

T.S. - 252/22 CNR – WBCC010835-2022

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 37

24.6.24

Today is fixed for passing necessary order in respect of the hearing conducted upon the application of the plaintiff u/o 39 Rules 1 and 2 read with section 151 CPC dtd 29.1.22 as well as the application u/o 39 Rule 4 read with section 151 CPC filed by the defendant nos 1 and 2 on 14.2.22.

Both the sides file haziras. Plaintiff files a petition praying for extending the force of adinterim order of temporary injunction passed in this suit.

Perused the application of the plaintiff for temporary injunction.

In short, the case of the plaintiff is that one Monmohan Pandey, since deceased, was the original owner of the premises no 68/G, Beadon Street, P.S. Burtolla, Kolkata - 6 and that by virtue of a registered Deed of settlement dtd 19.12.1934 he settled the same in trust appointing his son in law, namely, Sitanath Pradhan, as a trustee as well as appointing his grandsons, namely, Satya Sundar Pradhan and Charitra Sundar Pradhan ( both since deceased ) as the next trustees upon the death of the said Sitanath Pradhan apart from stipulating that on the death of the last surviving trustee, the said property would vest in the heirs on the male line of the said Satya Sundar Pradhan and Charitra Sundar Pradhan( both since deceased ). It is also the case of the plaintiff that the said Satya Sundar Pradhan and Charitra Sundar Pradhan, during their lifetime, amicably partitioned the said property by virtue of a registered deed of partition dtd 27.5.1947 into two lots, whereby the same was divided and mutated as 69A and 69B, Beadon Street, Kol – 06 making the said Satya Sundar Pradhan entitled to premises no 69B, Beadon Street, Kol -06 and the said Charitra Sundar Pradhan entitled to premises no 69A, Beadon Street, Kol – 06. Charitra Sundar Pradhan died leaving behind the plaintiff and Prabir Pradhan ( since deceased ), who accordingly became entitled to the said premises no 69A, Beadon Street, Kol -06. On the other hand, Satya Sundar Pradhan died on 7.1.1992 leaving behind his only son, Sabyasachi Pradhan, and his two daughters, i.e., the defendant no 3 and Sudipta Barman ( since deceased ), as her heirs and legal representatives. Subsequently, the said Sabyasachi Pradhan, who was a divorcee, died issueless and accordingly at present there is no heir on the male line of the said Satya Sundar Pradhan. It is contended by the plaintiff that according to the terms of the said deed of trust, he along with the said Prabir Pradhan became the owners of premises no 69B, Beadon Street, Kol - 06 as the only heirs in the male line of the said Sitanath Pradhan and that though the defendant no 3 and the said Sudipta Barman, as the daughters of the said Satya Sundar Pradhan, did not acquire any right, title or interest in respect of the premises no 69B, Beadon Street, Kol -06, but they illegally and wrongfully got their names mutated in the records of KMC by suppression of the terms and conditions of the said deed of trust, for which the plaintiff and the said Prabir Pradhan jointly filed T.S. 2616/10 before this Bench against the defendant no 3, Sudipta Barman ( since deceased ) and KMC for declaration, permanent and mandatory injunction together with other consequential reliefs. The said suit was dismissed on contest holding that the defendant no 3 and Sudipta Barman ( since deceased ) had one third share in the mother premises no 68G, Beadon

Street, Kol – 06 prior to its renumbering as 69A & 69B, Beadon Street, Kol -06. The plaintiff and the said Prabir Pradhan preferred appeal against the said judgment before the Hon'ble High Court at Calcutta, being FAT no 651/17, which is still pending. It is the specific contention of the plaintiff that the defendant nos 3 and 4 were / are all along residing away from the said premises no 69B, Beadon Street, Kol – 06 while the defendant nos 1 and 2 are residing as illegal occupiers in the said premises after the death of their predecessor in interest, who was a monthly tenant in respect thereof under the defendant nos 3 and 4, but the said tenancy having been extinguished in terms of the provision of section 2(g) WBPT Act 1997 and as such the plaintiff along with the proforma defendants, as the heirs and legal representatives of the said Prabir Pradhan, are the absolute owners in respect of both the premises nos 69A, Beadon Street, Kol – 06 ( as described in schedule A to the instant application ) & 69B, Beadon Street, Kol – 06 ( as described in schedule B to the instant application ), together of which were earlier numbered as 68/G, Beadon Street, Kol - 06. The specific contention of the plaintiff is that the defendant nos 1 and 2, with the help of local hooligans, have started making illegal constructions on the B schedule property since 19.1.22 without having any lawful right to do so thereby damaging the Western building wall and that inspite of repeated requests they are not paying any heed but carrying on with their aforesaid illegal activities. Subsequently on 20.1.22 the plaintiff came to know that the B schedule suit property was transferred to the defendant nos 1 and 2 by the defendant nos 3 and 4 by way of sale for valuable consideration despite the fact that the defendant nos 3 and 4 had no right, title or interest in respect thereto. For all these reasons the plaintiff, by filing this suit has come up with the present application praying for passing an order of temporary injunction restraining the defendant nos 1 and 2 from making any addition / alteration / renovation / construction on the B schedule property by damaging the A schedule property in any manner as well as for mandatory injunction directing them to restore the Western side building wall of the A schedule property to its original condition.

The defendant nos 1 and 2 have resisted and contested the injunction application by filing a WO denying all the material allegations contained therein. The positive stand of the said defendants is that the suit property, being their private property having purchased the same from the previous owner for valuable consideration, the plaintiff has no right or authority to challenge the same in the absence of any order of Hon'ble High Court at Calcutta in connection with the said pending appeal, being FAT 651/17. It is also their case that the plaintiff having no right, title interest or share in and in respect of the B schedule suit property but raising wild claim without any valid document, the prayer made in the injunction application should not be allowed. It is contended by the said defendants that whatever construction was made in the B schedule property, those were made in terms of sanctioned municipal building plan granted by KMC in their favour in the year 2020, which has since expired in the year 2022 and that no illegal construction work was made by them regarding the Western wall of the A schedule property. It is the further case of the defendant nos 1 and 2 that once the plaintiff having admitted the fact of the said Sabyasachi Pradhan having acquired right, title and interest in respect of undivided 1/3 rd share in the said undivided property comprised in 68/G, Beadon Street, Kol – 06, the plaintiff is debarred from

claiming any sort of right, title, interest or share in and in respect of the B schedule property, which was acquired by their vendors i.e., the two sisters of the said Sabyasachi Pradhan, by virtue of inheritance. For all these reasons, the said defendants have prayed for rejection of the injunction application.

The plaintiff has filed an affidavit in reply in order to deny the specific case made out by the defendant nos 1 and 2 in their said WO in the same line to what has been disclosed in their injunction application.

It appears from the record that after filing of this suit when the application for temporary injunction was moved on behalf of the plaintiff, an adinterim order of temporary injunction was passed in his favour on 29.1.22 restraining the defendants from making any addition, alteration, renovation and / or construction at the B schedule property by damaging the A schedule property and from giving any effect and / or further effect to the said registered deed of sale dtd 3.7.17 executed by the two sisters of the said Sabyasachi Pradhan in favour of the defendant nos 1 and 2 for a period of 14 days from the date of the said order. The said adinterim order was extended from time to time and the same is still in force.

The defendant nos 1 and 2 have filed an application on 14.2.22 u/o 39 Rule 4 read with section 151 CPC praying for setting aside the said adinterim order of temporary injunction assigning the reasons that they are the absolute owners in respect of the B schedule property by virtue of purchase for valuable consideration from the lawful owners thereof and that they had their names duly mutated in the records of KMC and that the B schedule property, being quite old and in a dilapidated condition, they undertook repair and renovation work in accordance with sanctioned municipal building plan of KMC without effecting any damage to the A schedule property, but due to the said adinterim order passed in this suit they have unnecessarily been stopped to carry on with the proposed repair and renovation work.

A supplementary affidavit has also been filed on behalf of the defendant nos 1 and 2 raising the plea that the plaintiffs are illegally claiming absolute right, title and interest in respect of the B and C schedule properties as such claim is frivolous and vexatious being based on gross misconception in the context of the contents of the deed of trust for the year 1934 and the deed of partition for the year 1947. The said defendants have also contended in the said supplementary affidavit that as the B schedule property was in need of urgent repair works for making the same habitable, they duly obtained necessary permission from KMC to undertake such repair / renovation work under the supervision of one LBS and as the said permission granted by KMC was going to expire in the month of December 2022 there is every necessity to vary / modify / set aside the said adinterim order of temporary injunction passed on 29.1.22.

The plaintiff has contested the said application of the defendant nos 1 and 2 by filing his WO against the same denying all the material allegations contained therein and have prayed for rejection of the same mainly on the grounds as disclosed by him in his application for temporary injunction alleging that the two daughters of the said Satyasundar Pradhan illegally and wrongfully got their names mutated in respect of the B schedule property in the records of KMC by suppression of the terms and conditions of the said deed of trust and that the registered deed of

sale executed by the vendors of the defendant nos 1 and 2 having been created during the pendency of the said T.S. 2616/10, the defendant nos 1 and 2 have not acquired any right, title, interest or share in the B schedule property, which actually belongs to the plaintiff and the proforma defendants.

From the respective stands of the parties as can be gathered from their applications and written objections, it appears to be the admitted position that the properties comprised in schedules A, B and C formed the erstwhile premises no 68/G, Beadon Street, Kol – 06, which belonged to one Manmohon Pandey, who created a trust in respect of the said property by dint of a registered deed of settlement dtd 19.12.34 appointing his son in law, Sitanath Pradhan, as trustee and thereafter appointing his two grandsons, namely, Satyasundar Pradhan and Charitra Sundar Pradhan, as the next trustees upon the death of Sitanath Pradhan apart from stipulating therein that on the death of the last surviving trustee, the said property would vest in the heirs on the male line of the said Satyasundar Pradhan and Charitra Sundar Pradhan absolutely and for ever. It is also the admitted position that the said Satyasundar Pradhan and Charitra Sundar Pradhan, during their lifetime, executed a registered deed of partition dividing the said property amicably by creating the A schedule and B schedule properties making the said Satyasundar Pradhan to become entitled in respect of the B schedule property and the said Charitra Sundar Pradhan to become entitled in respect of the A schedule property. The further admitted position is that Charitra Sundar Pradhan died leaving behind the plaintiff and the predecessor in interest of the proforma defendants, namely, Prabir Pradhan, as his heirs and legal representatives and they accordingly acquired the A schedule property and got their names mutated in the records of KMC. There is no dispute regarding the fact that Satyasundar Pradhan died leaving behind his only son, Sabyasachi Pradhan, and two daughters as his heirs and legal representatives. Sabyasachi Pradhan was admittedly a divorcee and died issueless. It is also undisputed that the said two daughters of Satyasundar Pradhan executed a registered deed of sale in respect of the B schedule property in favour of the defendant nos 1 and 2 for valuable consideration. The plaintiff and the predecessor in interest of the proforma defendants jointly filed T.S. 2616/10 before this Bench, which was dismissed on contest holding that the said vendors of the defendant nos 1 and 2 became joint owners in respect of the B schedule property. The said judgment and decree has been challenged before the Hon'ble High Court at Calcutta and the same is still pending for disposal. It is again the admitted position that the defendant nos 1 and 2 are in actual physical possession of the B schedule suit property, in respect of which they obtained sanctioned municipal plan from KMC for undertaking repair/renovation work but the validity of the said plan has already expired in the year 2022.

It further transpires from the record that at the instance of the defendant nos 1 and 2 Engineer Commission work was conducted in respect of the suit properties for ascertaining whether there is any scope to undertake the desired repair / renovation work in the B schedule property without disturbing the A schedule property in any manner when the Engineer Commissioner duly submitted his report dtd 5.8.23 and supplementary report dtd 28.1.24 to that effect wherefrom it is evident that if the proposed repair / renovation work is carried out according to the advice of the Engineer Commissioner, there is scope to undertake such work without affecting the A schedule property in any manner.

In the backdrop of the facts and circumstances as stated herein above, it is abundantly clear that in the absence of any evidence on record as well as till the final fate of the said FAT 651/17 is arrived at, there is hardly any scope to resolve the dispute involved in this suit between the parties. Though the Ld. Advocate for the plaintiff tried to impress upon this court by arguing that in view of the provision of section 44 of the Transfer of Property Act the defendant nos 1 and 2 are strangers to the family of the plaintiff and as such they should be enjoined while their application u/o 39 Rule 4 CPC should be rejected, but I find that no such case has been made out in the plaint or in the injunction application by the plaintiff to attract the provisions of Section 44 of the Transfer of Property Act and as such the said argument is completely foreign and cannot be given any weight at all. However considering the nature of dispute involved between the parties in this suit as well as to avoid unnecessary complication and / or confusion being sprung up before commencement of trial, I feel that the adinterim order of temporary injunction should be made absolute so that no injury / damage is caused to the A schedule property till disposal of the suit.

At the same time, when it is the admitted position that the defendant nos 1 and 2 are in actual physical possession of the B schedule property and that they had obtained sanctioned plan from KMC authority to undertake repair / renovation work in respect of the B schedule property and that apart when the judgment and decree passed in the said T.S. 2616/10 standing in favour of the vendors of the defendant nos 1 and 2 have not been set aside, I am of the view that there is necessity to modify the adinterim / temporary order of injunction to enable the defendant nos 1 and 2 to undertake necessary repair / renovation work in respect of the B schedule property but without affecting the A schedule property in any manner and that such repair / renovation work is to be carried out under the supervision of an empanelled Structural Engineer of KMC strictly in accordance with sanctioned plan of KMC as well as strictly in accordance with the suggestions provided by the Engineer Commissioner in his report dtd 5.8.23 and 28.1.24 with special emphasis upon the suggestions made in his supplementary report dtd 28.1.24 as well as allowing the plaintiff free access to the B schedule property for inspection as and when required but without claiming any equity or benefit whatsoever for such repair / renovation work.

Thus, the application of the plaintiff u/o 39 Rules 1 and 2 read with section 151 CPC dtd 29.1.22 as well as the application of defendant nos 1 and 2 u/o 39 Rule 4 read with section 151 CPC dtd 14.2.22 are thus disposed of on contest by making the adinterim order of temporary injunction passed in this suit on 29.1.22 absolute till the final disposal of this suit with the modification that the defendant nos 1 and 2 are at liberty to undertake necessary repair / renovation work in the B schedule property without affecting the A schedule property in any manner and that such repair / renovation work is to be carried out under the supervision of an empanelled Structural Engineer of KMC strictly in accordance with sanctioned plan of KMC as well as strictly in accordance with the suggestions provided by the Engineer Commissioner in his report dtd 5.8.23 and particularly according to the suggestions made in his supplementary report dtd 28.1.24 as well as allowing the plaintiff free access to the B schedule property for inspection as and when required but without claiming any equity or benefit whatsoever in future for such repair / renovation work.

The application of the plaintiff praying for extending the force of adinterim order of temporary injunction is thus also disposed of accordingly.

This order is passed without causing any injury or prejudice to the rights and contentions of the parties involved in this suit in any manner.

The plaintiff is directed to take fresh steps for causing summons of this suit in both ways upon the defendant nos 3 and 4 as well as upon the proforma defendant nos 1 and 2 positively by 23.8.24.

D/C by me

Judge

Judge 2<sup>nd</sup> Bench