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**Bijay Kumar Agarwal Vs. Narayani Devi Agarwal and Ors.**

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**SooperKanoon Citation : [sooperkanoon.com/69438](http://sooperkanoon.com/69438)**

**Court : Kolkata**

**Decided On : Mar-02-2016**

**Judge : Harish Tandon**

**Appellant : Bijay Kumar Agarwal**

**Respondent : Narayani Devi Agarwal and Ors.**

**Judgement :**

ORDER

SHEET GA No.533 of 2016 CS No.61 of 2011 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE IN THE MATTER OF: BIJAY KUMAR AGARWAL Versus NARAYANI DEVI AGARWAL & ORS.BEFORE: The Hon'ble JUSTICE HARISH TANDON Date : 2nd March, 2016.

Appearance: Mr.Suman Dutta, Advocate...for the petitioner.

Mr.Sarathi Dasgupta, Adv..for defendant nos.1,2 & 6[a].Mr.Aniruddh Poddar, Adv.Mr.Aditya Garodia, Adv..for respondent no.3.

Mr.R.Kumar Kalawatia, Adv.for respondent no.5.

Mr.Prabal Mukherjee, Adv.Mr.Vikash Singh, Adv..for defendant no.7.

Mr.Chakravorty, Adv.for defendant no.4.

This application is moved by the petitioner for leave to serve the copy of the petition on various persons who are not arrayed as defendants in the suit but allegedly interfered with the possession of the receiver and therefore acted in violation of the order passed by this Court.

Further order in the form of an injunction is sought restraining the respondents from interfering with egress and ingress of the petitioner to the plot of land situated at 11/1, B.K.Pal Temple Road, Howrah, so far as it relates to 8 cottahs and odd and also from establishing and/or running any manufacturing encumbering physical the same.

possession unit Further by therefrom leave evicting is the and/or sought illegal in for any way taking of trespassers as disclosed in prayer [a].to the said application.

It reveals that against refusal to pass an ad interim order of injunction in the suit, an appeal was filed before the Division Bench which came up for disposal on 6th June, 2011.

It would further be borne from the record that partition suit was filed in respect of five properties situated both in the vicinity of Kolkata and Howrah.

An objection was raised by the contesting respondents that some of the properties are in exclusive possession of one of the respondents and have been wrongly projected as the subject matter of the said suit.

It would discern from the order of the Honble Division Bench that the plaintiff could not prove a prima facie case with regard to Premises No.15, Panchanantala Street and Premises No.10, B.K.Pal Temple Road, Howrah.

Temple Road, Howrah is So far as Premises No.11/1, B.K.Pal concerned, the Honble Division Bench categorically observed that the plaintiff has been able to make out a prima facie case to the extent of 8 cottahs and odd on the strength of a deed of gift executed by the respondent No.1 in his favour.

making Ultimately, the Court restrained the respondents from any character addition, of alienating the any alteration properties, portion thereof or and or

changing also from encumbering the nature and transferring the same or except without the leave of the Court barring two of such properties over which the petitioner could not make out a prima facie case.

Further direction was given to disclose the name of the tenants and the rents payable before the Trial Court.

by them in respect of those properties The said order is still operative and has not been vacated, varied and/or modified.

It fell in couRs.of the argument that alleging violation of the order of injunction, an application for contempt had been taken out, which is still pending.

appeal It by would the further Honble appear Division that Bench, after a disposal Receiver of has the been appointed in respect of Premises No.1/1, Jagmohan Mullick Lane, Kolkata 700 007 to make inventory and take symbolic possession thereof and also to collect rents from the tenants and, in the event any portion is found vacant, to take physical possession thereof.

It is alleged in the instant application that after taking possession by the Receiver, the respondents have inducted various persons, names whereof have been disclosed in paragraph 15 of the application, and therefore those persons are required to be served with a copy of this application so that a suitable order evicting them therefrom can be passed by this Court.

It is further alleged that the respondents are denying access to Premises No.11/1, B.K.Pal Temple Road, Howrah so far as it relates to 8 cottahs and odd and are contemplating to make construction for the purpose of running a manufacturing business.

The respondents uniformly submitted that the persons named in the said paragraph as alleged trespassers are arraigned as alleged application, which is still pending.

contemnors in a contempt It is further submitted that details of the alleged interference with the possession of the Receiver disclosed in Annexure-I to the

application are somewhat replica of the list submitted and/or enclosed with the contempt application and therefore the Court should not pass the interim order as prayed for.

Mr.Chakraborty, learned Advocate for the respondent no.4 submits that certain respondents who are not parties in the suit have been included in the instant application and therefore the application is defective and should be dismissed.

Attention of this Court is drawn to an order by which the petitioner was permitted to add certain parties and it further appears that those parties have already been added in the suit and substitution is also effected contention of on Mr.the death of Chakraborty, one of the therefore, defendants.

is unfounded The and is factually incorrect.

However, he submits that the respondent No.7 is carrying on business at the said premises No.11/1, B.K.Pal Temple Road, Howrah since last 15 years and therefore any order as prayed for premises.

would It is virtually settled oust law the that respondent possession of from a the said co-owner in respect of an undivided property is possession on account of his own shares and on behalf of the other co-sharers/co-owneRs.It is not in dispute that the Court shall not disturb the possession of a co-owner at the interim stage until the partition suit is decreed in final form.

It is equally true that a co-owner has a right of access to the undivided property, which cannot be denied by the other co-owner except when the other co-owner asserts his possession adveRs.to the said co-owner.

Although it is contended by the respondents that there is lack of material disclosed in the application which may warrant the Court to pass an interim order, after perusing the averments made in paragraphs 25 and 26 of the application, this Court, prima facie, finds that there is specific allegation made therein in relation to respondents obstruction while and entering disturbances the said created premises.

This by the Court, therefore, finds that the petitioner has been able to make out a prima facie case for an interim order.

The and/or respondents disturbances are in restrained free ingress from and creating egress obstruction to premises no.11/1, B.K.Pal Temple Road, Howrah to the petitioner to the extent of 8 cottahs and odd which form the subject matter of the deed of gift executed by the defendant no.1 in favour of the petitioner.

Since the respondent No.7 is carrying out manufacturing business at the said premises, the petitioner shall ensure that, though this Court recognizes his right of access to the extent of 8 cottahs and odd, while exercising such right, he would not create any kind of obstruction and/or disturbance in smooth running of the said business.

So far as the other prayers are concerned, this Court does not find that any ad interim order should be passed at this stage.

The appearing respondents are directed to file their respective affidavits in opposition within four weeks from date.

Reply, if any, shall be filed within two weeks thereafter.

The matter will appear after six weeks as Adjourned Motion in the supplementary list.

(HARISH TANDON, J.) nm/S.Kumar A.R.(C.R.)

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