

(2012) 02 CAL CK 0027

Calcutta High Court

Case No: F.M.A.T. No. 948 of 2010 with C.A.N. No. 5933 of 2010

Kaushik Pahari

APPELLANT

Vs

Ad hoc President, District
Primary School Board and others

RESPONDENT

Date of Decision: Feb. 24, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, 151

Hon'ble Judges: Subhro Kamal Mukherjee, J; Mrinal Kanti Sinha, J

Bench: Division Bench

Advocate: Syama Prasanna Roychowdhury, Mr. Santipada Pahari and Mr. Tapan Kumar Mahapatra, for the Appellant; Jiban Ratan Chatterjee, Jayanta Kumar Das, Sadananda Karmakar, Supratim Dhar, Debabrata Mondal For the respondent No. 2 and Mr. Anil Kumar Jana For the respondent Nos. 6, 7 and 8, for the Respondent

Final Decision: Allowed

Judgement

Subhro Kamal Mukherjee, J.

This is an appeal against order No. 83 dated June 23, 2010 passed by the learned Civil Judge (Senior Division), Second Court at Contai, district- Purba Medinipore in Title Suit No. 79 of 2007.

2. By the order impugned, the learned trial judge partially modified the interim order of status quo, passed in connection with an application for temporary injunction filed by the plaintiff in the said suit, dated September 13, 2002, by permitting the defendant No. 6 to make construction of the school building and kitchen-cum-store as per the government sanctioned plan.

3. The application for temporary injunction is, still, pending before the learned trial judge.

4. The suit, inter alia, for partition and permanent injunction was instituted in the Court of the learned Civil Judge (Senior Division), First Court at Contai, district- Purba Medinipore. The suit was registered as Title Suit No. 202 of 2002.
5. Eventually, the said suit was transferred to the Court of the learned Civil Judge (Senior Division), Second Court at Contai, district- Purba Medinipore and was re-numbered as Title Suit No. 79 of 2007.
6. The suit was instituted by Bikash Ranjan Pahari, the respondent No. 6 in this appeal. One Amal Pahari alias Bhimsen Pahari was the defendant No. 1 in the said suit. On the death of the said defendant No. 1, his heirs and legal representatives were substituted and were, also, transposed in the category of the plaintiffs by order dated April 27, 2005. The transposed plaintiffs are the appellant and the respondent Nos. 7 and 8 in this appeal.
7. In the amended plaint, it was stated that Pradyut Kumar Pahari, since deceased, was the original owner of the property-in-dispute. He died intestate before the Hindu Succession Act, 1956. Consequently, the properties devolved upon his five sons, namely, Bikash Ranjan Pahari, the plaintiff, Amal alias Bhimsen Pahari, the original defendant No. 1, Adyanath Pahari and Kumud Ranjan Pahari, the defendant No. 2 and 3 respectively and Ananta Pahari, the father of the defendant No. 4, namely, minor Arup alias Laltu Pahari.
8. Therefore, the heirs and legal representatives of Pradyut Kumar Pahari inherited the property to the extent of 1/5th (one-fifth) share each. After the death of Ananta Pahari, since deceased, the defendant No. 4 inherited 1/5th (one-fifth) share of his father and he is represented by his uncle and next friend, namely, Adyanath Pahari, the defendant No. 2.
9. The property was recorded in the revenue settlement record of rights in the names of the plaintiffs and the defendant Nos. 1 to 4 each having 1/5th (one-fifth) share in the property. The defendant No. 2, Adyanath Pahari, executed a registered deed of gift in favour of Medinipore District School Board, inter alia, transferring the property in plot no. 466 measuring about 37 decimals although the plaintiff had 1/5th (one-fifth) share in the said plot of land. It was contended that the defendant No. 2 had no right to transfer the said plot, that is, plot no. 466. As the School Board was claiming right, title and interest in the said plot of land, the present suit was filed praying, also, for declaration that the defendant No. 2 had no right to transfer the said plot of land in favour of the School Board.
10. In connection with the said suit, an application for temporary injunction under Order 39, rules 1 and 2 read with Section 151 of the Code of Civil Procedure, was moved and the learned trial judge, by the said order dated September 13, 2002, passed an ad-interim order of injunction directing maintenance of status quo in relation to property described in Schedule "Ka-1" to the plaint during the pendency of the application for temporary injunction.

11. The property described in Schedule "Ka-1" is the said plot no. 466 measuring about 37 decimals of land.

12. The defendant No. 6, that is, the Headmaster of Saraswatipur Prathamik Vidyalaya, already, entered appearance in the suit and has been contesting the suit by filing a written statement.

13. In the said written statement, it was stated that the suit was instituted at the instance of the defendant Nos. 1 to 4 by setting up the original plaintiff. It was alleged that the defendant No. 2 was the erstwhile Secretary of the School, but he was no longer in power. Therefore, he has set up his brother to stall smooth running of the said primary school. The defendant No. 6 asserted that the defendant No. 2 validly executed the deed of gift in favour of the School and the School was in actual physical possession of the property.

13. Simultaneously, the defendant No. 6, also, filed an application under Order 39, Rule 4 of the Code of Civil Procedure. In the said application, it was stated that the school concerned was the only recognised free primary school in the village. Most of the students belong either to the minority community or the scheduled caste community or the other backward class community. Anganwari Sishu Siksha Kendra was, also, functioning from the school premises. The School has been providing mid-day meals to the students. Two full-time teachers and one part-time teacher have been engaged in the school. Moreover, two Anganwari teachers have, also, been engaged. Sarba Siksha Mission in the district of Purba Medinipur sanctioned Rs. 3,92,000/- (Rupees three lakh ninety two thousand) only for construction of School building and, also, sanctioned Rs. 60,000/- (Rupees sixty thousand) only for construction of kitchen-cum-store. It was stated that the school was in actual physical possession of about 30 decimals of land.

14. During the pendency of the application for injunction in the trial court, the learned trial judge appointed Mr. Prashanta Kumar Das, a practising advocate of the Contai Civil Court, as the commissioner for local inspection.

15. The learned advocate commissioner conducted an inspection and submitted his report in the trial Court. The report of the learned commissioner revealed that the suit plot no. 466 was measuring about 37 decimals as described in Schedule "Ka-1" of the plaint. He noticed a new tile shed structure. He, also, noticed that some students were studying in the newly constructed shed. He found that a portion of the tile shed was used for cooking purpose. Simultaneously, he, also, noticed the dwelling house of Bikash Ranjan Pahari, the original plaintiff, in the middle portion of plot no. 466 and a bathroom towards the northern portion of his dwelling house. He, also, noticed a cow shed towards the south-western portion of the said dwelling house.

16. The learned trial judge, by the order impugned, partially modified the ad-interim order of status quo passed on September 13, 2002 and allowed the prayer of the

defendant No. 6 to make construction of the School building and kitchen-cum-store as per government sanctioned plan.

17. Being aggrieved, the substituted plaintiff No. 1(b), namely, Kausik Pahari, has come up with this appeal.

18. In connection with this appeal, an application for stay was moved and a Division Bench of this Court on July 13, 2010, directed the parties to maintain status quo in relation to the disputed plot of land.

19. During the pendency of the appeal and the application for stay, a Division Bench of this Court on July 27, 2010, appointed Mr. Samiran Giri, a practising advocate of this Court as the special officer. The Learned special officer was requested to go to the locale to hold a local inspection as to the present position at the locale. The learned special officer had conducted a local inspection and submitted his report in this Court.

20. In the report the learned special officer stated that he had noticed incomplete structure standing in plot no. 466 and he was informed that it was the school building. He noticed that the construction was complete up to lintel and eighth part brick work was done over the lintel in verandah side. He found three incomplete rooms up to lintel and ninth part brick work was done over the lintel. He, also, recorded that when he held the inspection, he found that no construction was going on.

21. Mr. Syama Prasanna Roychowdhury, learned senior advocate appearing in support of this appeal, argues that there is no assertion that the school is the absolute owner of the property-in-dispute. He draws our attention to the report of the learned commissioner appointed by the trial court to indicate that there is a dwelling house of the appellant on the said plot of land. Mr. Roychowdhury, therefore, submits that when the suit for partition is pending, the learned trial judge was not correct in vacating the order of status quo and in permitting the defendant No. 6 to complete the construction.

22. Mr. Anil Kumar Jana, learned advocate appearing for the respondent Nos. 6, 7 and 8 adopted submissions of Mr. Roychowdhury.

23. Mr. Jiban Ratan Chatterjee, learned senior advocate appearing for the respondent No. 6, submits that it is a collusive litigation to acquire unlawful gain. Therefore, the learned trial judge was correct in applying the proper tests while considering the application under rule 4 of Order 39 of the Code of Civil Procedure.

24. The learned trial judge, by the order impugned, allowed the application filed by the defendant No. 6 and thereby permitted the defendant No. 6 to make construction of the school building and kitchen-cum-store as per government sanctioned plan. However, the learned judge did not make any provision as to the existing structure being the dwelling house of Bikash Ranjan Pahari.

25. The suit is pending. The application for temporary injunction is, also, pending. At this stage, if the school is permitted to make the construction according to sanctioned plan, situation may become reversible by the time, the application for temporary injunction is decided on merits. If the school, on the other hand, is not permitted to complete the unfinished construction, not only the school authorities shall suffer irreparable loss and prejudice, but the locality, as a whole shall, also, suffer irreparable loss and prejudice.

26. We feel that justice will be sub-served if the defendant No. 6 is permitted to complete the unfinished construction of the school and kitchen-cum-store room to make it useable without making any further encroachment of land in the said plot of land. Simultaneously, while making the construction the defendant No. 6 shall not interfere with the possession of the original plaintiff, namely, Bikash Ranjan Pahari.

27. Having regard to the acrimonious relationship between the parties and, also, to avoid all future complications in the matter, we direct the learned trial judge to appoint a receiver under whose supervision the defendant No. 6, that is, the school, will complete the existing structure, as above, without, however, any deviation from the sanctioned plan and without encroaching any further land in the disputed plot. The receiver shall ensure that, while making the construction, the defendant No. 6 will not cause any interference with the possession of the original plaintiff, namely, Bikash Ranjan Pahari, in the suit plot.

28. However, the construction shall abide by the result of the application for temporary injunction.

29. The learned trial judge is directed to appoint the receiver within two weeks from the date of communication of the order. The learned receiver shall submit his report after completion of the construction. The learned receiver must secure strict compliance of the directions passed by this Court.

30. The remuneration of the learned receiver shall be fixed by the learned trial judge and the same shall be paid by the defendant No. 6.

31. We clarify that the learned trial judge shall be free to pass necessary directions to the learned receiver to secure compliance of this order, if it is necessary for him to do so.

32. The order impugned stands modified, as above.

33. The appeal is, thus, disposed of.

34. We, however, make it clear that we have not gone into the merits of the claims and the counter-claims of the parties involved either in the suit or in the application for temporary injunction. All issues in the suit and all the points for consideration in the application for temporary injunction are left open.

35. The learned trial judge is requested to dispose of the application for temporary injunction as expeditiously as possible.

36. In view of the disposal of the appeal, the connected application is, also, disposed of.

37. We, however, make no order as to costs.

38. Urgent xerox certified copy of this judgment, if applied for, is to be given to the learned advocates for the parties upon compliance of all formalities.

Mrinal Kanti Sinha, J.

39. I agree