

Parboti Adhikary and ors. Vs. Pradip Adhikary and ors.

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Court : Guwahati

Decided On : Mar-10-2003

Judge : Amitava Roy, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39

Appeal No. : MAF No. 51 of 1998

Appellant : Parboti Adhikary and ors.

Respondent : Pradip Adhikary and ors.

Advocate for Def. : H.A. Sarkar, Adv.

Advocate for Pet/Ap. : S.K. Saha and S. Nath, Adv.

Judgement :

Amitava Roy, J.

1. The present appeal is directed against the order dated 9.2.1998 passed by the learned trial Court in Title Suit No. 3/98 rejecting the prayer for injunction made by the appellants herein, the plaintiffs in the suit.

2. I have heard Mr. S K Saha, learned counsel for the appellant and Mr. H A Sarkar, learned counsel for the respondent Nos. 1 and 2.

3. The present appellants/plaintiffs filed the suit praying for a decree, inter alia, for a declaration that the respondents/defendants have no right, title or interest over the suit land and for a permanent injunction restraining them from raising any construction/building or rebuilding any house thereon. The learned Court below by order dated 3.2.1998, while issuing notice to the respondents/defendants to show cause as to why the prayer for ad interim injunction as prayed for in the line of permanent injunction should not be granted, directed that status quo as regards the suit land be maintained. After the respondents/ defendants entered appearance in the suit, they filed an application for vacating the said order. After hearing the parties, by the impugned order, the injunction as prayed for was rejected.

4. Mr. Saha, learned counsel for the appellants, in course of his arguments has drawn my attention to the prayer made for interim injunction. It appears there from that the appellants/plaintiffs prayed for ad interim injunction for restraining the respondents/defendants from constructing any house building on the suit land and from demolishing any existing structure. The learned counsel argued that the order of status quo granted by the learned trial court did not in any way adversely affect the respondents/defendants possession of the suit land and that the said aspect of the matter was totally overlooked by the trial Court while passing the impugned order. The learned counsel has submitted that the appellants/plaintiffs had never prayed for an injunction for ouster of the respondents/defendants from the suit land. He, therefore, prayed that the impugned order should be interfered with by this Hon'ble Court as otherwise the suit of the appellants/ plaintiffs would be rendered infructuous.

5. In reply, Mr. Sarkar, learned counsel for the respondents/defendants has submitted that the ad interim injunction as prayed for by the appellants/plaintiffs would adversely affect their possession of the suit land and that the learned Court below on a proper appreciation of all relevant aspects of the matter has rightly passed the impugned order which does not call for any interference by this Court.

6. I have carefully perused the pleadings of the parties as well as the impugned order. I am of the view that the order of status quo as granted by the trial Court by

the order dated 3.2.1998 would not in any way adversely affect the respondents/defendants' possession of the suit land. On the other hand, if the impugned order is maintained there is possibility that the respondents/defendants may alter the nature and character of the suit land, which during the pendency of the suit is not desirable at all. As the parties have registered their competing claims with regard to right, title and interest on the suit land, it is always desirable that the status quo of the suit property be maintained till the suit is finally disposed of on merits. In that view of the matter, I am of the considered opinion that the order of status quo would not the ends of justice

7. Mr. Sarkar in course of his arguments has expressed an apprehension that the order of status quo may have the effect of totally disabling the respondents/defendants from making necessary repairs to the structures on the suit land and if that be so, they would be seriously prejudiced. Needless to say, the order of status quo would not stand in the way of respondents/defendants from approaching the trial Court with an application, if so necessary, making a prayer to make repairs to the structures on the suit land and if that is done, the learned trial Court after hearing the parties would pass, appropriate orders as it may be deemed fit and proper in the said facts and circumstances.

8. In view of the above, the impugned order is set aside. The parties are directed to maintain status quo of the suit land and the structures thereon till disposal of the suit on merits. The suit is of the year, 1998 and, therefore, the Court below would make all endeavours to dispose of the same at an early date and in any case not much later than one year herefrom. The office would send down the records immediately.

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