
(2016) 01 CAL CK 0005

In the Calcutta High Court

Case No : F.M.A. 177 of 2013 with CAN 10635 of 2015

Smt. Kankan Mullick and another

APPELLANT

Vs

Sri Iswar Gopal Jew and others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39
Specific Relief Act, 1963 — Section 34

Citation : (2016) 159 AIC 614 : (2016) 3 CalHCN 334

Hon'ble Judges : Jyotirmay Bhattacharya;Shib Sadhan Sadhu, JJ.

Bench : Division Bench

Advocate : Mr. K. Das, Mr. C. Gupta, Advocate, Mr. Avijit Chakraborty, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Jyotirmay Bhattacharya, J. - This first miscellaneous appeal is directed against an order being No. 9 dated 27th August, 2012 passed by the learned Judge, XIth Bench, City Civil Court at Calcutta in Title Suit No. 578 of 2012 at the instance of the defendant nos. 1 and 2/appellants. By the impugned order, the learned Trial Judge restrained the defendant nos. 1 and 2 and their men or agent or constituted attorney from demolishing or making any construction or from changing the nature and character of the Trust property and from disturbing the deities located at the top floor of the suit property and from transferring the suit property to any third person till the disposal of the suit.

2. The legality and/or propriety of the said order passed by the learned Trial Judge is under challenge in this appeal before us.

3. Let us now consider as to how far the learned Trial Judge was justified in passing the said temporary order of injunction in the facts of the present case.

4. Here is the case where we find that the plaintiff deities filed a suit for declaration and injunction. A declaration for recognising the plaintiffs' right of

worship of the deity was prayed for. A mandatory injunction is sought for by directing the defendants to restore possession of the family deities in its original place on the top floor at premises No. 264B, B. B. Ganguly Street, P.S. Bowbazar, Kolkata as per the terms of the Deed of Indentures dated 12.08.1957 and 25.03.1963.

5. Permanent injunction has also been sought for restraining the defendants and their men and agents from interfering with peaceful possession of the plaintiff deities as located on the top floor at premises No. 264B, B. B. Ganguly Street, Kolkata.

Permanent injunction has also been sought for restraining the defendants from transferring any part of the suit property to any third party and/or from demolishing and/or making any construction and/or changing the nature and character of the suit property in any manner whatsoever.

6. Several other incidental reliefs have also been claimed in the said suit. In such a suit, the plaintiff deities filed an application for temporary injunction praying for restraint order against the defendants and their men and agents so that they cannot disturb the peaceful possession of the plaintiff deities as located on the top floor at premises No. 264B, B. B. Ganguly Street, Kolkata.

7. Temporary injunction has also been sought for restraining the defendants and their men and agents from demolishing and/or making any construction and/or changing the nature and character of the suit premises and for restraining them from transferring any part of the suit property to any third party.

Temporary injunction has also been sought for restraining the defendants and their men and agents from performing the duty of the present she bait Sri Sanjoy Seal for the family deities, the plaintiffs herein at the said premises.

8. Interim order of injunction was passed on the plaintiffs' said application.

9. Let us now consider as to how far the learned Trial Judge was justified in passing the said interim order of injunction.

10. On perusal of the pleadings of the plaintiffs in the plaint and the reliefs claimed therein, we find that the plaintiffs prayed for issuance of mandatory injunction by directing the defendants to restore the possession of the family deities in their original place on the top floor of the said premises.

11. The relief so claimed in the plaint clearly indicates that the deities have already been shifted from the top floor of the said premises. As such, the relief which the plaintiffs have claimed by way of temporary injunction for restraining the defendants from interfering with the peaceful possession of the plaintiff deities as located on the top floor of the said premises ought not to have been granted by the learned Trial Judge.

12. In this context, we find much substance in the contention of Mr. Basu, learned senior counsel appearing for the defendant nos. 1 and 2/appellants. He

submits that the deities have been shifted from the top floor of the said premises to facilitate repairing works of the said premises. He has drawn our attention to the plan sanctioned by the Municipal authority for reconstruction of the roof of the said premises and the other portion of the said premises. He submits that his clients have already got a plan sanctioned by the Municipal authority for repair of the said premises by way of reconstruction of the roof and the other portion for restoring the suit premises in its original condition.

Mr. Basu further submits that immediately after the repair by way of reconstruction as per the sanctioned plan will be completed, his clients will install the deities in their original place on the top floor of the said premises.

Mr. Basu has also submitted that while repairing the said premises and/or reconstructing the roof of the said premises, his clients will not change the nature and character of the said property in any manner and all the repairing works and the reconstructional works will be done strictly in accordance with the sanctioned plan.

Mr. Basu further submits that his clients will not transfer and/or alienate and/or create any third party interest in respect of the Trust property.

13. Mr. Avijit Chakraborty, learned advocate appearing for the plaintiffs/respondent nos. 1, 2 and 3 refutes such submission of Mr. Basu by contending that the appellants have already transferred the Trust property to a developer. He further submits that the entire building has been demolished.

14. However, we do not find any substance in such contention of Mr. Avijit Chakraborty as nothing has been produced before us to show that the appellants have already transferred the Trust property to any third party and/or demolished the said premises as a whole. In this regard, we have considered the building plan sanctioned by the Municipal authority whereby the appellants were permitted to reconstruct the dilapidated roof by replacing the existing roof and also to undertake some reconstructional works to strengthen the existing construction. From the sanctioned plan, we do not find any authorisation given to the appellants to make any addition and/or alteration in the said premises excepting for construction of the structure for installation of the Lift therein.

15. By an earlier order passed by the Division Bench of this Hon"ble Court in this appeal, the construction of structure for installation of the Lift was permitted and we are informed that the construction of the structure for installation of the Lift has already been completed. Such construction was completed under the supervision of the learned Special Officer who has also submitted a report mentioning therein that the construction of the structure for installation of the Lift has already been completed.

16. Reconstruction and/or repair of the other portion of the said premises as per the sanctioned plan is yet to be completed. Unless the repair and/or reconstruction as per the sanctioned plan is allowed to be completed, the deities

cannot be relocated at the place where they were installed earlier on the top floor of the said premises.

17. As such, we permit the appellants to complete the repairing and/or reconstructional works strictly in terms of the sanctioned plan under the supervision of the learned Special Officer Mr. Sukanta Chakraborty who was appointed as Special Officer in this matter earlier.

18. Before commencement of the work of repair and/or reconstruction, the appellants will serve at least two days notice in advance upon the learned Special Officer and the learned advocate-on-record of the plaintiffs/respondent nos. 1, 2 and 3. The learned Special Officer after ascertaining the present condition of the said building will permit the appellants to repair and/or reconstruct the said premises strictly in terms of the sanctioned plan and such repair and/or reconstructional works will be commenced only after such permission is granted by the learned Special Officer.

19. Learned Special Officer is thus directed to inspect the building site before permitting the appellants to commence such repair and/or reconstructional works in the said premises and will visit to supervise the repairing works and/or to see as to whether the repair and/or reconstructional works are being carried out by the appellants strictly in accordance with the sanctioned plan at least once in a week until such repairing works are completed.

20. The appellants are also directed to relocate the deities in their original place of installation on the top floor of the said premises within two weeks after completion of the repair and/or reconstructional works and the parties will not remove the said deities therefrom during the pendency of the suit without the permission of the learned Trial Court.

21. Learned Special Officer will stand discharged after relocation of the deities in their original place of installation in terms of the above order and will submit a report before this Court immediately thereafter.

22. Remuneration of the Special Officer for every visit at the building site is fixed at 300 G.Ms. to be paid by the appellants.

23. It is made clear that in the event any obstruction is caused in the process of repair and/or reconstruction of the said premises by any person and if the learned Special Officer feels that police help is necessary, learned Special Officer will approach the Officer-in-Charge of Bowbazar Police Station and in the event the Officer-in-Charge of Bowbazar Police Station is so approached, the Officer-in-Charge of the said Police Station will render all necessary police help to the learned Special Officer so that the order passed herein above is implemented strictly in its true spirit.

24. The appellants are also restrained from changing the nature and character of the Trust property in course of repairing the said premises. The appellants are also restrained from transferring and/or alienating and/or creating any third

party interest in the said premises till the disposal of the suit.

25. The impugned order is thus modified to the above extent.

26. Both the appeal and the application being CAN 10635 of 2015 are thus disposed of.

Though the appeal is disposed of, but the matter will be placed in the list three months hence only for the purpose of submission of report by the learned Special Officer.

27. Let photostat plain copy of this order, duly countersigned by the Assistant Registrar (Court), be supplied to the learned Special Officer on usual undertaking and all the parties including the learned Special Officer will act on the plain copy of this order.

28. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.