

(2011) 06 CAL CK 0066

Calcutta High Court

Case No: C.O. No. 3870 of 2010

Abjun Bibi

APPELLANT

Vs

Md. Rafiquddin Motta and
Another

RESPONDENT

Date of Decision: June 24, 2011

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Mukteswar Maity, for the Appellant; S.S. Panda, for the Respondent

Judgement

Prasenjit Mandal, J.

This application is at the instance of the Plaintiff and is directed against the order dated November 22, 2010 passed by the learned Additional District Judge, Diamond Harbour, South 24-Pargans in Misc. Appeal No. 17 of 2010 arising out of Title Suit No. 87 of 2010 pending before the learned Civil Judge (Junior Division), Kakdwip, South 24-Pargans.

2. The short fact is that the Plaintiff/Petitioner herein instituted a suit being Title Suit No. 87 of 2010 for declaration of title, injunction and other relief's against the Defendants / opposite parties herein. In that suit, the Plaintiff filed an application for temporary injunction. That application was moved on June 15, 2010 and the learned Trial Judge issued a notice of show cause upon the opposite parties but refused to grant an ad interim order of injunction. Being aggrieved, the Plaintiff filed a misc. appeal being Misc. Appeal No. 17 of 2010 which was allowed on contest by the impugned order directing the parties to maintain status quo. Being aggrieved by the said order, the Plaintiff has preferred this revisional application.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the Plaintiff has prayed for declaration of his right, title, interest and possession over the suit property and other relief's. The Defendant is contesting the said suit. While relying the material allegations made in the plaint, the Plaintiff has not only prayed for declaration of his right, title, interest

and possession over the suit property, but, at the same time, he has prayed for passing temporary injunction so that the Defendants may not raise any objection or resist the construction to be made by the Plaintiff on the suit land. From the materials filed by the Plaintiff, it appears that the Plaintiff has made out a prima facie case to go for trial but if the temporary injunction as sought for, is granted, the effect will be that the Plaintiff will be permitted to raise construction on the suit land and the Defendants will be debarred from raising any obstruction or resist the construction. If the Plaintiff is allowed to raise the construction, the effect will be the change of the nature and character of the suit property. When a suit of this nature is filed, the object of granting temporary injunction is to keep the property in status quo position till the disposal of the suit.

4. The misc. appeal has arisen out of the order of refusal of the prayer for ad interim injunction. So, at this stage, there is no scope of consideration of the defence version. So, in such a situation, the property in suit should be kept in status quo. Otherwise, it is the Defendants who are to suffer irreparable loss if the construction is raised by the Plaintiff.

5. I am, therefore, of the view that till the disposal of the application for temporary injunction, parties should be directed to maintain status quo of the suit property. The learned Lower Appellate Court has, therefore, rightly allowed the misc. appeal.

6. Therefore, the revisional application is disposed of. Both the parties are directed to maintain status quo as it stands today till the disposal of application for temporary injunction. The learned Trial Judge is directed to dispose of the application for temporary injunction within a period of two months from the date of communication of the order to him.

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

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