintain status quo for a certain period.In that suit, the defendants/opposite parties appeared. The learned Trial Judge fixed the date of hearing of the application of the temporary injunction filed by the plaintiff. But the plaintiff/petitioner went on taking adjournments time and again.Ultimately, the application for temporary injunction was fixed for hearing on January 15, 2010. As usual, the learned Advocate

for the petitioner prayed for adjournment and at the same time prayed for extension of the order of status quo. That application for adjournment was rejected. Consequently, the learned Trial Judge rejected the application for temporary injunction dated March 27, 2009 by an order no.13 dated January 15, 2010. Being aggrieved by that order, the plaintiff preferred a misc. appeal being numbered 67 of 2010 which was also dismissed. Being aggrieved by such order of dismissal of this misc. appeal, the plaintiff/petitioner has filed this application.

Held:

The learned Appellate Court has rightly observed that the learned Trial Judge has no other alternative but to pass the impugned order dated January 15, 2010. Such concurrent views of the two courts below, I hold, should not be interfered with in exercising the power of superintendence by this Court. The learned Appellate Court has rightly dismissed the appeal affirming the order no.13 dated January 15, 2010 passed by the learned Civil Judge (Senior Division). But the learned Appellate Court has also, at the same time, given liberty to file a fresh petition under Order 39 Rule 1 & 2 of the C.P.C. if the petitioner desires to do so. The Court does not find any illegality in the matter.

Para-9

Since the possession with regard to the suit property is very much involved in the matter, the situation may arise where either of the party may have to file an application for temporary injunction. So, if the situation demands either of the party can pray for temporary injunction but not on the selfsame cause of action as filed earlier. Therefore, the learned Appellate Court has rightly given an opportunity to the plaintiff to file another petition for temporary injunction. There is no illegality in the matter.

Para-12

For the petitioner: Mr. Suhrid Sur.
(in C.O.2813 of 10)

For the opposite parties: Mr. Jiban Ratan Chatterjee,
(in C.O.2813 of 10) Mr. Chandra Nath Sarkar.

The Court:

These two have arisen out of the common order dated July 9, 2010 passed by the learned Additional District Judge, Eleventh Court, Alipore in Misc. Appeal No.67 of 2010. Since two applications have been filed by the two parties to the suit against the same order; these two applications are disposed of by this common judgment.

2. For convenience, I am discussing the revisional case No.2813 of 2010 first.

3. This application is at the instance of the plaintiff and is directed against the order dated July 9, 2010 passed by the learned Additional District Judge, Eleventh Court, Alipore in Misc. Appeal No.67 of 2010 thereby affirming the order no.13 dated January 15, 2010 passed by the learned Civil Judge (Senior Division), Baruipur in Title Suit No.52 of 2009.

4. The plaintiff/petitioner filed the said title suit for partition and permanent injunction against the opposite parties before the learned Civil Judge (Senior Division), Baruipur. At the time of filing the suit, the plaintiff/petitioner filed an application for temporary injunction. Upon hearing the learned Advocate for the petitioner, the learned Trial Judge directed the parties to maintain status quo for a certain period.

5. In that suit, the defendants/opposite parties appeared. The learned Trial Judge fixed the date of hearing of the application of the temporary injunction filed by the plaintiff. But the plaintiff/petitioner went on taking adjournments time and again.

6. Ultimately, the application for temporary injunction was fixed for hearing on January 15, 2010. As usual, the learned Advocate for the petitioner prayed for adjournment and at the same time prayed for extension of the order of status quo. That application for adjournment was rejected. The learned Advocate for the plaintiff expressed his inability for being ready for hearing the petition for temporary injunction. Consequently, the learned Trial Judge rejected the application for temporary injunction dated March 27, 2009 by an order no.13 dated January 15, 2010.

7. Being aggrieved by that order, the plaintiff preferred a misc. appeal being numbered 67 of 2010 which was also dismissed by the learned Appellate Court. Being aggrieved by such order of dismissal of this misc. appeal, the plaintiff/petitioner has come up with this application.

8. Now, the point for consideration is whether the impugned order could be sustained.

9. Upon hearing the learned Advocate of both the sides and on perusal of the materials on record, I find that the plaintiff/petitioner filed the petition for temporary injunction on March 27, 2009 and the learned Trial Judge granted an ex parte order of status quo for a certain period directing the plaintiff to serve a notice upon the opposite parties in accordance with law. The plaintiff/petitioner prayed for extension of the interim order from time to time and it was granted accordingly. Ultimately, on January 15, 2010 the application for temporary injunction was rejected when the learned Advocate appearing for the plaintiff/petitioner did not cooperate with the Court in the

matter of hearing the petition for temporary injunction. It may be noted herein that after obtaining an order of status quo ex parte the plaintiff was taking time again and again so that the hearing of the application for temporary injunction filed on March 27, 2009 could not be taken up. The application for temporary injunction ought to be disposed of within 30 days from the date of granting of the ad interim order of injunction as per provisions of Order 39 Rule 3A of the C.P.C. save special reasons. In spite of that, the Court has granted ex parte order of injunction and extended it from time to time and on the date of January 15, 2010 when the plaintiff again prayed for adjournment as usual, that application for adjournment was rejected and the plaintiff was directed to be ready for hearing. But the learned Advocate for the plaintiff expressed his unwillingness to cooperate in compliance with the order of the Court. So, I do not find any illegality in the matter. The observation as recorded by the learned Appellate Court that being exasperated by the conduct of the plaintiff under the said circumstances, the Court did not grant further extension of ad interim order of status quo and directed the plaintiff to be ready for hearing the application for injunction on January 15, 2010. I find that the learned Appellate Court has rightly observed that the learned Trial Judge has no other alternative but to pass the impugned order dated January 15, 2010. Such concurrent views of the two courts below, I hold, should not be interfered with in exercising the power of superintendence by this Court. The learned Appellate Court has rightly dismissed the appeal affirming the order no.13 dated January 15, 2010 passed by the learned Civil Judge (Senior Division). But the learned Appellate Court has also, at the same time, given liberty to file a fresh petition under Order 39 Rule 1 & 2 of the C.P.C. if the petitioner desires to do so. I do not find any illegality in the matter. Therefore, I am of the view that this application is totally meritless. There is nothing to interfere with the impugned order.

10. Accordingly, this application is dismissed.

11. Considering the circumstances, there will be no order as to costs.

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12. The objection of the defendants/opposite parties is that by the impugned order the learned Appellate Court has virtually given opportunity to the plaintiff to file a fresh petition under Order 39 Rule 1 & 2 of the C.P.C. I have discussed earlier that the suit is one for partition and so every party to the suit may be equally interested in the subject-matter of the suit and so position of each party to the suit may be plaintiff as well as defendant with regard to the relief sought for in the suit. Since the possession with regard to the suit property is very much involved in the matter, the situation may arise where either of the party may have to file an application for temporary injunction. So, if the situation demands either of the party can pray for temporary injunction but not on the selfsame cause of action as filed earlier. Therefore, the learned Appellate Court has rightly given an opportunity to the plaintiff to file another petition for temporary injunction. There is no illegality in the matter.

13. In view of the findings in the earlier application and the above observations, I am of the view that this application shall be disposed of with the observations noted earlier.

14. Considering the circumstances, there will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

