

Basant Kumar and ors. Vs. Mohan Kumar and ors.

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Court : Kolkata

Decided On : Mar-14-2011

Judge : Bhattacharya; Sambuddha Chakrabarti, J.

Appeal No. : APO No. 92 of 2011; GA No. 702 of 2011; CS No. 17 of 2011.

Appellant : Basant Kumar and ors.

Respondent : Mohan Kumar and ors.

Advocate for Def. : Mr. A. K. Mitra, Senior Adv.

Advocate for Pet/Ap. : Mr. Bimal Kumar Chatterjee; Mr. J. Saha; Mr. D. Basak; Mr.P.Banerjee, Advs.

Judgement :

1. This appeal is at the instance of the plaintiffs in a suit for partition and is directed against order dated 10th February, 2011 passed by a learned Single Judge of this Court by which His Lordship modified the ad interim order of injunction earlier granted by another learned Single Judge with direction upon the defendants to file affidavits-in-opposition to the main application for injunction and fixed the matter as Adjourned Motion in the monthly list of March, 2011.
2. Being dissatisfied, the plaintiffs have come up with the present appeal. After hearing the learned counsel for the parties and after going through the materials on record, we find that initially, immediately after filing of the suit, the learned Judge of this Court granted an ad interim order of injunction restraining the

defendants from disturbing the plaintiffs possession in the suit property situated on Garcha First Lane, and also restrained the defendants from transferring, alienating or encumbering the said property in any way.

3. Subsequently, on the returnable date, when the defendants appeared, the learned Single Judge after hearing the learned counsel for the parties modified the interim order to the extent that first part of the earlier ad interim order of injunction restraining the defendants from disturbing plaintiffs possession in the said property was maintained but the other part of the ad interim order of injunction restraining the defendants from transferring, alienating and/or encumbering the said property was vacated. Being dissatisfied, the plaintiffs have come up with the present appeal.

4. After hearing the learned counsel for the parties and after taking into consideration the fact that the learned Single Judge passed direction for filing affidavits-in-opposition and that the defendants have already filed such affidavits-in-opposition, we are not inclined to entertain this appeal at this stage as the main application for injunction is yet to be heard on merit.

5. It is now a settled law that while disposing of an appeal against grant of ad interim order of injunction, an Appeal Court generally does not interfere unless the order passed by the learned Trial Judge is found to be clearly wrong. In the case before us, we find that the learned Single Judge has, by a detailed order, discussed the well-settled principles of grant of ad interim order of injunction and after complying with such principles, in the facts of the present case, modified the ad interim order of injunction.

6. We do not find any reason to interfere with the said order passed by the learned Single Judge. It is needless to mention that at this stage, we have restricted our scrutiny to the materials which were already on record before the learned Single Judge and we have not taken into consideration even the defense disclosed by the defendants in their affidavits-in-opposition and thus, the learned Single Judge will be free to dispose of the application for injunction on merit without being influenced by the fact that we have not interfered with the ad interim order of injunction earlier granted.

7. The appeal is, thus, disposed of with the aforesaid observations. In view of the disposal of the appeal itself, the connected application has become in fructuous and the same is disposed of accordingly. Urgent Xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

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