
(2013) 09 CAL CK 0096
In the Calcutta High Court
Case No : C.O. No. 1596 of 2013

Angshuman Pahari and Others

APPELLANT

Vs

Gautam Chanda and Others

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2013) 09 CAL CK 0096

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Bidyut Kumar Banerjee, Mr. Prabir Kumar Mishra and Mr. S.N. Chattopadhyay, for the Appellant; Jiban Ratan Chatterjee for the Opposite Party Nos. 1 to 3 and Bijoy Bhusan Das for the Opposite Party No. 4, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the plaintiffs and is filed against the Order No. 1 dated April 19, 2013 passed by the learned Civil Judge (Senior Division), 1st Court, Contai in Misc. Appeal No. 15 of 2013 thereby refusing the prayer for ad interim order of injunction. The plaintiffs/appellants/petitioners herein instituted the aforesaid suit against the defendants/opposite parties herein for declaration of title to the extent of half share of the "Ka" schedule property by way of inheritance, permanent injunction and other reliefs before the learned Trial Judge. At the time of filing of the said suit, they prayed for temporary injunction along with a prayer for ad interim order of injunction. The learned Trial Judge granted ad interim order of injunction by way of status quo. But, while disposing of the application, the learned Trial Judge rejected the prayer for temporary injunction.

2. Being aggrieved by the said order of rejection, the plaintiffs preferred a misc. appeal being Misc. Appeal No. 15 of 2013. They also prayed ad interim order of injunction again and that prayer was refused by the First Appellate Court. Being aggrieved, this application has been preferred.

3. Now, the question is whether the petitioners are entitled to get any kind of relief as prayed for in the application for temporary injunction.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that it is not in dispute that one Ghanashyam Pahari, since deceased, was the original owner of the "Ka" schedule property. He left four sons, namely, Padmalochan, Baidyanath, Gobinda and Shibprasad. The plaintiffs are the descendants of Padmalochan and similarly, defendant nos. 1, 2 & 3 are the descendants of Baidyanath. Gobinda died bachelor and his share devolved upon the rest heirs/descendants of Ghanashyam Pahari. Shibprasad had one son, namely, Debabrata and his wife was Sabitri. Debabrata died living his wife Sabitri, but they had no issue. After the death of Sabitri, the property originally inherited by Shibprasad devolved upon the heirs/descendants of Padmalochan and Baidyanath meaning thereby each branch of them had 50% share in the suit property.

5. On the basis of that above contention, the plaintiffs have claimed declaration of title over half share of the suit property left by Sabitri. The defendants have denied such contentions of the plaintiffs.

6. From the above analogy, it is evident that the plaintiffs/appellants/petitioners herein are the descendants of Padmalochan. Of course, the contesting defendant nos. 1, 2 & 3 have denied such contention and that has to be considered at the time of trial.

7. What I find from the genealogy as submitted on behalf of the plaintiffs, the plaintiffs have filed the copy of the judgment of Title Appeal Nos. 293 & 294 of 1975 passed by the learned Additional District Judge, Midnapur thereby affirming the judgment and decree passed in the Title Suit No. 118 of 1972 over the property left by Debabrata and on the basis of such judgment of the First Appellate Court, the plaintiffs have contended that they have 50% share in respect of the property left by Sabitri. The copy of the judgment of the First Appellate Court is annexed as Annexure P-6 at page no. 58.

8. Thus, from the contention of the plaintiffs supported by the documentary evidence, it is evident that the plaintiffs have shown prima facie case to go for trial.

9. On the other hand, the defendant nos. 1, 2 & 3 have contended that they entered into an agreement with the defendant no. 4 and thus, the defendant no. 4 would be entitled to make excavation of sand from the "Ka" schedule property. They have claimed the entire 16 anna share in respect of the "Ka" schedule property and the defendant no. 4 has contended that he is entitled to make excavation by way of the agreement between the defendant nos. 1, 2 & 3 on one hand and the defendant no. 4 (himself).

10. Thus, prima facie it appears that a triable issue has been set out in the suit. If the injunction as prayed for is not granted and if the excavation of sand from

the "Ka" schedule land is made by the defendant no. 4, then certainly the nature and character of the suit property is bound to change. So, the balance of convenience in granting injunction is, prima facie, in favour of the plaintiffs. If the relief as sought for is not granted, it is the plaintiffs who are prima facie to suffer irreparable loss as the defendant no. 4 would then be able to excavate sand from the "Ka" schedule property causing the change the nature and character of the suit land. So, if ultimately the plaintiffs succeed in the suit, by that time, the nature and character of the "Ka" schedule property are likely to be changed and in that case, the plaintiffs may suffer irreparable loss.

11. Having considered the above facts and circumstances and also the fact that the plaintiffs/appellants/petitioners herein enjoyed an order of status quo by way of interim order of injunction, I am of the view that the said order of status quo in respect of the suit property as it stands today should be renewed with effect from date till the disposal of the misc. appeal.

12. Anyway, since the appeal is ready for hearing, the First Appellate Court should be directed to dispose of the said misc. appeal by the end of November, 2013.

13. The application, therefore, succeeds.

14. Both the parties are directed to maintain status quo in respect of the "Ka" schedule property as it stands today till the disposal of the misc. appeal. The learned First Appellate Court is directed to dispose of the said misc. appeal by the end of November, 2013 without fail.

15. It is also recorded that the above findings have been made for the disposal of this revisional application only and the First Appellate Court without being swayed away by my above findings, shall dispose of the said misc. appeal on the basis of the materials placed before him by the parties in support of their respective contentions.

16. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.