

CIVIL REVISION

Present :

The Hon'ble Mr. Justice Prasenjit Mandal

Jidgment on 02.09.2010

C.O. No. 2449 of 2010

Dr. Bratindranath Mukherjee.

Versus

Sri Raja Bhadra & Ors.

Points:

Scope of Revision- Whether concurrent finding of courts that there is no urgency can be interfered in revision- Code of Civil Procedure, 1908 S 115

Facts:

Petitioner filed a suit and in that suit he prayed for temporary injunction. Trial Court rejected the prayer of ad-interim injunction holding that there was no need of urgency. In appeal he also failed to get any order of injunction. Previously, the plaintiff filed another suit and in connection of interlocutory proceeding the matter is pending before this Hon'ble court in revision and in that case the restrained order granted by the appellate court is subsisting.

Held:

In exercising the revisional jurisdiction, this court should not interfere with the concurrent findings of the Courts below that there is no urgency in the matter and a restraint order is still subsisting. Para 10

For the petitioner: Mr. Haradhan Banerjee,

Mr. Amitava Pyne.

For the opposite parties: Mr. Ashoke Banerjee,

Mr. Aniruddha Chatterjee,

Mr. Kushal Chatterjee.

Prasenjit Mandal, J.: This application is at the instance of the plaintiff and is directed against the order no.1 dated July 15, 2010 passed by the learned Additional District Judge, Sealdah in Misc. Appeal No.47 of 2010 arising out of an order dated July 1, 2010 thereby refusing ad interim order of injunction passed by the learned Civil Judge (Junior Division), Second Court, Sealdah in Title Suit No.202 of 2010.

2. The plaintiff/petitioner instituted the Title Suit No.202 of 2010 before the learned Civil Judge (Junior Division), Second Court, Sealdah praying for a decree for declaration that the defendant no.1 has got no right, title and interest and to claim any access in respect of 'C' schedule property, as mentioned in the plaint and cannot claim any right or interest in respect of 'C' schedule property, a decree for declaration that the defendant nos.2, 4 & 5 have no right to act adversely against the interest of the trust property, a decree for permanent injunction and other reliefs. In that suit, he filed an application praying for temporary injunction. He also prayed for an ad interim order of injunction restraining the defendant no.1, his men and agents from entering into the 'C' schedule property and from making any construction by demolishing the existing construction of the 'C' schedule property. Upon hearing the learned Advocate for the petitioner, the learned Civil Judge was of opinion that there was no need of urgency and as such, he rejected the prayer for ad interim order of injunction. Against such order of refusal, the plaintiff/petitioner preferred a misc. appeal being Misc. Appeal No.47 of 2010 and that application came up for hearing before the learned Additional District Judge-in-Charge, Sealdah. By an order no.1 dated July

15, 2010, the learned Appellate Court rejected the prayer for an ad interim order of injunction and directed to issue show cause notice upon the defendants. Being aggrieved by the said order, the plaintiff/petitioner has come up with this revisional application.

3. Now the point for consideration is whether the impugned order can be sustained.

4. Upon hearing the learned Advocate of both the sides and on consideration of the materials on record, I find that according to the plaint case the settler, Rabindra Nath Mukherjee, since deceased, built a 5 storied building with own money in the suit property, as described in the schedule 'A' to the plaint. The plaintiff/petitioner also built two more storied, that is, 5 floor and 6 floor at his own cost at the premises no.P6, CIT Road, Scheme – LV, under P.S. Entally, Kolkata – 700 014. The settler, Rabindra Nath Mukherjee and the members of his family resides on a portion of the third floor of the building and the daughter-in-law of the settler, and her son reside in a flat on a portion of the fourth floor of the said building. Late Rabindra Nath Mukherjee executed and registered a deed of trust appointing him and the plaintiff/petitioner as trustees on June 7, 1998. Thereafter, Rabindra Nath Mukherjee died and since his death the plaintiff is the sole trustee and he is in possession of the entire property. The defendant nos.2, 4 & 5 and the proforma defendants are the beneficiaries of the said trust property in terms of the trust deed. The defendant no.1 is an outsider and he began to collect building materials including marbles, etc. for the purpose of making entry into the property, described in schedule 'C' to the plaint with the object to demolish the permanent partition brick walls of the rooms and also to remove the floors to settle marbles thereon. So, the plaintiff/petitioner filed the petition for temporary injunction.

5. Upon consideration of the materials placed in the application, I find that this is not a single suit filed by the plaintiff. Previously, the plaintiff filed the Title Suit No.190 of 2006 against the defendant nos.2 & 3 in respect of the trust property and in that suit, he prayed for an ad interim order of injunction and on being refused he preferred a misc. appeal and the learned Additional District Judge, Fast Track Court No.1, Sealdah passed a restraint order upon the respondent nos.2 & 3. Being aggrieved by and dissatisfied with that order of the learned Appellate Court, a revisional application was preferred before the Hon'ble High Court at Calcutta and the Hon'ble High Court, Calcutta was pleased to admit the application without granting any stay order and so the position is that the restraint order granted by the learned Appellate Court is still subsisting and the matter is still pending before the Hon'ble High Court.

6. This is not the end of the matter. There are other litigations. Another Suit being No.399 of 2006 was filed against the defendant nos.2 & 3 for declaration that they have no right to put any obstruction or that they have no right to interfere with the plaintiff's act of possession of the trust property and injunction petition is pending thereon.

7. The defendant no.2 filed a suit for removal of the plaintiff from the trustship before the learned District Judge and the said suit is now pending before the learned Additional District Judge. The plaintiff also filed a suit for selling the suit property before the learned District Judge and that suit is transferred to the Court of the learned Additional District Judge, Alipore and is still pending for disposal.

8. From the above facts, I find that a restraint order is still subsisting against the defendant nos.2 & 3 and the plaintiff has almost come up with the same

type of prayer before this Court. The plaintiff has come up against the refusal of an ad interim order of injunction.

9. The relief sought for is of discretionary nature to be exercised according to certain norms and settled principles of law relating to the grant of temporary injunction. Both the Courts below, upon consideration of the entire dispute between the parties, refused to grant an ad interim injunction.

10. This being the position, I am of the view that in exercising the revisional jurisdiction, this court should not interfere with the concurrent findings of the Courts below that there is no urgency in the matter and a restraint order is still subsisting. Instead of passing any ad interim order, I am of the view that a direction should be given upon the learned Appellate Court to dispose of the application within a period of 30 days from the date of communication of this order.

11. With this observation, this application is disposed of.

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

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

(Prasenjit Mandal, J.)