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Court : Kolkata Appellate

Decided On : Jan-25-2011

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 2345 of 2010 With CAN NO.9300 of 2010

Appellant : Manish Chandra Sarkar.

Respondent : Prodyut Kumar Sinha and ors.

Advocate for Def. : Mr. P. P. Roy, Adv

Advocate for Pet/Ap. : Mr. Priyabrata Ghosh,; Ms. Shefalika Ghosh, Advs

Judgement :

1. Challenge is to the order dated April 7, 2010 passed by the learned Civil Judge (Senior Division), Kandi in Misc. Case No.1 of 2009 arising out of the Partition Suit No.127 of 1991.
2. The CAN application bearing CAN No.9300 of 2010 being related to minor changes of the main revisional application, is allowed and this application is treated as part of the revisional application. The application is disposed of with such orders.
3. The short fact is that the plaitniff/opposite party herein instituted a suit for partition and for other reliefs and the defendant no.11 is contesting the said suit by filing a written statement. At the time of filing of the suit, the plaintiff filed an

application for temporary injunction and that application was disposed of directing the parties to maintain status quo. Thereafter, the plaintiff filed an application under Order 39 Rule 2A of the Code of Civil Procedure contending, inter alia, that the defendant no.11 was raising construction in violation of the order of status quo and that application under Order 39 Rule 2A of the C.P.C. is still pending for decision. In the meantime, the defendant no.11 filed an application praying for permission to complete the construction stating, inter alia, that after purchase of the land he started construction and at that time, an order of status quo was passed in the said suit for partition. So, after expending huge money, he had to stop the construction works further. He was making construction as per sanctioned plan. So, he has prayed for permission to raise construction for his residential purpose. That application was rejected by the impugned order. Being aggrieved, this application has been preferred.

4. Now, the question is whether the impugned order should be sustained.

Upon hearing the learned counsel for the parties and on going through the materials on record, I find that there is a checkered history in the matter. The petitioner purchased a piece of land to raise a residential house thereon, from one of the co-sharers of the plaintiff. Thereafter, the plaintiff filed an application for pre-emption under Section 8 & 9 of the West Bengal Land Reforms Act before the learned Civil Judge (Junior Division), Kandi. At the time of filing of the said application for preemption, he filed an application for temporary injunction. That application for temporary injunction was rejected. Thereafter, the plaintiff preferred a misc. appeal before the learned Civil Judge (Senior Division), Kandi and that misc. appeal was dismissed. When the plaintiff failed to secure any relief in the said misc. case under Section 8 & 9 of the West Bengal Land Reforms Act, he filed the suit for partition and other reliefs. In that suit, he filed an application for temporary injunction and while disposing of the said application, the learned Trial Judge passed the order of status quo. In the meantime, in order to raise construction, the petitioner obtained sanctioned plan, expended huge money to raise construction. At that time, the learned Trial Judge passed the order of status quo.

5. Mr. Ghosh has referred to the decisions of (2009) 2 SCC 784 particularly paragraph no.51, (2009) 12 SCC 775 particularly paragraph nos.26, 27 & 28 and AIR 2008 SC 2291 and submits that when a party raised construction by expending huge money, it would not be proper to stop further construction, in the interest of justice such party should be allowed to carry out the construction of building subject to ultimate decision of the suit. But, in the instant case, since the petitioner was raising construction in violation of the order of injunction, I am of the view that such a person should not be allowed to raise construction further.

6. It is contention of the plaintiff that in spite of order of status quo, in violation of that order, the petitioner began to raise construction. This being the allegation, the plaintiff filed a misc. case for violation of the order of injunction under Order 39 Rule 2A of the C.P.C. and that misc. case is pending. From the above situation, it appears that the defendant no.11 was going to raise construction in spite of the order of status quo and he has been successful in raising construction up to a certain level, as shown by the photographs attached to the application. So, apparently the defendant no.11 is not a law abiding person and the misc. case for violation of the injunction order is still pending. In such circumstances, if the defendant no.11 is permitted to raise construction, it may lead not only to a confusion in the matter of disposal of the petition under Order 39 Rule 2A of the C.P.C. but may also render permission to raise construction to a person who is not at all a law abiding person. So, such a person should not be empowered to proceed with the construction till the disposal of the application under Order 39 Rule 2A of the C.P.C.

7. Therefore, I am of the view that the learned Trial Judge was justified in rejecting the application for raising construction on the suit land. Therefore, at present there is nothing to interfere with the impugned order. So, this application should be dismissed.

8. However, since the petitioner was raising construction, upon obtaining sanctioned plan, he should be given liberty to renew his prayer again before the learned Trial Judge after disposal of the misc. case under Order 39 Rule 2A of the C.P.C.

9. This application is disposed of in the manner indicated above.

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

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

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