(2012) 12 CAL CK 0063

Calcutta High Court

Case No: C.O. No. 1513 of 2012

Ishwarnath Gupta		APPELLANT
	Vs	
Probir Das @ Kalua and Others		RESPONDENT

Date of Decision: Dec. 11, 2012

Citation: (2013) 2 CHN 310

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Haradhan Banerjee, for the Appellant;Probal Kumar Mukherjee, Partha Pratim Roy and Mr. B.P. Banerjee, for the Respondent

Judgement

Prasenjit Mandal, J.

This application is at the instance of the plaintiff/respondent and is directed against the Order dated April 19, 2012 passed by the learned Additional District Judge, Howrah in Misc. Appeal No. 1 of 2011 thereby vacating the interim order of injunction granted by the learned Trial Judge in Title Suit No. 189 of 2010. The plaintiff instituted a suit being Title Suit No. 189 of 2010 against the opposite parties praying for a decree of declaration of title and other Reliefs. At the time of filing of the suit, he filed an application for temporary injunction and moved for an ad interim order of injunction. The learned Trial Judge, upon considering the materials on record, granted the ad interim injunction restraining the defendants from disturbing the plaintiff in the peaceful enjoyment of the suit property and also from making any obstruction to the raising of the boundary wall of the suit property. Being aggrieved, defendants preferred a misc. appeal being Misc. Appeal No. 1 of 2011 and that misc. appeal was allowed by the learned 1st Appellate Court thereby reversing the order of ad interim injunction.

2. Now, the question is whether the impugned order should be sustained.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the plaintiff has asserted his right, title and interest

in the suit property contending, inter Alia, that one Ratan Chandra Naskar was the owner of the suit property as described in the schedule to the plaint. The plaintiff has also contended that he had purchased the said suit property by a Deed of Sale dated February 23, 2007 and thus, he had acquired right, title, interest and possession over the suit property. The plaintiff has also described how Ratan Chandra Naskar inherited the suit property as 16 Anna owner.

4. The plaintiff has also contended that the defendant nos. 1 & 2 are the men of the defendant No. 3 and they pressurized to transfer the suit property in favour of the defendant No. 3 to which proposal the plaintiff did not agree and as such, the dispute took place. At present, I am concerned with the interim order passed by the learned Trial Judge and the order of the Appellate Court therefrom.

5. So far as the prayer for ad interim injunction is concerned before the learned Trial Judge, I find that the plaintiff has shown prima facie case to go for trial as per plaint case. He has, prima facie, shown that he has his right, title, interest and possession over the suit property.

6. Mr. Haradhan Banerjee, learned Advocate appearing for the petitioner, has referred to the decisions of Sm. Muktakesi Dawn and Others Vs. Haripada Mazumdar and Another, and The Bengal Club Limited Vs. Susanta Kumar Chowdhury, which lay down that at the time of consideration of the prayer for ad interim injunction, the Court is required to state reasons in support of the ad interim injunction.

7. Mr. Banerjee has also referred to the decision of Sub-Committee of Judicial Accountability Vs. Union of India and others, upon which the 1st Appellate Court has relied in reversing the order passed by the learned Trial Judge. This decision refers to the fact that while passing inter locator order, the learned Trial Judge shall not prejudge some important and delicate issues in the main matter. The Court will abstain from passing inter locator order. This is also a general principle relating to grant ad interim injunction.

8. Mr. Probal Kumar Mukherjee, learned Advocate appearing on behalf of the opposite parties has supported the impugned order contending that since the learned Trial Court has prejudged the main matter in the suit and almost granted the entire Reliefs prayed for in the suit, the learned 1st Appellate Court has rightly set aside the order.

9. With due respect to Mr. Mukherjee, I am of the view that such submission cannot be accepted inasmuch as in appropriate situation the Court may grant ad interim injunction and for that reason finding, if any, is to be treated as prima facie finding because at that time, there is no scope to consider any Defence version.

10. However, Mr. Mukherjee files xerox copy of a Sale Deed, mutation certificate, etc., to show that Raymon Engineering Works Ltd. had purchased the suit property

by an auction sale from the Official Liquidator, High Court, Calcutta in the year 1987 and that mutation of the suit property had been done in the name of the defendant No. 3/opposite party herein in the year 2007.

11. Mr. Mukherjee has contended that the original land-owner recorded his name in the Record of Rights after 45 years. This creates a doubt in the title of the vendor of the plaintiff. There is a bona fide dispute as to the title to the suit property and as such, other proceedings were also lodged by the plaintiff, such as, 144 case and as such, when there is a bona fide dispute as to the title to the property, the Appellate Court has rightly set aside the order.

12. By the order of ad interim injunction, if the plaintiff is permitted to raise construction, there is a chance of encroachment. Therefore, so far as making construction of a boundary wall is concerned, that shall be considered upon hearing the learned Advocates of both the sides over the matter after giving an adequate opportunity to the opposite parties to file an appropriate written objection. The plaintiff has prima facie shown that if he is restrained from making construction, he is likely to suffer irreparable loss. The valuation of the building materials is going up day-by-day. So, unless, the ad interim injunction in the first part as prayed for barring the question of raising construction is granted, the plaintiff may suffer irreparable loss. If injunction is not granted at the initial stage and ultimately, the plaintiff succeeds in the suit by lapse of time and enhancement of the price of the building materials takes place in the meantime, after the disposal of the suit, the plaintiff may be in a disadvantaged position.

13. While disposing of the misc. appeal, relying on the decision of Sub-Committee of Judicial Accountability Vs. Union of India and others, , the learned Appellate Court has observed that virtually the learned Trial Judge has adjudicated the ownership of the plaintiff. The learned 1st Appellate Court has also observed that while disposing of the prayer for interim injunction, learned Court shall not prejudge some important and delicate issue in the main matter. At the time of granting injunction, the learned Trial Judge is required to show prima facie case and also urgency in the matter. While granting ad interim order, the learned Trial Judge has recorded that the defendants were trying to obstruct the construction when it was started by the plaintiff and even tried to interfere with the plaintiff''s possession. This being the finding of the learned Trial Judge, I am of the view that the learned Trial Judge has found urgency in passing the ad interim order.

14. This being the position, the finding of the Lower Appellate Court that the learned Trial Judge has opined virtually recording ownership of the plaintiff cannot be supported and these are merely prima facie views on the basis of the materials filed by the plaintiff in support of the application for temporary injunction. The learned 1st Appellate Court has not, therefore, addressed the issue properly. Accordingly, I am of the view that the impugned order cannot be supported and should be set aside.

15. However, since Mr. Mukherjee has filed the xerox copy of a deed showing that the defendant No. 3 became the owner of the property in suit and that the mutation had been done in its name, a bona fide dispute as to right, title and ownership over the suit property has, prima facie, cropped up.

16. This being the position in all fairness, I am of the view that both the parties should be directed to maintain status quo in respect of the suit property as it stands today till the disposal of the application for temporary injunction.

17. Accordingly, both the parties are directed to maintain status quo of the suit property as it stands today till the disposal of the application for temporary injunction.

18. The application is disposed of in the manner indicated above.

19. For fair trial, it is recorded that my above findings are of prima facie views and the learned Trial Judge is free to proceed with the suit on the basis of materials placed before him.

20. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.