

(2010) 10 CAL CK 0007

Calcutta High Court

Case No: C.O. No. 123 of 2009

Puspa Dey and Others

APPELLANT

Vs

Debkantho Dey

RESPONDENT

Date of Decision: Oct. 5, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2

Hon'ble Judges: Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** Gopal Ghosh, for the Appellant; None appears, for the Respondent**Final Decision:** Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the defendants and is directed against the order dated November 28, 2008 passed by the learned District Judge, North 24 Parganas at Barasat in Misc. Appeal No. 96 of 2008 arising out of an order No. 16 dated August 2, 2008 passed by the learned Civil Judge (Junior Division), First Court, Barasat in Title Suit No. 193 of 2008.

2. The plaintiff/opposite party herein instituted a suit being T. S. No. 193 of 2008 before the learned Civil Judge (Junior Division), Barasat praying for declaration and injunction in respect of the suit property, as described in the schedule of the plaint. At the time of filing of the said suit, the plaintiff filed an application for temporary injunction under Order 39 Rule 1 and 2 of the C.P.C. The plaintiff contended that he purchased the suit property by a deed of conveyance dated July 27, 1987 from Alauddin Shaw and others who inherited the same from the original owner, Chhamiraddin Biswas. During temporary absence of the plaintiff from the suit property, the defendants forcibly entered into the suit property with the help of some designed persons having vested interest. So, the plaintiff had to file the said suit. He prayed for temporary injunction restraining the defendants, their men and

agents from transferring, alienating or letting out or parting with possession of the suit property to any third party in any way and from changing the nature and character of the suit. The defendants appeared in the suit and they contested the application for temporary injunction. They filed a written objection against the petition for temporary injunction. They also filed a written statement in support of their defence. According to their case upon amicable partition Chhamiraddin Biswas got 16 decimals of lands. The defendants also purchased land from the other heirs of Chhamiraddin Biswas and an amicable partition was held between them. Accordingly, the plaintiff got northern half portion of the land to the extent of 8 decimals of land and the defendants got 8 decimals of land to the southern side. Thereafter, the plaintiff transferred his 8 decimals of land in favour of the son of the defendant, namely, Jyotirmoy Dey by a kobala dated July 24, 1991. The plaintiff is totally silent on such deed dated July 24, 1991. Thereafter, the defendants entered into an agreement for development of the land with a developer for making a new construction on demolition of the old building. The developer has collected huge materials for the purpose of construction and in fact, construction had been done up to the roof level. Thereafter, the plaintiff filed the suit for the reliefs stated. So, the plaintiff has no prima facie case at all.

3. Upon consideration of the rival claims by the parties, the learned Trial Judge directed the parties to maintain status quo with regard to the suit property till disposal of the suit. Being aggrieved by the said order of the learned Trial Judge, the defendants preferred a misc. appeal which was dismissed on contest and the learned Appellate Court also directed to maintain status quo with regard to the possession of the suit property till disposal of the suit. Being aggrieved by such order of the learned District Judge in the said misc. appeal, this application has been preferred.

4. Mr. Ghosh, learned Advocate appearing on behalf of the applicants, submits that in fact after sale of the land by the plaintiff in favour of the son of the defendant, namely, Jyotirmoy Dey, the plaintiff had no right, title and interest in the suit property and so, the order of status quo, as granted by the learned Trial Judge as well as the lower Appellate Court, is not justified at all. In fact, the defendants have entered into an agreement with a developer for construction of a building and construction has been completed up to the roof level after demolition of the old building and thus, the developer has expended a lot of money for the purpose. So, the order of status quo upon the defendants should be vacated.

5. Therefore, the point that cropped up for decision is whether the impugned order should be sustained.

6. Upon hearing Mr. Ghosh and on perusal of the materials on record, I find that it is an admitted position that the plaintiff got half share of the suit property to the northern side and the defendant No. 1 got half share of the southern side of the suit property so far as the land of Chhamiraddin Biswas is concerned. The plaintiff has

specifically claimed that an amicable partition was held and thus the parties got their respective portions in the land originally held by Chhamiraddin Biswas. The plaintiff has claimed his right, title and interest in the suit property by virtue of a registered deed of sale dated July 27, 1987 to the extent of 8 decimals of land. The plaint does not lay down that the plaintiff had sold such 8 decimals of land to Jyotirmoy Dey, son of the defendant No. 1, in 1991. The learned Appellate Court has observed that without taking evidence, it cannot be decided the merit of the case. From the materials on record, it appears that one commissioner at the instance of the defendant was appointed but as the identification of the land is disputed by the plaintiff, the inspection could not be held. The learned District Judge has opined that since there is a dispute relating to the identification of the suit property, without investigation the suit property cannot be identified. The learned Trial Judge has observed that without taking evidence the dispute between the parties cannot be solved. So, if order of status quo is not granted they may be possibilities of inviting multiplicity of proceedings.

7. Thus, I find that both the Courts below have come to the concurrent findings that the suit property should be kept in status quo till disposal of the suit. This Court in exercising a revisional jurisdiction should not interfere with such concurrent findings of the two courts below. The object of granting injunction is to keep the property in status quo during pendency of the suit. So, the concurrent findings should not be disturbed.

8. In that view of the matter, I hold that the application fails to succeed and it should be dismissed.

9. Accordingly, the revisional application is dismissed.

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

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