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(2002) 10 GAU CK 0004

Gauhati High Court

Case No: Civil Revision Petition No. 342 of 2002

Md. Makibur Rahman	APPELLANT
Vs	
Md. Wahidur Rahman @ Bhola and Another	RESPONDENT

Date of Decision: Oct. 10, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 3, Order 39 Rule 3A

Citation: (2003) 2 GLR 550 : (2003) 2 GLT 293

Hon'ble Judges: N.S. Singh, J

Bench: Single Bench

Advocate: S.A. Laskar, S.K. Deori and M. Chetia, for the Appellant; M.K. Choudhury, A. Wahed, J. Islam and F. Ahmed, for the Respondent

Final Decision: Dismissed

Judgement

N.S. Singh, J.
Heard Mr. S.A. Laskar, learned senior counsel assisted by Mr. S.K. Deori for the petitioners and also heard Mr. M.K. Chowdhury, learned counsel assisted by Mr. TV Islam for the respondents.

2. The judgment dated 2.8.2002 passed by the District Judge, Darrang, Mangaldoi in Misc. Appeal No. 1 of 2002 thus setting aside the order of injunction dated 11.4.2002 passed by the learned Civil Judge (Senior Division) Darrang at Mangaldoi in Misc. (J) Case No. 24/2000 is the subject under challenge in this revision petition.

3. The facts of the case in a short compass are as follows :

The plaintiffs, appellants herein instituted a suit being Title Suit No. 71/2000 before the trial Court as against the present respondents for a decree for right of preemption in respect of the suit land by contending inter alia, that under the Mahamadian Laws the

plaintiffs are entitled to preempt the property of the defendant No. 1. However defendant No. 1 transferred the suit land/property under a registered sale deed dated 5.2.2002 to and in favour of the defendant No. 2 Shri Debojyoti Sarma thus depriving the plaintiff''s right to preampt the property. The plaintiffs also sought for cancelling the related mutation order passed in favour of the defendant No. 2 by which the name of the defendant No. 2 has been duly mutated in Jamabandi in respect of the suit land on the basis of the said registered sale deed. While filing the said suit the plaintiffs also filed a petition under Order 39 CPC and on the basis of it the learned trial Court initially passed an ex parte temporary injunction on 25.7.2000 in the connected Misc. (J) Case No. 24/2000 which was further made absolute by the subsequent order dated 11.4.2002. Being dissatisfied with the injunction order the defendant No. 2 preferred an appeal being Misc. Appeal No. 1 of 2002 and the First appellate Court upon hearing the parties, allowed the appeal thus setting aside the related injunction order. Being dissatisfied with the judgment dated 2.8.2002 passed by the first appellate court these petitioners-plaintiffs filed this revision petition.

4. At the hearing Mr. S. A. Laskar, learned senior counsel contended that the trial Court passed ex parte injunction order and the same was made absolute under the related order mentioned above rightly and in-accordance with the law. However, the first appellate Court without considering the facts and circumstances of the case set aside those injunction orders. According to Mr. Laskar, learned senior counsel the plaintiffs have prima facie case, balance of convenience is in their favour and the plaintiffs shall suffer irreparable loss if the injunction is not granted inasmuch as if the defendant No. 2 is allowed to construct the house by demolishing the standing construction/house the entire structures standing over the suit land shall be changed and there shall be multiplicity of cases litigations between the parties. In order to avoid it. The learned trial Court passed the injunction order in-accordance with the law and as such the injunction order should not be interfered with by the first appellate Court. Supporting his submission the learned senior counsel relied upon the decision of a Division Bench of this Court reported in Bindeshwar Narayan Singh and Others Vs. Managing Committee, Shri Sundarmal Hindi High School and Others, and contended that the suit property shall be preserved by granting injunction in order to avoid the litigations between the parties. Another case laws was also cited by the learned senior counsel reported in 2002 (2) GLT 299 (Phulmati and Ors. v. Bidyutjyoti Dutta Choudhury and Ors.) and submitted that the appellate Court should be slow to interfere with the injunction order and the injunction order can be interfered with only when the order is unreasonable, capricious and when there is material that the trial court ignored the material evidence and the facts on record. It is also argued by the learned senior counsel that all the essentials/ ingredients for grant of temporary injunction were fulfilled by the plaintiffs and the case of the plaintiffs is genuine and if the temporary injunction is not granted, the purpose of filing of the main suit shall be defeated and it shall cause a great prejudice to the plaintiffs. At the hearing Mr. Chowdhury, learned counsel for the respondent defendant No. 2, respondent No. 2 submitted that there is no infirmity or illegality in the impugned judgment passed by the

first appellate Court.

5. Now this Court is to see and to examine as to whether the trial Court passed the ex parte injunction order dated 25.7.2002 in the connected Misc. Case in accordance with the law or whether the trial Court had duly complied with the provision of Order 39 while passing the order or not, and whether, the same was made absolute by the trial Court in accordance with the Law or not. According to me the trial Court had completely lost the sight of the related provision of law laid down under Order 39 Rules 3 & 3A while passing the ex parte order and while making the same absolute with the following reasons.

6. When the trial Court is of the view that an ex parte injunction order is called for without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay (emphasised supplied). A bare perusal of the ex parte interim order dated 25.7.2000 shows that there is no whisper or no reason is assigned that the object of granting the injunction would be defeated by delay (emphasise given). This important legal aspect was completely ignored by the trial Court while issuing the exports injunction order which was made absolute later on under the related order dated 11.4.2002. On this ground alone, these ex parte injunction order as well as the order making the same absolute which deserve to be set aside by the first appellate Court. This aspect was not considered by the first appellate Court. Be that as it may this Court shall go further more into depth on the other issue.

7. Mere recording of the reason by the trial Court that the plaintiffs have a prima facie case ; balance of convenience is in favour of the plaintiffs and the plaintiffs shall face irreparable loss if the construction is allowed by the defendant No. 2 are not the cogent/ sufficient reasons in arriving to the conclusion that an ex parte injunction order is called for. No proper reason has been assigned in the order dated 25.7.2000 so as to enable the trial Court to pass the ex parte injunction order mentioned above, except, the trial Court simply recorded the fact that plaintiffs'' will suffer loss and injury as they have established prima facie case for enforcement of right of pre emption ; balance of convenience are also in their favour. Accordingly the trial Court directed the parties to maintain status quo of the suit land which according to me it is not tenable in law and apart from it, no essentials are available on record for grant of ex parte injunction order dated 25.7.2000 as-well as the related order dated 11.4.2002, making the ex parte injunction order absolute. According to me, the case of the defendant No. 2 was not properly considered by the trial Court about the factum of occupation/possession of the suit land by the defendant No. 2 on the basis of the registered sale deed and delivery of possession of the suit land to the defendant No, 2 who is a bona fide purchaser of the suit land for value without notice and he is protected by the related provisions of law laid down under the Transfer of Property Act.

8. A copy of the plaint was supplied by Mr. Chowdhury at the time of the hearing of this petition. I have perused it. The copy of the plaint is not appended to the present revision

petition. A bare perusal of it shows that, there is no relief for permanent injunction sought for by the plaintiffs in their plaint except the prayer for temporary injunction which is not permissible under the law as laid down by this Court in a case between Gadadhar Barman v. Ranendra Mohan Paul reported in (1998) 1 GLR 383. The case law cited by Mr. Laskar, learned senior counsel reported in 2002 (2) GLT 299 (Phulmati and Ors. v. Bidyutjyoti Dutta Choudhury) and also another case laws reported in Bindeshwar Narayan Singh and Others Vs. Managing Committee, Shri Sundarmal Hindi High School and Others, do not help the present petitioners inasmuch as this Court laid down in the said cases that a Court can grant temporary injunction in exercise of inherent power u/s 151 CPC where the provision of Order 39 CPC is not strictly applicable. In the instant case the provision of Order 39 is strictly applicable. It is well settled that the higher appellate Court as well as the revisional court shall be very slow in interfering with the injunction order but when there is infirmity or illegality in the related orders of injunction which was passed without following the procedural standard prescribed by law, the same should be set aside. In the instant case as discussed above the learned trial court completely lost the sight of the related provision, i.e., the proviso of Order 39 Rules 3 & 3A CPC while passing the related two injunction orders namely ex parte injunction order and order making the some absolute, it is also made clear that if the plaintiffs succeed in the case and any construction is made by the defendant No. 2 over the suit premises it is at the risk of the defendant No. 2 and if the suit is decreed then in that case there is a related provision u/s 144 CPC for restitution. Therefore, no prejudice shall be caused upon the plaintiffs if the interim injunction as prayed for is not granted.

9. For the reasons, observations, and discussion made above I am of the view that the petitioners could not make out a case to justify interference with the impugned judgment dated 2.8.2002 passed by the first appellate Court in Misc. Appeal No. 1/2002.

10. In the result this revision petition is devoid of merit and accordingly, it is dismissed thus affirming the impugned judgment passed by the first appellate Court in Misc. (J) Case No. 24/2000. No cost.

Registry is directed to send a copy of the order to the first appellate Court immediately.