

(2010) 09 CAL CK 0080

Calcutta High Court

Case No: C.O. No. 198 of 2009 with C.A.N. No. 5432 of 2010

Bindeswari Dubey

APPELLANT

Vs

Lakhu Dubey

RESPONDENT

Date of Decision: Sept. 2, 2010

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Aniruddha Chatterjee and T.K. Das, for the Appellant; J.R. Chatterjee and S.N. Dhar, for the Respondent

Judgement

Prasenjit Mandal, J.

This application is at the instance of the plaintiff and is directed against the order No. 2 dated December 23, 2008 passed by the learned District Judge, Alipore in Misc. Appeal No. 594 of 2008 thereby affirming the order No. 85 dated November 18, 2008 passed by the learned Civil Judge (Junior Division), Fourth Court, Alipore in Title Suit No. 78 of 1997.

2. The plaintiff instituted the suit for a decree of declaration that he is the tenant of the premises in suit, as described in the schedule of the plaint and also for a decree of permanent injunction and other reliefs. In that suit, he filed an application for temporary injunction. The defendant/opposite party is the brother of the plaintiff and he has been trying to dispossess the plaintiff and also to disturb him in the peaceful enjoyment of the premises in suit. He installed gas oven in the open space within the suit premises which adversely affects the health of the plaintiff and his children. So, he filed an application for temporary injunction restraining the defendant from using the unauthorized gas ovens. That prayer was rejected by the learned Civil Judge (Junior Division) on contests. Thereafter, a misc. appeal was preferred by the plaintiff. The plaintiff prayed for an ad interim order of injunction and it was rejected. Being aggrieved, the petitioner has come up with this application.

3. Upon hearing the learned Advocate for the parties and on consideration of the materials on record, I find that admittedly the suit premises was the tenanted property of the father of the plaintiff at 15, Kali Temple Road. Selling and making ♦padas♦ for the prasad of Kalimata was a family business and the plaintiff is also actively involved in the said business. The plaintiff has been running his business inherited from his father. His contention is that in the absence of the plaintiff, the defendant installed gas ovens in the space within the suit premises and the emission of fumes adversely affects the health of the plaintiff and his children.

4. Inspection of the said premises was held and the learned Advocate commissioner submitted a report stating that the preparation of the sweet products is the business of the parties to the suit. The space between the bedroom and the kitchen of the plaintiff is 40 inches width and in that place the gas oven had been installed causing inconvenience for ingress and egress to the bedroom of the plaintiff and also health hazards to the members of the plaintiff♦s family. It appears that the pollution control board also asked the defendant to close the use of the oven in that place for safety and security and also to save the property from pollution. In spite of that, the defendant is preparing sweet products at that place.

5. However, the plaintiff/petitioner has come up against the rejection of the prayer for interim order and if I make any observations, it will likely affect upon the learned courts to decide the matter in dispute independently.

6. Thus, I find that the learned Trial Judge rejected the application for temporary injunction and the learned Appellate Court has also rejected the prayer for an ad interim injunction.

In such circumstances, in exercising the revisional jurisdiction it will not be proper to take a contrary view.

7. This being the position, I am of the view that without making any observation, the learned Appellate Court should be directed to dispose of the application for temporary injunction within a period of three weeks from the date of communication of the order.

8. Accordingly, the prayer for interim order is not considered by this Court in exercising the revisional jurisdiction. The matter is left with the learned Appellate Court for disposal of the application for temporary injunction finally. It is recorded that I have not gone into the merit of the application for temporary injunction.

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

10. Since the main application is disposed of, the Can application has become infructuous and so it is also dismissed.

11. There will be no order as to costs.

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