

Civil Revision
PRESENT: THE HON'BLE MR JUSTICE KALIDAS MUKHERJEE
JUDGMENT ON: 18.02.2010.

C.O. NO. 3827 OF 2008
Mst. Rabia Khatun
Vs.
Khawaja Ali Ahmed

Point:

INJUNCTION- Suit for partition- Construction started by one party- Whether Court should pass an order for maintenance of status-quo – Code of Civil Procedure, 1908, S. 151 & O. 39, R. 1 & 2.

Fact: The predecessor in interest of the opposite party filed a Title Suit in the Court of Civil Judge (Senior Division) claiming partition in respect of a plot and pre-emption under the Mohammedan Law and for injunction. The suit was dismissed on contest and being aggrieved the plaintiff filed a Title Appeal. During the pendency of the said appeal the appellant filed an application under Order 39 Rule 1 & 2 read with Section 151 C.P.C. for temporary injunction against the defendant/respondent which was allowed by the Ld. First Appellate Court by restraining the defendant/respondent from raising construction and directing both parties to maintain status-quo till the disposal of the appeal. Being aggrieved by the said order passed by the learned First Appellate Court the defendant/respondent has preferred the instant application.

Held: The High Court by upholding the contentions of the Ld. Judge of the First Appellate Court observed that the defendant has started construction in the suit property and if the suit ultimately succeeds in favour of the appellant/plaintiff, in that case such a construction by the other side would be a matter of gross injury for which the appellant would suffer irreparable loss and injury. It was also upheld by the High Court that in a case where construction has been started there should be an order for maintenance of status-quo. Paragraph – 6

Cases: (2004)8 SCC 488 [Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass]para 10 & AIR 1993 SC 276 [Dalpat Kumar and another Vs. Prahlad Singh and others].

For the petitioner: Mr. Sardar Amzad Ali
 Mrs. Kaberi Ghosh (Dey)

For the O.P. : Mr. Saptangshu Basu
 Mr. Jayanta Das

The Court:

1. This is an application under Article 227 of the Constitution of India assailing the order No. 25 dated 25.9.2008 passed by learned Additional District Judge, 2nd Fast Track Court, Paschim Midnapur in Title Appeal No. 102 of 2006.
2. The predecessor in interest of the opposite party herein brought a Title Suit No. 326 of 1994 in the Court of Civil Judge (Senior Division) claiming partition of C.S. plot No. 577 of mouza Milonbazar within Midnapur Town and pre-emption under the Mohammedan Law and for injunction. The suit was subsequently numbered as T.S. No. 46 of 2006 and it was ultimately dismissed on contest by the learned Civil Judge (Senior Division), Third Court, Paschim Midnapur on 18.9.2006. Being aggrieved by the said judgment and decree passed by the learned Trial Court the plaintiff filed a Title Appeal before the learned District Judge which was numbered as T.A. 102 of 2006. During the pendency of the said appeal the appellant filed an application under Order 39 Rule 1 & 2 read with Section 151 C.P.C. for temporary injunction against the defendant/respondent.
3. The contention of the respondent in that Title Appeal was that she was a purchaser from co-sharer and she was residing in her legally purchased land and was entitled to make construction upon her own land. The suit was held bad for non-joinder of necessary parties

and non-inclusion of total area of C.S. plot No. 577. The learned First Appellate Court allowed the application for temporary injunction on 25.9.2008 restraining the defendant/respondent from raising construction and directing both parties to maintain status-quo till the disposal of the appeal.

4. Being aggrieved by the said order passed by the learned First Appellate Court the defendant/respondent has preferred the instant application under Article 227 of the Constitution of India. It has been contended on behalf of the petitioner herein that the suit was defective as held by the learned Trial Court and, as such, in a defective suit no order of injunction can be granted. It has also been submitted that the learned Trial Court rejected the application for injunction and the suit was dismissed on contest and the learned First Appellate Court granted injunction when the suit has already been dismissed. It is contended that the findings of the learned First Appellate Court are based on surmise and conjecture and, therefore, the order of injunction is totally unwarranted. It is submitted that the petitioner herein has the right to raise construction over her own land and no order of injunction can be passed.
5. The learned Counsel appearing on behalf of the O.P. submits that the order of injunction was passed by the learned First Appellate Court on an interlocutory application filed in the Title Appeal. It is submitted that in a suit for partition an order to maintain status-quo should be passed in the interest of justice, otherwise, there would be multiplicity of suits and further complications. In this connection the learned Counsel has referred to and cited the decision reported in *(2004)8 SCC 488 [Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass]para 10 & AIR 1993 SC 276 [Dalpat Kumar and another Vs. Prahlad Singh and others]*.

6. The suit was filed in the learned Trial Court for partition, pre-emption and injunction. The contention of the defendant/petitioner herein is that she is occupying the specific portion and, as such, she has the right to raise construction over the part of the property under her occupation. The learned Judge of the First Appellate Court held that the defendant has started construction in the suit property and if the suit ultimately succeeds in favour of the appellant/plaintiff, in that case such a construction by the other side would be a matter of gross injury for which the appellant would suffer irreparable loss and injury. The learned Judge also by referring to a decision held that in such a case where construction has been started there should be an order for maintenance of status-quo. Having regard to the contentions raised by the parties and the circumstances of the case, I find that the learned Judge of the First Appellate Court was justified in passing the impugned order on the basis of an application for injunction filed in the Title Appeal arising out of the judgment and decree passed by the learned Trial Court. There is no ground to interfere with the findings of the learned Judge of the First Appellate Court. I only direct that the learned Judge of the First Appellate Court will dispose of the appeal as early as possible. The application under Article 227 of the Constitution of India is thus disposed of.
7. There will be no order as to costs.
8. Let a copy of this order be sent to the learned Court below immediately.
9. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.

(Kalidas Mukherjee, J.)

