

Anil Kumar Patodia and Anr. Vs. Sunil Kumar Patodia and Ors.

Anil Kumar Patodia and Anr. Vs. Sunil Kumar Patodia and Ors.

SooperKanoon Citation : sooperkanoon.com/74002

Court : Kolkata

Decided On : Jun-28-2016

Judge : Harish Tandon

Appellant : Anil Kumar Patodia and Anr.

Respondent : Sunil Kumar Patodia and Ors.

Judgement :

ORDER

SHEET GA1875of 2016 CS338of 2013 IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction ORIGINAL SIDE ANIL KUMAR PATODIA &
ANR.

Versus SUNIL KUMAR PATODIA & ORS.BEFORE: The Hon'ble JUSTICE
HARISH TANDON Date : 28th June, 2016.

Appearance: Mr.Abhrajit Mitra, Sr.Adv.Mr.Kamal Kumar Sharma, Adv.Ms.Rajshree
Kajaria, Adv.Mr.Jishnu Chowdhury, Adv.Mr.Sarvopriyo Mukherjee,
Adv.Mr.Soumabho Ghosh, Adv.for the plaintiffs.

Mr.S.N.Mookherjee, Sr.Adv.for the defendant nos.9 & 40.

Mr.Ratnanko Banerjee, Sr.Adv.Mr.Debanjan Mukherjee, Adv.for the defendant
nos.5, 41, 36, 37, 46 & 56.

Mr.Surajit Nath Mitra, Sr.Adv.Mr.R.L.Mitra, Adv.Mr.N.Dasgupta, Adv.Ms.Priyanka Dhar, Adv.for the defendant Nos.1 to 4.

Ms.Lapita Banerjee, Adv.Mr.Saptarshi Banerjee, Adv.for the defendant Nos.12 & 15.

The Court : The parties have been litigating since long in different Courts for preservation, protection of their respective shares and the properties held jointly.

filed in the Alipore Court in respect of some A suit was of the joint properties and an application for temporary injunction was moved restraining the defendants therein from transferring, alienating, encumbering and/or dealing with properties in any manner whatsoever.

Upon refusal to pass an ex parte ad interim order of injunction, an appeal was filed under Order 43 Rule 1(r) of the Code of Civil Procedure before this Court.

At the time of admission, the Court passed an ad interim order restraining the defendants therein from transferring, alienating, encumbering and/or dealing with properties being the subject-matter of the said suit.

Subsequently, the said order was made confirmed and the were parties directed to go back to the trial court and contest the application for temporary injunction after exchange of affidavits.

It further appears that the approach to a Company Law Board has also been made by some of the parties.

In one of such proceedings, the parties have been restrained from changing the composition of the shareholding pattern.

Board of Directors and maintaining the The order of CLB was passed in the form of a status quo and there is no ambiguity that it should be read in consonance with the shareholding pattern, share capital and the composition of Board.

According to the petitioners.the present suit is more comprehensive in nature as it involves all the joint properties held by the Patodia family.

The principal reliefs claimed in the suit are basically the partition of the movable properties more particularly the different companies held by their respective groups, which owned immovable properties as well.

An application was taken out claiming similar reliefs in the suit being GA No.2980 of 2013 and a direction was passed that in the event the respondent no.40 is desirous of selling its units, the same be not effected except the leave of the Court and the consideration received from such sale was to be treated as the money of the respondent no.41.

I am told by the respective out containing parties that the said application is still pending.

The larger interim present reliefs application but at the is time taken of the arguments the petitioners have restricted the claim firstly on the property at Moira Street, secondly properties at Hare Street and thirdly convening of the meetings of respondent Nos.36, 37, 46 and 56.

The petitioners are more apprehensive in attending the meeting sought to be convened today at 3.00 P.M.as in the past they were not allowed to participate therein being manhandled and assaulted by the other group for which the complaint had been lodged with the local police station.

Court that such incident On being asked, it is told to the occurred in the year 2009.

It is undeniable that much development took place after 2009 and the meetings of the different company allegedly owned by the Patodia family were held and the warring groups had participated therein.

The attention of this Court is drawn to one of the agendas of the said meeting and an exception is taken by the petitioners that by circuitous manner the other group is trying to get rid of the order of injunction and intending to transfer, alienate and encumber the property owned by the said companies and, therefore, they should be restrained from convening the said meeting.

It seems from the submission of the respective Counsel that certain properties are kept idle and it is now decided to have the best use of it and the meeting is called to discuss in more democratic manner and there is no sense which the petitioners have developed in their mind that they should be isolated being minority in the Board of Directors. Equally, this Court cannot overlook the fact that all the properties owned by the different companies belonging to the Patodia family are the subject-matter of the suit and the principal relief claimed is the partition.

The best interest which this Court sees, at this moment, is that the joint property held by the companies should not be dissipated and/or dealt with at this juncture.

This Court, therefore, declines to pass an interim order in the manner as has been sought for except that the meeting shall be convened but the decision taken therein shall be implemented without obtaining the leave of the Court.

So far as the Moira Street property is concerned, it is said that the property which is purely a residential premises of the parties to the proceedings are being used and utilised for commercial purposes which is not only contrary to law, but also affects the integrity and sanctity of the family.

It is ardently submitted by the petitioners that two floors of one of the buildings constructed in a larger area are being used as guest house and a wide publicity on the internet is made to invite the guests to avail such facilities and amenities provided by one of such group.

The information downloaded from the Website is annexed to the petition which also contains the reviews of the respective guests who availed the facilities and amenities attached to such stay in lieu of the monetary considerations.

It further appears that the alleged letting out of the aforesaid two floors is not of the recent origin, but is being used since 2014.

Whether the respondents Nos. 12 and 15 or their respective family members are carrying on such activities competent at a place authority is without obtaining a sanction from the such competent authority and the said respondents.

Furthermore, this Court do not intend to pass an interim order at this juncture since a considerable delay has occasioned and it would not be just and proper that an interim order is passed on the basis of an averments made in the application without inviting the respondents to disclose their stands.

So far as the allegation as to the construction on the roof/terrace of one of the buildings is concerned, it is informed by Mr.Banerjee that only the constructed on the roof/terrace.

quarters are intended to be The properties are still joint and form the subject-matter of the instant suit.

The possession of one of the co-owners/co-sharers is a possession not only on his behalf, but on behalf of the other co-owners/co-sharers as well.

The parties cannot deal with the joint property in such manner which could either diminish or deteriorate the value thereof.

Being oblivion of the fact that the co-owner has a right to make construction and restriction can be imposed by the Court that at the time of final decree, no equity should come in its favour, yet this Court feels that any blessing in the guise of permission to construct may sometimes result into the irreversible situation.

This Court, therefore, restrains the respondent nos.5, 12 and 15 from making any constructions resulting into changing the nature and character of the premises in any manner whatsoever for a period of ten weeks or until further orders.whichever is earlier.

The respondents are directed to file their respective affidavits-in-opposition within two weeks from date; reply thereto, if any, shall be filed within a week thereafter.

Let the matter appear after three weeks as Adjourned Motion in the supplementary list.

Urgent certified website copies of this order, if applied for, be given to the parties within three days from date, subject to compliance with all requisite formalities.

(HARISH TANDON, J.) sp2.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com