

(2011) 07 CAL CK 0019
In the Calcutta High Court
Case No : C.O. No. 2228 of 2011

Amit Dutta

APPELLANT

Vs

Sita Ram Project Pvt. Ltd.

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9

Citation : (2012) 2 CHN 710

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Biswarup Biswas, for the Appellant; H.P. Roy Chowdhury, for the Respondent

Judgement

Dipankar Datta, J.—This revisional application is directed against judgment and order dated 14th June, 2011 passed by the learned Civil Judge (Senior Division), 1st Court, Krishnagar, Nadia. By the impugned order, Miscellaneous appeal No. 59 of 2010 was allowed on contest and consequently Order No. 22 dated 27th August, 2010 passed by the Trial Court granting the prayer of the plaintiffs/petitioners (hereinafter the plaintiffs) for temporary injunction was set aside. The lower Appellate Court, in the impugned judgment, recorded that the defendants/appellants/opposite parties (hereinafter the defendants) would be at liberty "to make construction over their portion of the land, which is within their exclusive possession and if it is subsequently found that any portion of the plaintiffs land has been encroached by such construction, the defendants shall dismantle at their own cost. Mr. Biswas, learned Advocate appearing for the plaintiffs contends that a seriously disputed question having been raised in the suit, the learned Trial Judge was justified in granting injunction and the Lower Appellate Court acted illegally in the exercise of its jurisdiction by interfering with the discretion exercised by him. In support of his submission that the discretion exercised by the learned Trial Judge ought not to have been interfered with by the lower Appellate Court, number of decisions both of the Supreme Court as well as this Court were referred to by him.

2. Mr. Roy Chowdhury, learned Advocate appearing for the defendants on the other hand contends that the Lower Appellate Court did not commit any illegality in allowing them to raise construction on their portion of the land with the implied observation that no equity shall be created therefore in their favour.

3. I have heard learned Advocates for the parties. While it is true that the plaintiffs are entitled to ensure that their land is not encroached by any one including the defendants, at the same time there cannot be any doubt that the defendants are equally entitled in law to raise construction of a boundary wall on their own land for security purpose.

4. It is found that an application under Order 26 Rule 9 CPC is pending before the Trial Court. In my view, interest of justice would be best served if the Trial Court considers the said application at an early date and proceeds to appoint a commissioner, well versed in survey works, for the purpose of conducting investigation not only on the points mentioned in such application but also for the purpose of supervising the work of construction of boundary walls on the portion of the land of the defendants for ensuring that in course of such construction, no portion of the land of the plaintiffs is encroached upon.

5. This revisional application accordingly stands disposed of with the direction that till such time the Commissioner is appointed by the Trial Court, the defendants shall not proceed to make any further construction. The application under Order 26 Rule 9 of the Code shall be considered by the learned Judge of the Trial Court within a week from date of receipt of a copy of this order. Once the Commissioner is appointed, he shall be under an obligation to supervise the work of construction of the boundary walls on the portion of land belonging to the defendants without in any manner encroaching the portion of the land of the plaintiffs.

6. There shall be no order as to costs. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as quickly as possible.